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DISTRICT I

October 29, 2024

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

S.N.B.
4673 N. 79th Street
Milwaukee, WI 53218

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

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Services
Charmian Klyve
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Milwaukee, WI 53233-1803

Danielle E. Chojnacki
Electronic Notice

Julian B. Lacera
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Steven Zaleski
Electronic Notice

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

2024AP1759-NM

In the interest of R.T.: State of Wisconsin v. S.N.B.
(L.C. # 2023TP77)

Before Donald, 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.N.B., by counsel, appeals the circuit court order terminating her parental rights to her child, R.T. Attorney Steven Zaleski, appointed counsel for S.N.B., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. S.N.B. was informed of her right to

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.

respond to the report, but she has not done so. Upon consideration of the report, and an independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the circuit court's order. *See* WIS. STAT. RULE 809.21.

S.N.B. is the biological mother of R.T., born in February 2022. R.T. had marijuana, cocaine, and fentanyl in her system when she was born. She also had issues with feeding. She was placed in the neonatal intensive care unit, and required medication for both her feeding issues and for withdrawal symptoms.

S.N.B. has a long history of drug abuse. She admitted to hospital staff that she had used cocaine and heroin while she was pregnant with R.T. Additionally, there is a history of domestic violence between S.N.B. and R.T.'s father.² When R.T. was discharged from the hospital in March 2022, she was immediately placed in foster care.

In May 2023, the State filed a petition for the termination of S.N.B.'s parental rights to R.T. In the petition, the State alleged as grounds for termination the continuing need for protection and services for R.T., pursuant to WIS. STAT. § 48.415(2), and the failure by S.N.B. to assume parental responsibility, pursuant to § 48.415(6). The State explained that S.N.B. had not met the conditions for the return of R.T. For example, S.N.B. did not demonstrate that she had gained control of her drug addiction; she first refused inpatient care, then relapsed and was

² S.N.B. and R.T.'s father are not married; he was adjudicated as the father. His parental rights were also terminated as a result of these proceedings, but he is not a part of this appeal.

admitted to inpatient care, where she was discharged for being physically violent toward another patient. She also did not have stable housing, and was not consistently visiting R.T.

During the grounds phase of the proceedings, S.N.B. chose to enter a no contest plea to the continuing need for protection and services for R.T.; the failure to assume parental responsibility ground was dismissed as part of the plea deal. The matter then proceeded to the disposition phase. Based on the evidence presented—including testimony from S.N.B., her case worker, and R.T.’s foster parent—the circuit court determined that the evidence was “absolutely overwhelming” in support of the termination of S.N.B.’s parental rights. This no-merit appeal follows.

In the no-merit report, appellate counsel first addresses whether there would be arguable merit to challenges relating to the competency of the circuit court relating to adherence to statutory deadlines. Counsel states, and the record reflects, that the circuit court either acted within the statutory time periods for these proceedings as set forth in WIS. STAT. §§ 48.422(1)-(2), 48.424(4), and 48.427(1), or found good cause for granting a continuance, pursuant to WIS. STAT. § 48.315(2)-(3). We therefore agree with counsel’s analysis that there would be no arguable merit to a claim relating to statutory deadlines.

Appellate counsel next addresses whether there would be any arguable merit to a claim relating to S.N.B.’s no contest plea. The record reflects that the circuit court engaged in a thorough plea colloquy with S.N.B. We therefore agree with appellate counsel that a claim regarding the validity of S.N.B.’s plea would lack arguable merit.

Next, appellate counsel addresses whether there would be arguable merit to challenges relating to the disposition phase of these 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). The circuit court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interests of the child. *See Gerald O.*, 203 Wis. 2d at 153-54. Here, the record reflects that the circuit court expressly considered the statutory factors, made factual findings based on the evidence presented, and reached a reasonable decision.³ We therefore agree with appellate counsel’s conclusion that any challenge to the circuit court’s decision to terminate S.N.B.’s parental rights would lack arguable merit.

Finally, the no-merit report discusses whether S.N.B. could pursue an arguably meritorious claim that her trial counsel was ineffective. To prevail on such a claim, a litigant must show that counsel’s performance was deficient and that the deficiency prejudiced the defense. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). There is nothing in the no-merit report or the record to suggest that trial counsel rendered ineffective assistance of counsel in representing S.N.B. We therefore agree with appellate counsel that any such claim would lack arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

³ We note that a termination of parental rights case, *State v. H.C.*, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024), is currently pending before the Wisconsin Supreme Court, for review of the issue of whether there is a burden of proof that must be met during the dispositional phase. While that issue has yet to be decided, in the instant case, the circuit court found the State had met both a “clear and convincing evidence” burden as well as a “preponderance of [the] evidence” burden; in fact, the court stated the evidence presented had “even gone beyond those burdens[.]” The record supports the circuit court’s findings and conclusion.

Upon the foregoing, therefore,

IT IS ORDERED that the order terminating S.N.B.'s parental rights 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.N.B. in these matters.

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

Samuel A. Christensen
Clerk of Court of Appeals