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**DISTRICT II/III**

May 28, 2015

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Circuit Court Judge  
Calumet County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2015AP581-NM

Amanda M. M. v. Jesse J. A. (L. C. # 2014TP4)

Before Hoover, P.J.<sup>1</sup>

Counsel for Jesse A. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order terminating Jesse's parental rights to his son, Quintin P. Jesse was informed of his right to file a response to the report and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issues of arguable merit appear.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Therefore, the order terminating Jesse's parental rights is summarily affirmed.<sup>2</sup> *See* WIS. STAT. RULE 809.21.

Quintin was born September 10, 2008, and Jesse was adjudicated his father in February 2009. Pursuant to the paternity judgment, Quintin's mother, Amanda M., had primary physical placement with Jesse to have "periods of physical placement at reasonable times upon reasonable notice." Within the first year of Quintin's life, Amanda began dating Thomas M. The couple married in October 2011 and subsequently had a daughter. In August 2014, Amanda petitioned for termination of Jesse's parental rights, alleging abandonment and a failure to assume parental responsibility. Jesse contested the petition and demanded a jury trial. Jesse later withdrew his jury trial demand and, after a bench trial, the trial court found that grounds existed to terminate Jesse's parental rights. Following a disposition hearing, the trial court found Jesse unfit and concluded it was in Quintin's best interest to terminate Jesse's parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits lacks arguable merit. All of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling

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<sup>2</sup> Cases appealed under WIS. STAT. RULE 809.107 "shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief..." WIS. STAT. RULE 809.107(6)(e). Here, the appellant's response to the no-merit report was due on or about April 21, 2015, making an opinion from this court due on or about May 21, 2015. Conflicts in this court's calendar have resulted in a short delay in the opinion's release. Therefore, we sua sponte extend our decision deadline to the date of this opinion. *See Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995).

time limits. See *State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

There is no arguable merit to a claim that the trial court erred by allowing Jesse to withdraw his jury trial demand. The trial court engaged in a colloquy with Jesse and his counsel regarding Jesse's understanding of what would occur if he withdrew his jury trial demand. The court explained that in lieu of proving grounds for termination of Jesse's parental rights to twelve jurors, Amanda would only have to convince the court. The court confirmed Jesse's desire to proceed with a bench trial and ascertained that Jesse was neither threatened nor promised anything to withdraw his jury trial demand.

As noted above, the petition alleged abandonment and a failure to assume parental responsibility. Abandonment is established by proving Jesse left Quintin with any person; Jesse knew or could discover Quintin's whereabouts; and Jesse failed to visit or communicate with Quintin for a period of six months or longer. See WIS. STAT. § 48.415(1)(a)3. Trial testimony established that Quintin was left in his mother's care and Jesse knew Quintin's whereabouts. Although there was some dispute regarding the number of visits Jesse had with Quintin, Jesse conceded he had no contact with Quintin for a period of one year—from September 2012 to September 2013.

Turning to the alternate ground for termination, failure to assume parental responsibility is established by proving that Jesse has not had a substantial parental relationship with the child. WIS. STAT. § 48.415(6)(a). “[S]ubstantial parental relationship means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” WIS. STAT. § 48.415(6)(b). Failure to assume parental responsibility is determined

by consideration of the totality of the circumstances. *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶¶3, 27-35, 333 Wis. 2d 273, 797 N.W.2d 854.

Trial testimony established that throughout Quintin’s life, Jesse had not exercised significant responsibility for Quintin’s daily supervision, education, protection or care. Jesse testified that Amanda made it difficult to see or communicate with Quintin. Amanda conceded that she became concerned for her safety and Quintin’s safety after Jesse’s 2010 and 2011 convictions for domestic disorderly conduct, marijuana possession, and carrying a concealed weapon.<sup>3</sup> Amanda testified, however, that she never refused visits, and the trial court ultimately determined that for “the lion’s share” of Quintin’s life, Amanda had done nothing to interfere with Jesse’s efforts to visit or communicate with Quintin. The court ultimately concluded that Jesse “is so disconnected from [Quintin] that he doesn’t know where he goes to school, doesn’t know where he goes to church or if he goes to church, doesn’t know the names of any doctors or dentists, and apparently has never inquired to find out that information.” The court found the State had established by clear and convincing evidence both that Quintin had been abandoned by Jesse and that Jesse had failed to assume parental responsibility. Any challenge to these findings would lack arguable merit.

Finally, there is no arguable merit to a claim that the trial court erroneously exercised its discretion when it terminated Jesse’s parental rights. The court correctly applied the best

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<sup>3</sup> The no-merit report addresses whether the trial court erroneously exercised its discretion by admitting evidence of Jesse’s convictions. In a termination-of-parental-rights case, a “parent’s relevant character traits and patterns of behavior” are not excluded by WIS. STAT. § 904.04(2). *La Crosse Cnty. Dep’t of Human Servs. v. Tara P.*, 2002 WI App 84, ¶18, 252 Wis. 2d 179, 643 N.W.2d 194. Evidence of Jesse’s convictions provided relevant background to the discussion of whether Amanda interfered with Jesse’s efforts to see his son. Any challenge to the admission of this evidence would therefore lack arguable merit.

interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court considered Quintin's adoptability and age, along with the absence of any substantial relationship with Jesse. The court noted that Thomas intended to adopt Quintin, and Quintin had expressed his wish to be adopted by Thomas. The court also acknowledged that Quintin had a stable life in his current family unit, consisting of his mother, step-father, half-sister and two step-siblings. In consideration of the potential harm of severing ties by termination, the court noted that Quintin's visits with Jesse's family had been sporadic "with no real development of a relationship." The court's discretionary decision to terminate Jesse's parental rights demonstrates a rational process that is justified by the record. See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Colleen Marion is relieved of further representing Jesse A. in this matter. See WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*