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**DISTRICT I/II**

August 28, 2013

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

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2013AP1664-NM

In re the termination of parental rights to Charity K., a person under the age of 18: State of Wisconsin v. Jessica B. (L.C. # 2012TP112)

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

Jessica B. appeals from a circuit court order terminating her parental rights to Charity K.

Jessica B.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE

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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 2011-12 version unless otherwise noted.

809.107(5m) and *Brown Cnty. v. Edward C.T.*, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998). Jessica B. received a copy of the report and has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The State of Wisconsin petitioned to terminate Jessica B.'s parental rights on several grounds, including that Jessica B. had failed to assume parental responsibility for Charity K. WIS. STAT. §§ 48.415(1)(a)2 and (6). Jessica B. stipulated that she failed to assume parental responsibility for Charity K., and the circuit court terminated Jessica B.'s parental rights after a dispositional hearing.

The no-merit report addresses: (1) whether all mandatory WIS. STAT. ch. 48 deadlines were met or extended for good cause, (2) whether the requirements of WIS. STAT. § 48.422(7) were met when Jessica B. stipulated that she failed to assume parental responsibility after a colloquy with the circuit court, (3) whether the circuit court properly exercised its discretion in determining that it was in the child's best interest to terminate Jessica B.'s parental rights, and (4) whether the record supports any claim of ineffective assistance of trial counsel. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. See *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927.

Continuances are permitted “upon a showing of good cause in open court ... and only for so long as is necessary[.]” WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court’s competency to act during the continuance. Sec. 48.315(3). The record shows that the circuit court found good cause to toll the time limits on several occasions, and Jessica B. did not object. There would be no arguable merit to a challenge to the circuit court’s competency to proceed based on a failure to comply with statutory time limits.

Before taking a parent’s stipulation to grounds for termination, the circuit court must conduct a colloquy with the parent in accordance with WIS. STAT. § 48.422(7). See *Oneida Cnty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must determine that the parent’s admission is made voluntarily, and that the parent understands “the nature of the acts alleged in the petition and the potential dispositions,” along with the rights waived by the parent’s decision not to contest the grounds for termination. *Id.* The court must also “[e]stablish whether any promises or threats were made” and that the admission has a factual basis. *Id.* The parent must understand that the stipulation to grounds “will result in a finding of parental unfitness.” *Id.*, ¶10. A court must inform the parent that at the second stage of the termination proceeding, the court will hear evidence that will result in either termination of the parent’s rights or dismissal of the termination petition. *Id.*, ¶16. “[T]he court must inform the parent that ‘[t]he best interests of the child shall be the prevailing factor considered by the court in determining the disposition.’” *Id.* (citation omitted).

The record establishes that the circuit court conducted a proper colloquy with Jessica B. before accepting her stipulation to the grounds for termination. The circuit court advised Jessica B. of her rights in the proceeding, the rights waived by her stipulation to grounds to terminate her parental right, and the various possible dispositions. There was a factual basis for

Jessica B.'s stipulation to failure to assume parental responsibility. We conclude that Jessica B.'s stipulation was knowing and voluntary, and we agree with counsel's conclusion that an appeal on this basis would lack arguable merit.

The decision to terminate parental rights is within the circuit court's discretion. *B.L.J. v. Polk Cnty. DSS*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991), holding modified on other grounds by *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402. The circuit court must consider the statutory factors to determine if termination is in a child's best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court considered the appropriate factors: the likelihood of the child's adoption after termination, the child's age and health, the child's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the child as a result of the termination. *See id.* The court's findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and the factors all weighed in favor of a determination that it was in the child's best interests to terminate Jessica B.'s parental rights. We agree with counsel's conclusion that an appellate challenge on this basis would lack arguable merit.

We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a posttermination motion in the circuit court. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether the record supports counsel's conclusion that an ineffective assistance of trial counsel claim would lack arguable merit. *State v. Allen*, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we "should identify issues of arguable merit even if those issues were

not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those issues were not preserved for appeal”).

Our review of the record does not reveal a basis for an ineffective assistance of trial counsel claim. The colloquy on Jessica B.’s stipulation was thorough, and the circuit court confirmed that Jessica B. was satisfied with her representation by trial counsel. An ineffective assistance of counsel claim is not apparent from this record. Jessica B. has not alerted this court to any claim regarding trial counsel’s representation.

In addition to the issues discussed above, we independently reviewed the record. Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the order terminating Jessica B.’s parental rights and relieve Attorney Steven Zaleski of further representation of Jessica B. in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of Jessica B. in this matter.

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