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DISTRICT IV

August 8, 2024

To:

Hon. Timothy S. Gebert
Circuit Court Judge
Electronic Notice

Tiffany Rose Wunderlin
Electronic Notice

Chris Marfilus
Juvenile Clerk
Portage County Courthouse
Electronic Notice

Steven Zaleski
Electronic Notice

S. B.
1052 West 51st Street
Chicago, IL 60609

You are hereby notified that the Court has entered the following opinion and order:

2024AP1028-NM

In re the termination of parental rights to J.G., a person under the
age of 18: Portage County DHHS v. S.B. (L.C. # 2023TP16)

Before Kloppenburg, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

S.B., by counsel, appeals the circuit court order terminating his parental rights to J.G. Attorney Steven Zaleski, appointed counsel for S.B., has filed a comprehensive and detailed no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. S.B. was informed of his right to respond to the report, but has not filed a response. On consideration of the report, and after conducting an independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that there is no arguable merit to any issue that could be

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

raised on appeal. Therefore, the circuit court order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The Portage County Health and Human Services Department filed a petition to terminate S.B.'s parental rights to J.G. As grounds, the petition alleged that J.G. was in continuing need of protection or services (CHIPS) and that S.B. failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). S.B. exercised his right to a jury trial. After evidence was presented, the jury found that the County had established both grounds alleged in the petition. The circuit court entered a finding of unfitness as to S.B. and set the matter for a dispositional hearing. At the dispositional hearing, the circuit court made an oral decision, after hearing evidence and argument, to terminate S.B.'s parental rights. The next day, the circuit court entered a written order terminating S.B.'s parental rights, and S.B. appeals.

The no-merit report addresses whether the circuit court complied with the statutory deadlines that govern termination of parental rights proceedings. The record reflects that all of the statutory time limits under WIS. STAT. ch. 48 were either complied with or properly extended for good cause, without objection, to accommodate the parties' schedules. "Failure to object to a period of delay ... waives any challenge to the court's competency to act during the period of delay." WIS. STAT. § 48.315(3). Any challenge to the circuit court proceedings based on a failure to comply with the statutory time limits would be without arguable merit on appeal.

The no-merit report also addresses whether there would be any arguable merit to challenging the sufficiency of the evidence to support the jury's finding of grounds for termination based on CHIPS and failure to assume parental responsibility. Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424(2)

and 48.31(1). A jury's determination that grounds exist for termination will be upheld so long as there is any credible evidence to support that determination. *See State v. Quisanna D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. "When reviewing a jury's verdict, we consider the evidence in the light most favorable to the verdict." *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d. 273, 797 N.W.2d 854. The credibility of the witnesses and the weight to give their testimony are matters left to the jury. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

To prove grounds based on CHIPS, the County was required to prove that: (1) J.G. had been placed outside the home for a cumulative total of six months or longer; (2) the County had made reasonable efforts to provide the services ordered by the circuit court; and (3) S.B. failed to meet the conditions established for the safe return of J.G. *See* WIS. STAT. § 48.415(2)(a). The County presented evidence to satisfy each of these grounds over the course of a two-day hearing. Several witnesses testified at the hearing, including the ongoing social worker who had been assigned to S.B.'s case for over two years, a child support specialist, an Illinois interstate services supervisor who reviewed the home studies conducted of S.B.'s home, two mental health therapists who had worked with J.G., and the ongoing social worker who had been working with J.G. for over two years. S.B. also testified at the hearing. Having reviewed the record, this court is satisfied that there would be no arguable merit to an argument that the evidence was

insufficient to support the jury's findings as to the ground of CHIPS for termination of S.B.'s parental rights.²

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court's decision to terminate S.B.'s parental rights at the conclusion of the dispositional phase of the proceedings. "The ultimate decision whether to terminate parental rights is discretionary." *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). In rendering its decision, the circuit court considered the statutory factors set forth in WIS. STAT. § 48.426(3), and concluded that termination of S.B.'s parental rights to J.G. was in J.G.'s best interest. The circuit court heard testimony at the dispositional hearing from J.G.'s elementary school principal, her ongoing social worker, and her mental health therapist. S.B. also testified on his own behalf at the dispositional hearing. Having reviewed the record, this court agrees with counsel that a challenge to the circuit court's exercise of discretion as to disposition would lack arguable merit.

Finally, there is nothing in the no-merit report or the record to suggest that trial counsel rendered ineffective assistance of counsel in representing S.B. On an independent review of the record, this court has determined that there is no arguable basis for reversing the order

² The termination ground of failure to assume parental responsibility required the County to prove that S.B. failed to accept and exercise "significant responsibility for the daily supervision, education, protection and care" of J.G. See WIS. STAT. § 48.415(6). Because this court concludes that there would be no arguable merit to challenge the sufficiency of the evidence to support the jury's findings as to the CHIPS ground, the court does not address the sufficiency of proof on the alternative ground of failure to assume parental responsibility. Only one ground for termination need be established. See § 48.415 ("Grounds for termination of parental rights shall be *one* of the following") (emphasis added).

terminating S.B.'s parental rights. The court concludes that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of S.B. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals