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**DISTRICT I**

November 21, 2023

To:

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Milwaukee, WI 53233-1803

Brighton M. Troha  
Electronic Notice

J.Z.

Steven Zaleski  
Electronic Notice

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

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2023AP1088-NM	In re the termination of parental rights to A.T., a person under the age of 18: State of Wisconsin v. J.Z. (L.C. # 2021TP126)
2023AP1089-NM	In re the termination of parental rights to A.T., a person under the age of 18: State of Wisconsin v. J.Z. (L.C. # 2021TP127)

Before Geenen, J.<sup>1</sup>

**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).**

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<sup>1</sup> 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.

Joanna appeals from orders terminating her parental rights to her children Adam and Annie.<sup>2</sup> Appellate counsel, Steven Zaleski, has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also Anders v. California*, 386 U.S. 738 (1967). Joanna was advised of her right to file a response, but she has not responded. Based upon an independent review of the records and the no-merit report, this court concludes that an appeal would lack arguable merit. Therefore, the orders terminating Joanna’s parental rights are summarily affirmed.

In May 2020, the Division of Milwaukee Child Protective Services (DMCPS) detained Adam and Annie, then ages seven and six, when they were found in a non-moving car with their parents passed out. Richard and Joanna had ongoing drug problems and repeated interactions with DMCPS and the police. In May 2021, the State filed petitions to terminate Richard and Joanna’s parental rights to Adam and Annie, alleging continuing child in need of protection or services and failure to assume parental responsibility.<sup>3</sup>

After multiple missed court appearances, Joanna was found in default after failing to appear at court. The cases proceeded to a prove-up hearing where the State presented evidence in support of the grounds for termination. The circuit court found the State had satisfactorily demonstrated a basis for both grounds as to each child.

The court then held a dispositional hearing. The State provided evidence to support its argument for termination of Richard and Joanna’s parental rights, including that the children

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<sup>2</sup> For ease of reading and to maintain confidentiality, we employ pseudonyms for the children and parents in this case. WIS. STAT. RULE 809.86(1).

<sup>3</sup> We affirmed the termination of Richard’s parental rights in *State v. R.T.*, Nos. 2023AP1095 and 2023AP1096, unpublished slip op. (WI App Sept. 12, 2023).

understood adoption and both wanted to be adopted by their foster parents. Richard and Joanna testified on their own behalf. Richard offered testimony from his mother and sister. The circuit court concluded that termination of Richard and Joanna's parental rights was in the children's best interests and subsequently entered orders to that effect for each child.

The no-merit report discusses whether Joanna could argue on appeal that the circuit court failed to comply with the statutory time limits under WIS. STAT. ch. 48. The record reflects that all of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' schedules. The failure to object to a delay waives any challenge to the court's competency on these grounds. WIS. STAT. § 48.315(3). Any challenge to the circuit court proceedings based upon a failure to comply with the statutory time limits would be without arguable merit on appeal.

The no-merit report next discusses whether there is any merit to challenge the court's entry of a default judgment against Joanna. Counsel explains he filed a postdisposition motion on Joanna's behalf challenging the court's entry of default judgment on the basis that the circuit court only "warned" Joanna that her failure to appear could result in a default judgment and did not "order" Joanna to appear at all court dates. Counsel also argued that when the court entered the default judgment, it never explicitly found her conduct to be "egregious" and "without clear and justifiable excuse." WIS. STAT. § 48.23(2)(b)3. ("Failure by a parent ... to appear in person at consecutive hearings as ordered is presumed to be conduct that is egregious and without clear and justifiable excuse."). Counsel explains that the circuit court held a hearing on Joanna's postdisposition motion, but she did not appear.

At the postdisposition hearing, the court noted that its September 22, 2021 scheduling order provided “Parties shall appear personally at ... all hearings or at trial. Failure to appear timely will result in a finding of default.” The court also stated it defaulted Joanna after she failed to appear because it found her conduct to be egregious and without clear and justifiable excuse. *See* WIS. STAT. § 48.23(2)(b)3. The court elaborated that Joanna had missed multiple court appearances before she was defaulted and, when she appeared at later hearings, she never offered an excuse as to why she failed to appear in court. Counsel explains that given the record developed at the postdisposition hearing there is no longer any basis to challenge the court’s default judgment against Joanna.

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. Here, Joanna was ordered to attend each hearing or risk a default judgment being entered against her. The record reflects the circuit court gave Joanna multiple opportunities to appear before the court entered its default judgment and also explained its reasons for entering default judgment. We agree there is no arguable merit to challenge the circuit court’s discretionary decision to find Joanna in default. *See id.*, ¶18.

Notwithstanding a finding of default, the State still had the burden to show that grounds for termination exist by clear and convincing evidence. *See id.* ¶22, 25. Thus, the circuit court held a prove-up hearing before proceeding to disposition.

To prove that a child is in continuing need of protection or services, the State must show that the child has been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice; the applicable

county department has made a reasonable effort to provide services ordered by the court; and the parent has failed to meet the conditions established in the order for the safe return of the child to the parent's home. WIS. STAT. § 48.415(2)(a).

To prove failure to assume parental responsibility, the State must demonstrate “that the parent ... [has] not had a substantial parental relationship with the child.” WIS. STAT. § 48.415(6)(a). A substantial parental relationship “means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” § 48.415(6)(b).

Here, our review of the records confirms that the case manager's testimony along with the documents offered into evidence established the factual grounds for the finding that grounds existed to terminate Joanna's parental rights. Accordingly, there is no arguable merit to claim there is insufficient evidence to support the grounds alleged for termination.

The no-merit report discusses whether the circuit court erroneously exercised its discretion when it terminated Joanna's parental rights. “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. *Gerald O.*, 203 Wis. 2d at 153-54. Here, the records reflect that the circuit court expressly considered the relevant factors in light of the evidence as to each child, made a number of factual findings based on the evidence presented, and reached a reasonable decision. We therefore agree with appellate counsel's conclusion that there is no arguable merit to a claim that the circuit court erroneously exercised its discretion in deciding to terminate Joanna's parental rights to Adam and Annie.

Finally, the no-merit report discusses whether there is a basis for a claim of ineffective assistance of trial counsel. *See A.S. v. State*, 168 Wis. 2d 995, 1004, 485 N.W.2d 52 (1992) (concluding a parent facing the involuntary termination of his or her parental rights is entitled to effective assistance of counsel). We agree with counsel that the record does not reveal a basis for an ineffective assistance of trial counsel claim.

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

Upon the foregoing, therefore,

IT IS ORDERED that the orders are summarily affirmed.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of Joanna in these matters.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*