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DISTRICT I

May 13, 2025

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C.D.W.

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

2024AP1885-NM In re the termination of parental rights to J.A.M.-S., a person under the age of 18: State of Wisconsin v. C.D.W. (L.C. # 2023TP5)

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).

C.D.W. appeals from an order involuntarily terminating his parental rights (TPR) to his nonmartial child, J.A.M.-S.[2] C.D.W.'s appointed appellate counsel has filed a no-merit report

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

To the extent that the 30-day time limit in WIS. STAT. RULE 809.107(6)(e) applies, we extend the deadline on our own motion to the date this decision is issued. *See* WIS. STAT. RULE 809.82(2)(a).

pursuant to WIS. STAT. RULES 809.107(5m) and 809.32, as well as ***Anders v. California***, 386 U.S. 738 (1967). C.D.W. was served with a copy of the no-merit report and was advised of his right to file a response, but he has not done so. After considering the no-merit report and independently reviewing the appellate record, we conclude there are no non-frivolous issues for appeal. Therefore, we summarily affirm the TPR order. *See* WIS. STAT. RULE 809.21(1).

J.A.M.-S. was born on August 22, 2020. She was removed from her mother's care in January 2021 after her minor brother overdosed on opiates at a social gathering and was admitted to a hospital. C.D.W. was a suspected father and was contacted about the removal proceedings but did not participate.

C.D.W. began attending court proceedings regarding J.A.M.-S. following his arrest in July 2022 on suspicion of being a party to a June 16, 2021 reckless homicide. According to undisputed testimony in the grounds phase, C.D.W. had met J.A.M.-S. a few times in the first few months of her life, but he had never contacted, visited, or participated in any services for J.A.M.-S. following her placement in out-of-home care. C.D.W.'s paternity was established by DNA testing days before the TPR petition in this case was filed.

The State petitioned to terminate C.D.W.'s parental rights in January 2023. As grounds, the petition alleged that C.D.W. had failed to assume parental responsibility for J.A.M.-S. C.D.W. initially contested the petition, but he ultimately entered a no-contest plea in the grounds phase. The circuit court held a dispositional hearing featuring extensive testimony from State witnesses, as well as from C.D.W. and members of his family as alternative placement options.

[2] The order also terminated the mother's parental rights. Her appeal is not before us.

Afterward, the court concluded that termination would be in J.A.M.-S.'s best interests, and it entered a written order terminating C.D.W.'s parental rights to J.A.M.-S.

C.D.W., by appointed counsel, filed a notice of appeal and requested that we remand the matter for postdisposition proceedings. C.D.W. argued that his plea colloquy in the grounds phase was defective and, as a result, his plea was not entered knowingly, intelligently, and voluntarily. Specifically, C.D.W. asserted that the circuit court failed to advise him that there was a knowledge element to the failure to assume parental responsibility, such that the State was required to demonstrate that he failed to form a substantial parental relationship "only after knowing or having reason to believe that he was J.A.M.-S.'s father." C.D.W. alleged that he did not have actual or constructive knowledge that he was J.A.M.-S.'s father until he received the results of DNA testing six days before the State filed the TPR petition. He further alleged that, had the circuit court given a proper colloquy, "he would not have entered a plea of no contest, and would have proceeded to trial."

On remand, C.D.W. sought plea withdrawal under ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). The State opposed the motion as facially insufficient and also contended that C.D.W.'s averments regarding his knowledge were in contradiction to established facts. The circuit court scheduled a hearing at which C.D.W.'s testimony was anticipated, but he twice refused to leave his cell to appear on the Zoom conference.[3] The circuit court denied the

[3] C.D.W. was incarcerated throughout the TPR proceedings and has since been convicted and sentenced. He appeared by Zoom during some of the TPR hearings. His refusal to attend the postdisposition proceedings appears to have been animated by a general disinclination to participate and not by any objection to appearing by Zoom. The appellate record does not suggest that there would be any arguable merit to an assertion that C.D.W.'s occasional appearance by Zoom affected his ability to meaningfully participate in the proceedings.

postdisposition motion as a sanction for C.D.W.'s failure to prosecute. It also concluded that the plea colloquy was legally sufficient and that C.D.W.'s assertions about his lack of knowledge of paternity were implausible in light of testimony that he had previously given.

