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DISTRICT I

October 19, 2021

To:

Hon. Gwendolyn G. Connolly
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County
Electronic Notice

Danielle E. Chojnacki
Electronic Notice

Brian C. Findley
Electronic Notice

Anne M. Abell
Electronic Notice

S.C.

Division of Milwaukee Child Protective Services
Charmian Klyve
635 North 26th Street
Milwaukee, WI 53233-1803

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

2021AP914-NM	In re the termination of parental rights to C.C., a person under the age of 18: State of Wisconsin v. S.C. (L.C. # 2018TP116)
2021AP915-NM	In re the termination of parental rights to A.M.C., a person under the age of 18: State of Wisconsin v. S.C. (L.C. # 2018TP117)

Before Brash, C.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).

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

S.C. appeals from circuit court orders terminating his parental rights to his two children, C.C. and A.M.C.[2] S.C.'s appointed attorney, Brian C. Findley, has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. S.C. was served with a copy of the report and has filed a response. Appellate counsel then filed a supplemental no-merit report. This court has considered appellate counsel's report, S.C.'s response, and the supplemental report, and has independently reviewed the record as required by ***Anders v. California***, 386 U.S. 738 (1967). This court agrees with appellate counsel's conclusion that further proceedings would lack arguable merit. Therefore, the orders terminating S.C.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

This matter has a long procedural history. C.C. was born on November 23, 2015. His brother A.M.C. was born on May 7, 2017. C.C. was found to be child in need of protection or services on June 22, 2016. A.M.C. was found to be a child in need of protection or services on August 22, 2017. Both children have remained continuously placed outside of the home since then.

On May 31, 2018, the State filed petitions to terminate S.C.'s parental rights to the children alleging that the children continued to be in need of protection or services (Continuing CHIPS) and failure to assume parental responsibility, pursuant to WIS. STAT. §§ 48.415(2), (6).

S.C. did not attend the hearing on the petitions. At the hearing, on June 21, 2018, the case worker told the court that she spoke with S.C. and informed him of the date and time of the

[2] The parental rights of A.M.C.'s and C.C.'s mother have also been terminated and are not a part of this appeal.

hearing, but that S.C. did not indicate whether he would attend. The circuit court found S.C. in default for failure to appear.

The matter proceeded to a grounds hearing on September 18, 2018. At the hearing, the circuit court was informed that S.C. was in custody and was not produced. The court maintained its default finding and heard evidence as to grounds. The court found that grounds existed for the requisite finding of unfitness. The matter proceeded to disposition, where the court found that S.C. "forfeited his right to further notice" and that it was "appropriate to proceed" without producing him for the disposition. The court ultimately terminated S.C.'s parental rights to his children.

S.C. then filed a motion in this court, requesting that this court remand the matter so that S.C. could pursue postjudgment fact-finding to rescind the default judgments and termination orders. We granted the motion.

S.C. then filed a motion for postdisposition relief, arguing that the circuit court erred when it found him in default because he did not have notice of the June 21, 2018 hearing, and that the circuit court erred in terminating his parental rights while he was in custody and unable to meaningfully participate in the proceedings. The circuit court granted an evidentiary hearing on the matter.

Following the hearing, the circuit court found that S.C. failed to provide sufficient evidence to support his claim that his failure to attend the June 21, 2018 hearing was due to excusable neglect and upheld the default finding. However, the court also found that S.C. was denied a meaningful opportunity to participate in the proceedings against him because no accommodations were made to produce him while he was in custody; accordingly, the circuit

court vacated the previous findings as to grounds and disposition and ordered new hearings as to both.

Following a competency evaluation and procedural delays stemming from the use of Zoom during the COVID-19 pandemic, a hearing on the termination petitions was ultimately held on August 5, 2020. The court found that grounds existed as to both children and made the requisite findings of unfitness. At disposition, the court addressed each of the factors outlined by WIS. STAT. § 48.426(3) and determined that termination of S.C.'s parental rights was in the best interest of the children.

