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**DISTRICT IV**

November 12, 2013

To:

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

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2013AP1574-NM

In re the termination of parental rights to Monique F-D., a person under the age of 18: Dane County Department of Human Services v. Tiffany F. (L.C. # 2012TP78)

Before Lundsten, J.

Tiffany F. appeals an order terminating her parental rights to her daughter, Monique. Attorney Philip Brehm has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULES 809.107(5m) and 809.32<sup>1</sup>; *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses whether Tiffany knowingly and voluntarily waived her

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

right to a jury trial, the sufficiency of the evidence, the circuit court's exercise of discretion in terminating Tiffany's parental rights, and whether Tiffany was denied a fair trial due to her hearing and visual impairments. Tiffany was sent a copy of the no-merit report and has filed a response challenging the sufficiency of the evidence. Upon reviewing the entire record, as well as the no-merit report and response, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

### *Background*

On August 31, 2012, the Dane County Department of Human Services filed a petition for termination of Tiffany's parental rights to her child, Monique, who was then two years old. The petition alleged that the child was in continuing need of protection or services (CHIPS) and that Tiffany had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). Tiffany waived her right to a jury trial, and a court trial was held over four days. The court found that both grounds alleged in the petition existed. The court found Tiffany to be an unfit parent and scheduled a dispositional hearing. At the conclusion of the dispositional hearing, the court terminated Tiffany's parental rights to Monique.

### *Jury Waiver*

There is a statutory right to a jury trial in a termination of parental rights case. WIS. STAT. §§ 48.422(4); 48.424(2); *see also Steven V. v. Kelley H.*, 2004 WI 47, ¶4, 271 Wis. 2d 1, 678 N.W.2d 856. Courts are urged to engage in a colloquy to determine that a withdrawal of a jury demand is knowing and voluntary. *Walworth County Dep't of Health & Human Servs. v. Andrea L.O.*, 2008 WI 46, ¶55, 309 Wis. 2d 161, 749 N.W.2d 168. The record reflects that Tiffany initially requested a jury trial, but that, at a pretrial conference held on February 21,

2013, Tiffany's counsel informed the court that Tiffany had elected to proceed with a court trial on the issue of grounds. Counsel informed the court that counsel had had a four-hour meeting with Tiffany to discuss the advantages and disadvantages of a jury trial versus a court trial, and that Tiffany had decided on a court trial. The court personally confirmed this choice with Tiffany. Tiffany has not alleged that her waiver of the right to a jury trial was unknowing or involuntary and, based on the record and the no-merit report and response, we are unaware of any facts that would indicate otherwise.

*Sufficiency Of The Evidence—Continuing CHIPS*

We agree with counsel's assessment that a challenge to the sufficiency of the evidence on appeal would be without merit. In order to establish the termination ground of CHIPS, the County needed to show: (1) that the child had been adjudged to be in need of protection or services and placed outside the home for six months or more pursuant to a court order containing statutory notice of termination of parental rights proceedings; (2) that the county department of health and human services had made reasonable efforts to provide the services ordered by the court; (3) that Tiffany failed to meet the conditions established for the safe return of the child; and (4) that there was a substantial likelihood that Tiffany would not meet the conditions within nine months after the fact-finding hearing. *See* WIS. STAT. § 48.415(2).

At the grounds hearing, to prove the first element the County introduced as an exhibit the prior court order. To prove the second element, the County elicited testimony that it had provided various services to Tiffany, including her participation in the Family Preservation Program, the PACT program, the Welcome Baby program, Access to Independence, a parenting class, and mental health programming. With regard to Tiffany's progress toward meeting the

conditions of return and the likelihood of future progress, social worker Lindsey Beischel testified, based on the visits that she monitored between Tiffany and Monique, that Tiffany's participation in these programs had not resulted in any progress toward improving Tiffany's parenting skills, and that there was a substantial likelihood that Tiffany would not meet the conditions of return in the nine months following the hearing. We conclude that the evidence in the record is sufficient to support the court's finding that all of the required CHIPS elements had been established under WIS. STAT. § 48.415(2), such that an appeal on that basis would be without merit.

*Sufficiency Of The Evidence—Failure To Assume Parental Responsibility*

In order to establish the termination ground of failure to assume parental responsibility, the County needed to show that Tiffany had not developed a substantial parental relationship with the child, meaning the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. *See* WIS. STAT. § 48.415(6); WIS JI—CHILDREN 346. The County introduced testimony from social worker Beischel that Tiffany did not have a substantial parental relationship with Monique, had not expressed concern for or interest in the care, support, and well-being of the child, and had not accepted significant responsibility for the child's daily care. This evidence was sufficient for the court to find that all of the required elements had been established, such that any challenge on appeal would be without merit.

*Disposition*

Any challenge to the circuit court's exercise of discretion in the dispositional phase of the proceedings would likewise be without merit. At the dispositional hearing, the circuit court was

required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parent or other family members, the wishes of the child, the duration of the child's separation from the parent, and whether the child would be able to enter a more stable and permanent family relationship as a result of termination, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record shows that the circuit court did so. The court noted that Monique did not have a substantial parental relationship with Tiffany, that it would not be harmful to Monique to sever the legal parental relationship, and that the likelihood of adoption for Monique was very high. The court found that it would be in Monique's best interest to terminate parental rights. In short, the record shows that the circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

#### *Right To A Fair Trial*

Tiffany is profoundly deaf and is also visually impaired. Tiffany was provided with interpreters and, at times during the proceedings, the interpreters paused to clarify matters for Tiffany. Counsel asserts that he is unaware of any instance where Tiffany was unable to understand the proceedings, and Tiffany has not alleged otherwise in her response. Based upon the record and the information provided by counsel and by Tiffany, we are satisfied that any argument on appeal that Tiffany was denied a fair trial due to her hearing and visual impairment would be without merit.

In addition to the potential issues discussed by counsel, we note that it appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. We have discovered no other arguably meritorious grounds for an

appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order terminating Tiffany's parental rights to Monique is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Philip Brehm is relieved of any further representation of Tiffany F. in this matter. *See* WIS. STAT. RULE 809.32(3).

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