The no-merit report addresses whether the circuit court complied with all mandatory time limits, including the 30-day time limit for holding an initial hearing, *see* WIS. STAT. § 48.422(1), the 45-day time limit for holding a fact-finding hearing, *see* § 48.422(2), the 45-day time limit for holding a dispositional hearing, *see* WIS. STAT. § 48.424(4), and the 10-day time limit for entering a disposition, *see* WIS. STAT. § 48.427(1). Extensions were granted pursuant to "good cause" findings. *See* WIS. STAT. § 48.315(2). In any event, objections to competency are forfeited if not raised, and the failure by the court to act within any of WIS. STAT. ch. 48's designated time periods "does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction." Sec. 48.315(3). There is no non-frivolous challenge to the TPR order based upon the time limits established by WIS. STAT. ch 48.

The no-merit report also addresses whether C.D.W.'s plea in the grounds phase was knowing, intelligent, and voluntary, and whether the plea colloquy was sufficient under WIS. STAT. § 48.422(7). *See* ***State v. B.W.***, 2024 WI 28, ¶¶53-56, 412 Wis. 2d 364, 8 N.W.3d 22. The circuit court, by colloquy, established C.D.W.'s age, education level, and comprehension abilities. The court advised C.D.W. that his no-contest plea would result in a finding of parental unfitness and a second phase, controlled by the best-interests-of-the-child standard, would determine whether his parental rights should be terminated. The court advised C.D.W. of the constitutional and procedural rights he was giving up by pleading no contest. It told C.D.W. that his no-contest plea would relieve the State of its burden of proving by clear and convincing evidence the ground of failure to assume parental responsibility. Further, C.D.W. was told this

standard required the State to establish that C.D.W. has not had a "substantial parental relationship" with J.A.M.-S. C.D.W. confirmed that he was not pressured or coerced in any way to enter his no-contest plea in the grounds phase.

As counsel observes, the colloquy did not address a potential factor bearing on the unfitness phase: that C.D.W. had failed to assume parental responsibility because he did not know, or have reason to believe, that he was J.A.M.-S.'s father. On remand, the parties disagreed about whether the failure to discuss the purported knowledge element was cognizable as a claim for plea withdrawal under ***Bangert***. Even assuming that it was—the position most favorable to C.D.W.—there is no non-frivolous basis for an appeal on that issue given C.D.W.'s decision to absent himself from the evidentiary proceedings on remand, at which he would have had an opportunity to testify about his lack of actual or constructive knowledge of paternity.[4] And even if C.D.W. had testified consistent with his motion's allegations, the circuit court determined that the State's evidence—which included testimony C.D.W. had previously given—

[4] C.D.W.'s refusal to cooperate with the resolution of his postdisposition motion renders it unnecessary for us to opine about the arguable merit of a claim that the circuit court has additional colloquy responsibilities when actual or constructive knowledge of paternity is disputed or uncertain. Relatedly, his refusal to cooperate also renders it unnecessary to determine whether a respondent's alleged postdisposition lack of knowledge of paternity is appropriately addressed as a ***Bangert*** claim or, alternatively, as a claim under ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d 50 (1996).

Nonetheless, a few observations are warranted in this no-merit context. A parent's "lack of opportunity to establish a substantial relationship is not a defense to failure to assume parental responsibility." ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶38, 333 Wis. 2d 273, 797 N.W.2d 854. The reasons for a parent's lack of involvement may be considered by the fact finder as part of the totality-of-the-circumstances analysis, *see* ***id.***, but there is no statutory requirement for the State to establish that the lack of involvement was unreasonable, *see* WIS. STAT. § 48.415(6); *see also* ***State v. Bobby G.***, 2007 WI 77, ¶47, 301 Wis. 2d 531, 734 N.W.2d 81 (observing that § 48.415(6) "contains no express directive regarding whether a circuit court must consider that the father did not know of or have reason to believe of the existence of the child before the petition for termination was filed" when deciding whether the father ever had a substantial parental relationship with the child).

was sufficient to rebut C.D.W.'s allegations. There is no arguable merit to any claim that the circuit court erred by denying the postdisposition motion.

Additionally, the plea colloquy, coupled with the testimony of child welfare case manager Melissa Youngs, established a factual basis for C.D.W.'s stipulation to failure to assume parental responsibility. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶56, 233 Wis. 2d 344, 607 N.W.2d 607, *holding on other grounds clarified by* ***St. Croix Cnty. DHHS v. Michael D.***, 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107; *see also* WIS. STAT. § 48.422(3). Youngs testified that C.D.W. had not contacted, visited, or exercised any parental responsibility for J.A.M.-S. during the vast majority of her life. We therefore agree with appointed appellate counsel's conclusion that there is no non-frivolous basis to challenge the knowing, intelligent, and voluntary nature of C.D.W.'s plea in the grounds phase.

