



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I/II**

February 5, 2014

To:

Hon. John J. DiMotto  
Circuit Court Judge  
Children's Court Center  
10201 W. Watertown Plank Rd.  
Wauwatosa, WI 53226

Dan Barlich  
Juvenile Clerk  
Children's Court Center  
10201 Watertown Plank Rd.  
Milwaukee, WI 53226

Randall E. Paulson  
Asst. State Public Defender  
735 N. Water St., #912  
Milwaukee, WI 53202-4116

Claire Starling  
Assistant District Attorney  
10201 Watertown Plank Rd.  
Wauwatosa, WI 53226

Bureau of Milwaukee Child Welfare  
Arlene Happach  
635 N. 26th St.  
Milwaukee, WI 53233-1803

Valerie H.  
2666 N 25th St., Upper  
Milwaukee, WI 53206

Deanna M. Weiss  
Legal Aid Society of Milwaukee  
10201 Watertown Plank Rd.  
Milwaukee, WI 53226

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

---

2013AP2349-NM	In re the termination of parental rights to Kanye H., a person under the age of 18: State of Wisconsin v. Valerie H. (L.C. #2013TP105)
2013AP2350-NM	In re the termination of parental rights to Kamill H., a person under the age of 18: State of Wisconsin v. Valerie H. (L.C. #2013TP106)

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

In these consolidated cases, Valerie H. appeals from orders terminating her parental rights to two children. Valerie's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Valerie received a copy of

---

<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.

the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record, we conclude that the orders may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.<sup>2</sup>

Kanye and Kamill have been placed outside of Valerie's home pursuant to court orders since December 9, 2009. On February 28, 2013, the State filed petitions to terminate Valerie's parental rights to both children on the grounds of abandonment, continuing need of protection or services, and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (2), and (6). Valerie failed to appear at the initial hearing on the morning of March 25, 2013. The court reconvened the case later that afternoon after learning that Valerie had been waiting outside the wrong courtroom. The court warned Valerie that it was her duty to appear at all future hearings and that if she failed to appear or follow court orders, she risked sanctions:

[THE COURT]: If you're acting in bad faith and there's no clear and justifiable excuse, I can take away your right to a jury trial, I could find grounds, I could even take away your parental rights if you weren't here. I don't want to do that. I want you to cooperate with your lawyer. But if you don't do these things, I can penalize you, but I don't want to do that. So make sure you follow all my rules, okay?

[VALERIE]: Okay.

The court adjourned the case to allow Valerie to obtain counsel.

---

<sup>2</sup> On December 12, 2013, we ordered supplementation of the record and extended the time for deciding this case under WIS. STAT. RULE 809.107 to thirty days after the filing of the supplemental record, or February 17, 2014.

Valerie did not appear in court on April 30, 2013.<sup>3</sup> Trial counsel stated that Valerie put forth “some efforts” to meet with her prior to the hearing and the court took under advisement the State’s motion to enter default judgments. On July 1, 2013, Valerie again failed to appear and the court entered default judgments, subject to the State’s proof of unfitness grounds.

The attorneys next appeared on July 10, 2013. Valerie was not present and trial counsel reported that her attempts to reach Valerie had been unsuccessful. The trial court considered the State’s proffered testimony and exhibits and found that all three unfitness grounds were established by clear and convincing evidence. After finding that termination was in the children’s best interests, the court entered orders terminating Valerie’s parental rights to both children.

On August 6, 2013, the attorneys appeared on Valerie’s motion to re-open the default judgments. Valerie failed to appear personally and the trial court permitted her to participate by telephone. Valerie testified that she had no transportation to court for that day or back on July 1, 2013, either. Her caseworker disputed Valerie’s claim that she had requested assistance getting to court. Another social worker testified that her office had not had contact with Valerie since May 2013. The court denied Valerie’s motion to vacate the default judgments.

The no-merit report addresses the trial court’s exercise of discretion in granting the default judgments and denying Valerie’s motion to re-open, the sufficiency of the evidence as to

---

<sup>3</sup> The trial court was eventually informed that Valerie had shown up late in the afternoon, after the hearing had ended. Trial counsel tried to make another appearance but the court’s calendar was fully scheduled.

the ground of failure to assume parental responsibility, and the trial court's decision that termination was in the children's best interests

We conclude that there is no arguably meritorious challenge to the trial court's entry of and refusal to vacate its default judgments. See *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768 (in a TPR action, the trial court may, in its discretion, find a party in default as a sanction for failing to comply with a court order). After the trial court warned Valerie that a failure to appear at every court hearing might result in default, she missed the April 30, 2013 hearing due to her tardiness and failed to come to court at all on July 1 and July 10, 2013. The trial court took evidence and found that the State established clear and convincing proof of Valerie's unfitness under three separate termination grounds. *Id.*, 246 Wis. 2d 1, ¶¶24-26 (before entering a default judgment, the trial court must take sufficient evidence to support a finding that grounds have been established by clear and convincing evidence). We agree with appellate counsel's analysis and conclusion that the State met its burden to prove unfitness under WIS. STAT. § 48.415(6).<sup>4</sup> The evidence established that the children had been out of Valerie's care for about three and one-half years, she was not their primary caregiver prior to their removal, and she had no contact with the children in the year before the hearing. The trial court properly exercised its discretion in entering default judgments.

---

<sup>4</sup> The termination ground of failure to assume parental responsibility requires the State to establish that Valerie failed to accept and exercise "significant responsibility for the daily supervision, education, protection and care" of the subject child. WIS. STAT. § 48.415(6). Because we conclude that the trial court properly granted default on at least one of the alleged unfitness grounds, we need not address the sufficiency of proof on the two alternative grounds.

The trial court's decision whether to vacate its default judgment is also discretionary. *Ness v. Digital Dial Commc'ns, Inc.*, 227 Wis. 2d 592, 599-600, 596 N.W.2d 365 (1999). Here, the trial court noted that it could deny Valerie's motions up front, based on her failure to personally appear, but stated its preference to resolve the case by determining whether new evidence justified relief. The court determined that Valerie's testimony was not credible and that she failed to establish any ground that would justify reopening the judgments. The trial court applied the proper legal standard to the facts and reasonably exercised its discretion in denying Valerie's motion. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

We further conclude that there is no arguable merit to a claim that the trial court erroneously exercised its discretion in terminating Valerie's parental rights at disposition. The court correctly applied the best interests of the child standard and considered the factors set forth in WIS. STAT. § 48.426(3), including the children's "very, very high" likelihood of adoption and their "very insubstantial relationship" with Valerie.

In addition to the potential issues discussed by appellate 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.

Upon the foregoing reasons,

IT IS ORDERED that the orders terminating parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Randall E. Paulson is relieved from further representing Valerie H. in these matters.

---

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