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

DISTRICT II

April 30, 2014

To:

Hon. John A. Jorgensen
Circuit Court Judge
P.O. Box 2808
Oshkosh, WI 54903

Sara Henke
Register in Probate
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

David G. Been
430 Ahnaip St.
Menasha, WI 54952-3311

Leonard D. Kachinsky
Sisson & Kachinsky Law Offices
103 W. College Ave., #1010
Appleton, WI 54911-5782

Raymond L. Edelstein
Edelstein Law LLC
204 Church Ave.
Oshkosh, WI 54901-4748

Kimberly A. R.
239 1/2 Doty Ave.
Neenah, WI 54956

Larry D. T.
819 Whitter Dr.
Appleton, WI 54914

Antonio D. B.
511 22nd St.
East Saint Louis, IL 62204

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

2014AP523-NM	In re the termination of parental rights to Tashawn M. R., a person under the age of 18: Winnebago County DHS v. Kimberly A. R. (L.C. #2013TP24)
2014AP524-NM	In re the termination of parental rights to Dondre O. R., a person under the age of 18: Winnebago County DHS v. Kimberly A. R. (L.C. #2013TP25)

Before Gundrum, J.[1]

---

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

In these consolidated appeals, Kimberly A. R. appeals from orders involuntarily terminating her parental rights to her non-marital children, Tashawn M. R. and Dondre O. R. On appeal, Kimberly's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 and ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). Kimberly received a copy of the report and was advised of her right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record, we conclude there are no issues that would have arguable merit for appeal. We summarily affirm the orders terminating Kimberly's parental rights and relieve Attorney Leonard D. Kachinsky of further representation of Kimberly in this matter.

In February 2011, the Winnebago County Department of Social Services removed three-year-old Tashawn and two-year-old Dondre from Kimberly's home upon receiving a referral that Kimberly's youngest child, twenty-day-old Jamaris, suffered life-threatening head trauma, likely from abuse. In July 2013, the County filed petitions for the termination of parental rights (TPR) of Kimberly and Larry D. T. to Tashawn and of Kimberly and Antonio D. B. to Dondre. The grounds for terminating Kimberly's rights to both boys was continuing Child in Need of Protection or Services (CHIPS). *See* WIS. STAT. § 48.415(2). The grounds for terminating both fathers' rights were abandonment and failure to assume parental responsibility. *See* § 48.415(1), (6). Kimberly ultimately waived her right to a jury trial. After a bench trial, the court found that the continuing CHIPS provided grounds for the TPR, and entered TPR orders after a dispositional hearing. This no-merit appeal followed.[2]

[2] Both fathers defaulted. They do not appeal the terminations of their parental rights.

The no-merit report first considers whether all mandatory time limits set forth in WIS. STAT. ch. 48, subch. VIII, were adhered to and whether the petition's content satisfied the requirements set forth in WIS. STAT. § 48.42(1). A continuance for the fact-finding hearing to be held outside the statutory time limits was for good cause stated on the record and without objection from Kimberly. *See* WIS. STAT. § 48.315(1)(b), (2). Our review also establishes that the petition was in proper form. No issue of arguable merit could arise from either point.

Likewise, no issue of arguable merit could arise from the jury trial waiver. The right to a jury trial in a TPR case is statutory, not constitutional. ***Walworth Cnty. DHHS v. Andrea L.O.***, 2008 WI 46, ¶29, 309 Wis. 2d 161, 749 N.W.2d 168. There is no procedure under WIS. STAT. ch. 48 for withdrawing a jury demand. ***Andrea L.O.***, 309 Wis. 2d 161, ¶30. The trial court conducted a personal colloquy with Kimberly on the record to verify that her waiver of a jury trial was knowing, intelligent, and voluntary.

The no-merit report also correctly determines that no meritorious challenge could be made to the sufficiency of the evidence to support the court's conclusion that grounds existed for the TPRs due to continuing CHIPS. "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). After a bench trial, we review a trial court's factual determinations under the clearly erroneous standard. ***A&A Enters. v. City of Milwaukee***, 2008 WI App 43, ¶17, 308 Wis. 2d 479, 747 N.W.2d 751; WIS. STAT. § 805.17(2). Here, there was no dispute that Tashawn and Dondre had been adjudged CHIPS and placed outside the home for six months or longer pursuant to a court order containing the TPR notice required by law. *See* WIS. STAT. § 48.415(2)(a)3. The court, as the trier of fact, was entitled to believe the various witnesses who testified to the effect that Kimberly had not met the conditions necessary for Tashawn's and Dondre's return despite the

Department's many reasonable efforts to assist her. The court also could have found from the evidence that Kimberly had made only limited progress and that it was unlikely that she would satisfy the court-ordered conditions in another nine months. *See* ***id.*** Consequently, an argument that there was no credible evidence to support the court's conclusion would lack arguable merit.

The no-merit report next examines whether any of the trial court's rulings on Kimberly's evidentiary objections present issues of arguable merit. She had argued that evidence of Jamaris's head injuries and of arguments between her and Dondre's father was not relevant, that the CHIPS orders were insufficiently authenticated, and that her probation officer's testimony was irrelevant and violated HIPAA privacy requirements.

A trial court has broad discretion when making evidentiary determinations, and our review is highly deferential. ***Martindale v. Ripp***, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. A court properly exercises its discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational and legally sound conclusion. ***Burkes v. Hales***, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991).

Appellate counsel has properly assessed the evidentiary rulings. We agree that no issues of arguable merit could arise in regard to any of them.

The no-merit report also addresses whether, upon finding both Tashawn and Dondre to be continuing CHIPS, *see* WIS. STAT. § 48.415(2), the trial court properly exercised its discretion in terminating Kimberly's parental rights. Whether the evidence warrants a TPR is within the trial court's discretion. *See* ***Sheboygan Cnty. DHHS v. Julie A.B.***, 2002 WI 95, ¶28, 255 Wis. 2d 170, 648 N.W.2d 402. The court thoroughly considered the WIS. STAT. § 48.426(3) factors from the perspective of the boys' best interests, especially their adoptability into the same home, their

fraternal bond, and their bonded relationship with their foster parents. The GAL joined the Department in recommending termination. We agree that no issue of arguable merit could arise. Our independent review satisfies us that there are no other potential issues of arguable merit.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing Kimberly A. R. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals