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**DISTRICT IV**

April 23, 2014

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

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2013AP2553-NM

In re the termination of parental rights to Tierra M., a person under the age of 18: Dane County Department of Human Services v. Donronnell T. V. (L.C. #2012TP54)

Before Blanchard, P.J.<sup>1</sup>

Donronnell T.V. appeals an order terminating his parental rights to Tierra M. Attorney Theresa Schmieder has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel.*

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

*McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report discusses whether the circuit court properly granted—and subsequently refused to vacate—a default judgment on the grounds of continuing CHIPS, and whether the circuit court properly exercised its discretion in the disposition phase. Donronnell was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel’s assessment that there are no arguably meritorious appellate issues.

#### *Default Judgment*

The circuit court has discretion to enter a default judgment on the grounds phase of a TPR proceeding when a parent fails to appear. See *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768; see also WIS. STAT. § 806.02(5) (default judgment statute). Before making a determination on grounds, however, the court must take evidence as set forth in WIS. STAT. § 48.422(7), even if the petition is not contested. See § 48.422(3). Relief from a default judgment in a TPR case is available based upon any of the reasons set forth in WIS. STAT. § 806.07(1)(a), (b), (c), (d) or (f).

Here, the Dane County Department of Human Services moved for default judgment after Donronnell failed to appear at the initial appearance. The county presented testimony from a social worker sufficient to establish that: (1) Tierra M. had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) the county department of health and human services had made reasonable efforts to provide the services ordered by the court; (3) Donronnell failed to meet the conditions established for the safe return of Tierra; and (4) there was a

substantial likelihood that Donronnell would not meet the conditions within the next nine months. *See* WIS. STAT. § 48.415(2); WIS JI—CHILDREN 324. The county also introduced court orders from the prior CHIPS proceeding as exhibits. This evidence was more than sufficient for the circuit court to determine that grounds had been proven and to enter a default judgment finding Donronnell unfit as a parent.

Nearly a year later,<sup>2</sup> Donronnell moved to vacate the default judgment. The circuit court held an evidentiary hearing at which it heard testimony from Donronnell (who claimed he had never been served with notice about the TPR proceeding, had only learned about the proceeding through the mother, and had been told by the social worker that his rights had already been terminated); from a deputy who claimed to have personally served Donronnell; and from the social worker who claimed to have spoken with Donronnell about the default judgment about a month after it had been issued and to have advised him that it would be to his benefit to obtain counsel. The circuit court found the testimony of the deputy and social worker to be credible, and determined that Donronnell had in fact been served with notice of the proceeding and informed about the default judgment, and had not provided any sufficient reason why he had waited so long to seek relief or grounds to do so.

### *Disposition*

At the dispositional hearing, a trial court is 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

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<sup>2</sup> The matter did not proceed directly to disposition because first there was a trial to determine whether there were grounds to terminate the mother's rights.

relationship with the parents or other family members, the wishes of the child and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record shows that the trial court considered the relevant factors. After hearing testimony from Tierra's foster parent, the social worker, Donronnell and Tierra's mother, the court determined that Tierra had been flourishing in her foster placement for four years and was highly likely to be adopted there, since the foster parents had already adopted two of Tierra's older siblings; that Tierra's relationship with Donronnell was attenuated; and that Tierra would be more adversely affected by being removed from the foster home than from terminating her relationship with Donronnell. In short, the record shows that the trial court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

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 Donronnell T.V.'s parental rights to Tierra M. is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Theresa Schmieder is relieved of any further representation of Donronnell T.V. in this matter. *See* WIS. STAT. RULE 809.32(3).

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