The no-merit report addresses five potential issues: (1) whether the circuit court erred when it did not vacate the default order against S.C.; (2) whether there was sufficient evidence to establish that the children were in need of protection or services; (3) whether there was sufficient evidence to prove that S.C. failed to establish a parental relationship with the children; (4) whether the circuit court erroneously exercised its discretion at disposition; and (5) whether the circuit court committed reversible error when S.C. was unable to attend a hearing via telephone over Zoom. This court agrees with appellate counsel that there would be no arguable merit to pursuing an appeal based on these issues. We will briefly elaborate below.

I. Default Finding

First, this court considers whether there would be arguable merit to a challenge to the circuit court's default findings. A circuit court has both inherent and statutory authority to enter a default judgment as a sanction for failure to obey its orders. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768.

Each default finding was based upon S.C.'s failure to appear pursuant to a Summons and Petition. Based upon the evidence in the record, the circuit court found that S.C. had adequate notice of the date and time of the hearing. S.C.'s case manager testified that she personally notified S.C. twice, and service attempts were made by personal service, mail, and publication. Since the court applied the correct law and found facts that support its findings, there is no merit to any claim that the default order was error.

II. Sufficiency of the Evidence

Next, this court considers the sufficiency of the evidence on the grounds for terminating parental rights. "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M. M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993); *see also* WIS. STAT. § 48.31(1). Our review is narrow. We affirm the fact finder's decision if there is any credible evidence that under any reasonable view supports it. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. We search the record for evidence that supports the decision and accept any reasonable inferences the fact finder could reach. *See* ***id.***

During the prove-up portion of the hearing, the State produced evidence on each of the required elements through the testimony of the case manager. *See* WIS JI—CHILDRENS 324 & 346. In rendering its findings, the circuit court considered the requirements and found that there was sufficient evidence as to the grounds under WIS. STAT. § 48.415(2) (continuing CHIPS) and §48.415(6) (failure to assume parental responsibility) and that S.C. was unfit. Based upon our independent review of the record, we conclude that the record supports the circuit court's findings as to grounds.

III. Disposition

Next, we consider whether there would be any merit to a challenge of the circuit court's decision to terminate S.C.'s parental rights. The decision to terminate a parent's rights is discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The circuit court considers multiple factors, including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3).

Here, the circuit court specifically addressed each factor and found that: both children were likely to be adopted and had adoptive resources; that C.C. had been out of his parental home since his infancy and A.M.C. had been out of his parental home since birth; that neither child had significant health issues and that their health needs were being met by their adoptive resources; that severing the children's relationship with S.C. would not cause substantial harm; that the children's adoptive resources have facilitated the children's interaction with each other,

as well as other relatives, and have expressed a willingness to continue to do so; that the children were too young to understand the concept of terminating their father's parental rights; that they have had limited interaction with S.C. since their infancies; that each child has bonded with his respective foster family; and that terminating S.C.'s parental rights would ultimately allow for the children to reside in stable homes. *See* WIS. STAT. § 48.426(3)(a)-(f). The court concluded that termination of S.C.'s parental rights would promote the children's best interests. Any challenge in this regard would lack arguable merit.

IV. Zoom Hearing

Finally, we address whether there would be merit to a claim that the circuit court committed any sort of error when S.C. was unable to attend a Zoom hearing while incarcerated. Due to the COVID-19 pandemic, the court attempted to hold a fact-finding hearing over Zoom on June 4, 2020. S.C. was unable to attend via video and could only attend by phone. Both S.C.'s counsel, and S.C. himself, objected to the hearing on the grounds that S.C. could not actually see who was present at the hearing. The court heeded S.C.'s concerns and rescheduled for an in-person hearing. S.C. was then able to fully participate in the grounds and disposition hearings. We therefore agree with counsel that there would be no arguable merit to a challenge based on the Zoom hearing. The circuit court made accommodations to ease S.C.'s concerns and made sure that S.C. had the opportunity to participate in the hearings.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

IT IS ORDERED that the orders terminating S.C.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian C. Findley is relieved of any further representation of S.C. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals