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**DISTRICT IV**

November 5, 2013

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Laura S.

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

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2013AP1751-NM

In re the termination of parental rights to Derrick B., Jr., a person under the age of 18: Dane Co. DHS v. Laura S. (L.C. # 2012TP52)

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

Attorney Brian Findley has filed a no-merit report seeking to withdraw as appellate counsel for Laura S. in this case concerning the termination of her parental rights. *See* WIS. STAT. RULES 809.107(5m) and 809.32. The no-merit report addresses: (1) whether Laura's no-contest plea to grounds to terminate her parental rights to Derrick B. was knowing, intelligent and voluntary; (2) whether Laura's trial counsel was ineffective; (3) whether the circuit court

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

properly exercised its discretion by determining that termination of Laura's parental rights was in Derrick's best interest; and (4) whether the circuit court erred by allowing a social service specialist to offer an opinion as to whether termination was in Derrick's best interest. Laura was sent a copy of the report, but has not filed a response. Upon our independent review of the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In June 2012, the State filed a petition to terminate Laura's parental rights to Derrick B.<sup>2</sup> The petition alleged grounds existed to terminate Laura's parental rights under WIS. STAT. §§ 48.415(2), continuing child in need of protection or services (CHIPS), and 48.415(6), failure to assume parental responsibility. The petition also stated adoption was likely if Laura's parental rights were terminated. On November 29, 2012, pursuant to negotiations with the State, Laura pled no-contest to the allegation of continuing CHIPS, and the State dismissed the allegation of failure to assume parental responsibility. The court held dispositional hearings on March 4, 2013, and March 21, 2013. At the conclusion of the dispositional phase, the court determined that termination was in Derrick's best interest, and terminated Laura's parental rights.

We agree with counsel that a challenge to Laura's no-contest plea would lack arguable merit. Before accepting Laura's no-contest plea to grounds, the circuit court conducted a plea colloquy that satisfied the court's duty to establish such information as Laura's ability to understand the proceedings, her understanding of the grounds of continuing CHIPS, the consequences of pleading no-contest to grounds, and the rights she would be waiving by entering

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<sup>2</sup> The petition also sought to terminate the parental rights of Derrick's father. Those rights were also terminated, but are not at issue in this appeal.

her plea. See *Oneida Cnty. Dep't of Social Servs. v. Therese S.*, 2008 WI App 159, ¶¶5-6, 314 Wis. 2d 493, 762 N.W.2d 122. Although the court did not hear supporting testimony at the grounds phase, the court heard testimony at the dispositional hearings in support of the allegations in the petition before entering the order terminating parental rights. See *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶33, 246 Wis. 2d 1, 629 N.W.2d 768. We discern no arguable merit to any argument on this issue.

We also agree with counsel that a claim of ineffective assistance of counsel would lack arguable merit. The no-merit report opines that counsel made a strategy decision in advising Laura to plead no-contest to continuing CHIPS, and thus was not ineffective. We agree that counsel made a reasonable strategy decision and thus was not ineffective.

Next, we agree with counsel that the circuit court did not erroneously exercise its discretion by terminating Laura's parental rights. At the dispositional phase, the court heard evidence that Derrick was thriving in his current foster placement and was likely to be adopted if Laura's parental rights were terminated; that Derrick has been in his current placement for most of his life, and considers that placement his family; and that Derrick does not have a substantial parental relationship with Laura. The circuit court explained that it considered the evidence offered at the dispositional hearing, both in favor of and against termination of Laura's parental rights, and weighed the evidence according to the required statutory factors in reaching its decision. The court was within its discretion to determine that termination of Laura's parental rights was in Derrick's best interest.

Finally, the no-merit report opines that it was error for the circuit court to allow a social services specialist to offer an opinion that termination of Laura's parental rights was in Derrick's

best interests, but that the error was harmless. *See* WIS. STAT. §§ 907.01 and 907.02; *see also Dresser-Rand Co. v. Virtual Automation Inc.*, 361 F.3d 831, 842 (5th Cir. 2004). We agree with counsel that there would be no arguable merit to an argument that there was any harm in the circuit court allowing the opinion by the social services specialist, in light of the fact that the court did not reference that opinion in its lengthy decision, and in light of the other extensive evidence offered at the dispositional phase.

Upon our independent review of the record, we have found no other arguable basis for reversing the order terminating Laura’s parental rights. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Findley is relieved of any further representation of Laura S. in this matter. *See* WIS. STAT. RULE 809.32(3).

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