



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 26, 2024

To:

Hon. Douglas R. Edelstein
Circuit Court Judge
Electronic Notice

Amber Letourneau
Juvenile Clerk
Fond du Lac County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Michael E. O'Rourke
Fond du Lac District Attorney's Office
160 S. Macy Street
Fond du Lac, WI 54935

John W. Herrick
Law Office of John W. Herrick, LLC
P.O. Box 708
Fond du Lac, WI 54936-0708

A. C. S.

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

2024AP2325-NM

State of Wisconsin v. A. C. S. (L.C. #2023TP25)

Before Neubauer, 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).

A.C.S. appeals from an order terminating her parental rights to her daughter, A.F. A.C.S.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. A.C.S. received a copy of the report, was advised of her right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude there are

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.

no issues with arguable merit for appeal. We summarily affirm the order and remand with directions.² WIS. STAT. RULE 809.21.

A.F. was removed from A.C.S.'s care in October 2021 due to concerns of neglect. At the time, she was fifteen months old. A.F. was subsequently found to be a child in need of protection or services.

In June 2023, the State of Wisconsin petitioned to terminate A.C.S.'s parental rights on the ground that A.F. was a child in continuing need of protection or services. *See* WIS. STAT. § 48.415(2). After a bench trial, the circuit court found that the ground was proven and made the requisite finding of unfitness. It then terminated A.C.S.'s parental rights after a dispositional hearing. This no-merit appeal follows.

The no-merit report addresses whether the evidence presented at trial was sufficient to sustain the circuit court's finding of unfitness. In reviewing this issue, we must consider the evidence in a light most favorable to the determination made by the court. *See Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169. Our review of the trial transcripts persuades us that the State produced ample evidence to prove that A.F. was a child in continuing need of protection or services. Once the court found that this ground was proven, it was required to find A.C.S. unfit. *See* WIS. STAT. § 48.424(4).

² There is a clerical error in the order regarding the grounds for termination. The order indicates the circuit court found both "continuing need of protection or services" and "failure to assume parental responsibility." In actuality, the court just found "continuing need of protection or services." We remand the matter to the circuit court so that the order can be amended to reflect that.

The no-merit report also addresses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating A.C.S.'s parental rights. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in WIS. STAT. § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit court's remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of A.F. to terminate A.C.S.'s parental rights.³

Finally, the no-merit report addresses other issues, including whether A.C.S. properly waived her right to a jury trial and whether there were any procedural defects/erroneous rulings that require a new trial. We agree with appellate counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Leonard D. Kachinsky of further representation in this matter.

³ We note that a termination of parental rights case is currently pending before the Wisconsin Supreme Court for review of the issue of whether there is a burden of proof at the dispositional hearing. See *State v. H.C.*, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024). Based on the record in this case, we are persuaded that the circuit court would have ordered the same disposition regardless of the burden of proof. Accordingly, there is no potentially meritorious issue relating to the burden of proof.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating A.C.S.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of further representation of A.C.S. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals