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**DISTRICT IV/III**

September 4, 2013

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

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2013AP1600-NM

In re the termination of parental rights to Jacob C., a person under the age of 18: Wood Co. HSD v. Kristin C. (L.C. # 2012TP28)

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

Counsel for Kristin C. has filed a no-merit report concluding there is no arguable basis for appealing an order terminating her parental rights to her son, Jacob. Kristin was advised of her right to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

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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.

The jury found two grounds for terminating Kristin's parental rights, Jacob's continuing need of protection and services and Kristin's failure to assume parental responsibility. The no-merit report addresses: (1) Whether the court fulfilled its obligation to assure Kristin's right to meaningfully participate in the fact-finding hearing; (2) the sufficiency of the evidence to support the jury's findings; and (3) whether the court properly exercised its discretion when it terminated Kristin's parental rights.

During the fact-finding hearing, Kristin repeatedly interrupted witnesses' testimony. After the court warned Kristin that she would be removed from the courtroom if she could not control her behavior, Kristin twice more disrupted the proceedings. The court sent the jury to lunch and removed Kristin to the audiovisual room in the jail where she could watch and hear the courtroom proceedings and communicate with her attorney by cell phone prior to cross-examination of each witness. When the jury returned, the court explained the audiovisual arrangements by which Kristin would participate in the hearing and admonished the jury not to draw any inference from that arrangement. At the conclusion of the first day, Kristin said she preferred to participate from the jail's audiovisual room. She said she liked the system, could hear everything, and there was no time she was unable to communicate with anyone in the courtroom. At the start of the second day, she again indicated a preference for participating from the audiovisual room. This arrangement allowed Kristin to meaningfully participate in the hearing, as allowed by *Waukesha Cnty. v. Teodoro E.*, 2008 WI App 16, ¶1, 307 Wis. 2d 372, 745 N.W.2d 701, and *State v. Lavelle W.*, 2005 WI App 266, ¶8, 288 Wis. 2d 504, 708 N.W.2d 698.

The record discloses no arguable basis for challenging the sufficiency of the evidence to support the jury's finding that Jacob was a child in continuing need of protection or services

(CHIPS). This court must affirm the jury's verdict if there is any credible evidence to support it. *Morden v. Continental AG*, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. To establish continuing CHIPS under WIS. STAT. § 48.415(2), the Department must prove four elements: (1) The child has been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law; (2) the human services department made a reasonable effort to provide the services ordered by the court; (3) the parent failed to meet the conditions established for the safe return of the child to the parent's home; and (4) there is a substantial likelihood that the parent will not meet the conditions for return within a nine-month period following the conclusion of the fact-finding hearing. WIS JI—CHILDREN 324A (2009).

The record contains sufficient evidence to sustain the jury's finding on each of these elements. Jacob was adjudged to be in need of protection or services on March 24, 2010. An order containing the termination of parental rights notice required by law placed Jacob outside of Kristin's home on February 28, 2011. Thereafter, Jacob remained in foster care for more than two years.

The CHIPS order was based on concern for Jacob's welfare based on Kristin's mental health issues. The order required Kristin to meet several conditions in order to have Jacob returned to her home, including successful completion of parenting education, a psychological evaluation and complying with all resulting recommendations, participation in AODA counseling and following all recommendations, participation in and cooperation with supervised visitation and unsupervised visitation when deemed appropriate by the social worker, and participation in in-home counseling services and following all recommendations.

Social workers, a psychologist, a substance abuse counselor and an in-home therapist testified regarding Kristin's failure to meet the conditions for Jacob's return to her home, their efforts to assist her and her prognosis for future compliance. Approximately three months before Jacob was removed from her home, Kristin discontinued her psychiatric medication because she disagreed with the clinic's recommendation that she lower her intake of the stimulant Adderall and try an antipsychotic medication. In October 2012, Kristin admitted herself for inpatient psychiatric care, but left after five to seven days against medical advice.

Kristin demonstrated a bizarre view of her child, rationalizations and delusional thinking. She believed Jacob was making sexual sounds toward her when he was five or six weeks old. A family resource coordinator visited Kristin's apartment in February and found Jacob lying in his crib near a window that was open approximately three inches. She obtained Kristin's permission to return later that day. At approximately 5:00 p.m., she returned and found that Jacob was still in his crib and had not been fed since breakfast time. At that time Kristin was preoccupied with thoughts about her mother, believing her mother was in an upstairs apartment and she could hear her mother's voice "interfering with her life." Jacob was removed from Kristin's home at that time.

After Jacob was removed from Kristin's home, a therapist began working with Kristin in her home once or twice a week. Kristin cancelled appointments and there were "quite a few no-shows." During their meetings, Kristin made statements that raised concern about her mental health. Kristin refused to agree to voluntary commitment and there was no improvement in her behavior.

Kristin's substance abuse counselor terminated the services he was providing Kristin due to lack of progress. He testified that rather than talk about her use of alcohol and drugs, Kristin wanted to focus her anger toward social services and two women she accused of casting a spell on her, preventing her from becoming gainfully employed. She also talked about her mother "putting a contract out on her for her death." The counselor again recommended inpatient psychiatric care.

A psychologist diagnosed Kristin with a psychotic disorder not otherwise specified, an anxiety disorder, posttraumatic stress and panic disorders, and a mood disorder. He testified that Kristin reported hearing voices and had an elaborate belief system that was not founded in reality. He did not believe Kristin would be able to manage her emotions sufficiently to meet the needs of a three-year-old child.

A mental health therapist testified that he had twenty-seven scheduled appointments with Kristin. She cancelled ten appointments and failed to show up for four other appointments. He testified Kristin "got worse in terms of her reality orientation" from June 2011 to January 2013. Kristin reported having witchcraft spells placed upon her that would make her eat feces and drink urine. She claimed she could make \$60,000 a day doing computer work. She also reported having been raped over 3,000 times in her life.

A family resource coordinator discontinued parenting classes with Kristin after conducting over fifty sessions because Kristin was not making any progress and was increasingly hostile toward her, accusing her of lying and accusing the county of conspiring to steal Jacob.

A social worker testified that during supervised visits, Kristin would not interact with Jacob, and would instead talk about how other persons were doing things to ruin her life. Kristin never progressed to having unsupervised visits with Jacob.

As the arbiter of the witnesses' credibility, *see Becker v. Crispell-Snyder, Inc.*, 2009 WI App 24, ¶20, 316 Wis. 2d 359, 763 N.W.2d 192, a jury could reasonably find that Jacob was in continuing need of protection or services and, despite the Department's substantial efforts on Kristin's behalf, she was unlikely to meet the return conditions within the nine-month period following the fact-finding hearing.

Sufficient evidence also supports the jury's verdict that Kristin failed to assume parental responsibility for Jacob. In reaching this decision, the jury should consider the parent's actions throughout the entirety of the child's life. *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶23, 333 Wis. 2d 273, 797 N.W.2d 854. Substantial 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). At the time of the fact-finding hearing, Jacob was almost three years and four months old. He had been continuously staying outside of Kristin's home for twenty-five months. From this evidence, the jury could reasonably find Kristin failed to assume parental responsibility for Jacob because she had not exercised significant responsibility for his daily supervision, education, protection and care.

The court properly exercised its discretion when it terminated Kristin's parental rights. The court considered each of the six factors listed in WIS. STAT. § 48.416(3). It found a high likelihood that Jacob would be adopted. It determined that Jacob's age and health were not significant factors in the termination decision. The court found Jacob had no existing substantial

relationship with any biological relative. Given Jacob's age, the court concluded his wishes were not an appropriate consideration. The court found the duration of separation of Kristin and Jacob to be significant and that termination would allow Jacob to enter into a more stable and permanent family relationship. These findings are supported by the record and support the court's discretionary decision to terminate Kristin's parental rights because doing so was in Jacob's best interest.

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

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

IT IS FURTHER ORDERED that attorney Paul LaZotte is relieved of his obligation to further represent Kristin C. in this matter. WIS. STAT. RULE 809.32(3).

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