Finally, there is no non-frivolous basis to challenge the circuit court's exercise of discretion when determining that termination was in J.A.M.-S.'s best interests.[5] *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The court correctly identified the best-interests-of-the-child standard as controlling the disposition. *See* WIS. STAT. § 48.426(2). Further, the circuit court explicitly considered the factors identified in § 48.426(3) to guide its best-interests determination.

[5] The guardian ad litem called witnesses and conducted direct and redirect examinations in lieu of the State because the prosecutor had lost her voice. Though C.D.W.'s counsel objected to this arrangement, we perceive no arguably meritorious issue for appeal. *See* WIS. STAT. § 48.427(1) ("Any party may present evidence relevant to the issue of disposition."). The GAL and the State were aligned in their position that termination was in J.A.M.-S.'s best interests.

The circuit court found that Sarah, the adoptive resource, testified credibly that she was "very bonded" with J.A.M.-S. and was committed to adoption. J.A.M.-S. was healthy, in a stable environment, and did not have any significant issues in Sarah's care. The court found that both the first and second WIS. STAT. § 48.426(3) factors weighed heavily in favor of termination.

The circuit court extensively analyzed the third factor and found that it, too, weighed in favor of termination. The court found that J.A.M.-S. had no substantial relationships with her parents or biological family members except for a brother, and Sarah intended to facilitate that relationship to the extent possible following termination. The court discussed possible cultural differences between Sarah and J.A.M.-S. due to race,[6] and it found that Sarah was proactively addressing some of those matters. Although the court recognized that there was some potential for harm in severing J.A.M.-S.'s connections to her cultural identity, on balance the court determined that any future frustration or resentment J.A.M.-S. might experience did not outweigh other considerations supporting termination.

The court concluded the remaining factors were either neutral or favored termination. J.A.M.-S. was too young to have formed opinions as to the termination of parental rights. She had been separated from C.D.W. for essentially her entire life. The conditions of J.A.M.-S.'s placement with Sarah were "outstanding," and it was highly likely that J.A.M.-S. would remain in the foster care system absent termination. Additionally, there was an incredible amount of uncertainty regarding C.D.W.'s legal circumstances and whether, and for how long, he would be incarcerated. The court discussed possible alternatives to the termination of parental rights,

[6] Sarah is white; J.A.M.-S. is Black.

including the placements suggested by C.D.W., and found that they would not create the stability that J.A.M.-S. needed. There appears on this record no non-frivolous basis for asserting the court erroneously exercised its discretion when determining whether termination was in J.A.M.-S.'s best interests.

The no-merit report acknowledges that the Wisconsin Supreme Court has granted review in ***State v. H.C.***, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024) and has requested briefing on the issue of whether there is a burden of proof in the dispositional phase and, if so, what that burden of proof is. Here, the circuit court stated that it believed there was no burden of proof in the best-interests phase. However, the court stated that even if the petitioner bore the burden of proof by a preponderance of the evidence, or even clear and convincing evidence, "the State's presentation really shepherded through by the guardian ad litem here did meet the standard of preponderance and clear and convincing in terms of what is in the best interest" of J.A.M.-S. As a result, regardless of the outcome in ***H.C.***, it does not appear that there would be any non-frivolous basis for appeal regarding the burden of proof, even assuming the holding would apply retroactively.

Finally, the no-merit report addresses whether the record discloses any non-frivolous issue regarding whether C.D.W.'s trial counsel provided constitutionally adequate assistance. *See* ***Strickland v. Washington***, 466 U.S. 668 (1984). Given the limited record of attorney-client interactions available for our review, we agree with appellate counsel's conclusion that the decision to enter a no-contest plea in the grounds phase and to challenge the State's case at disposition appears to be objectively sound strategy. C.D.W. acknowledged at the plea hearing that he was satisfied with trial counsel's representation. Additionally, the circuit court complemented C.D.W.'s trial counsel on his representation and argument at the dispositional

hearing, particularly counsel's emphasis on family and cultural ties in suggesting that placement could continue with family members as opposed to terminating C.D.W.'s parental rights. We agree with appellate counsel's conclusion that any assertion of ineffective assistance of trial counsel is unsupported by this record.

Our review of the record discloses no other potential issues for appeal. We therefore accept the no-merit report, affirm the order terminating C.D.W.'s parental rights to J.A.M.-S., and discharge appellate counsel of the obligation to represent C.D.W. further in this appeal.

Based on the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved of any further representation of C.D.W. 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