



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**

May 7, 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 W. Watertown Plank Rd.  
Milwaukee, WI 53226

Gregory Bates  
Bates Law Offices  
P.O. Box 70  
Kenosha, WI 53141-0070

Claire Starling  
Assistant District Attorney  
Milwaukee County District Attorneys Office  
10201 W. Watertown Plank Road  
Wauwatosa, WI 53226

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

Dennis M.

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

Steven Zaleski  
The Zaleski Law Firm  
10 E. Doty St., Ste. 800  
Madison, WI 53703

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

---

2014AP597-NM

In re the termination of parental rights to Quintasiaona H., a person under the age of 18: State of Wisconsin v. Dennis M.  
(L.C. #2013TP49)

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

Dennis M. appeals the order terminating his parental rights to Quintasiaona H. Dennis M.'s appellate lawyer, Gregory Bates, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), *Brown County v. Edward C.T.*, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam), and WIS. STAT. RULES 809.107(5m) and 809.32. Dennis M. was informed of his right to respond, but he did not respond. After considering the no-merit report and conducting an independent review of the record, we conclude that further proceedings would lack arguable merit. Therefore, we affirm the order terminating Dennis M.'s parental rights.<sup>2</sup>

Quintasiaona H. was born August 21, 2011. Since her birth, she has not lived with her biological parents, who are not married, but have been in a long-term stable relationship for over sixteen years and have five older children. Quintasiaona H. has lived with the same foster mother since her discharge from the hospital, where she stayed for several weeks after her premature birth. Quintasiaona H. went into foster care, rather than home with her biological parents, because they contacted the Bureau of Milwaukee Child Welfare and asked for assistance, explaining that they were not financially or emotionally prepared to care for her because they were under the impression that she would be stillborn. On January 4, 2012, Quintasiaona H. was found to be in need of protection or services. On January 31, 2013, the

---

<sup>1</sup> 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.

<sup>2</sup> The parental rights of Carlisa H., the mother of Quintasiaona H., were also terminated. She has filed a separate appeal, 2014AP611-NM, which shares a record with this appeal. We decide the two appeals in separate orders because the legal issues in the two cases vary and counsel for each parent has addressed different issues in the no-merit reports they have submitted.

State filed a petition to terminate Dennis M.'s parental rights, alleging that that he had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6). Default judgment was entered against Dennis M. on July 1, 2013, when he failed to appear for a pretrial hearing. After holding a dispositional hearing that spanned several days, the circuit court determined that termination of Dennis M.'s parental rights was in Quintasiaona H.'s best interest.

The no-merit report first addresses whether Dennis M.'s procedural rights were protected. At a hearing on April 22, 2013, the circuit court personally informed Dennis M. that he was required to attend the final pretrial hearing on July 1, 2013 at 9:30 a.m. The circuit court also advised Dennis M. that he needed to stay in touch with his lawyer and could be penalized, including having default judgment entered against him in the grounds phase of the case, if he did not appear or follow the circuit court's orders. Dennis M. failed to appear for the July 1 hearing and did not call to explain his absence. The circuit court entered default judgment against him. After hearing testimony from the case manager, addressed in more detail below, the circuit court determined that there was sufficient evidence to support a finding that Dennis M. had failed to assume parental responsibility. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶3, 246 Wis. 2d 1, 629 N.W.2d 768. Dennis M.'s lawyer moved to reopen the default judgment at the next hearing, explaining that Dennis M. was confused about when the hearing was and was shocked that default had been entered against him for missing the court appearance. The circuit court considered the argument, but concluded that there was no clear and justifiable excuse for Dennis M.'s failure to appear and no reason to reopen the judgment. Because Dennis M. was accorded the process that was due him and the circuit court's decision to enter default judgment based on his failure to appear was not a misuse of discretion, we conclude that there would be no

arguable merit to an appellate challenge based on a claim that Dennis M.'s procedural rights were not protected.

The no-merit report next addresses whether there was sufficient evidence to find Dennis M. to be an unfit parent with regard to Quintasiaona H. because he had failed to assume parental responsibility for her. Case Manager Crystal Smith testified that Dennis H. did not have a substantial relationship with Quintasiaona H., who had never lived with him. She testified that he did not accept responsibility for the daily supervision, education, protection or care for Quintasiaona H., that he had declined the opportunity to participate in a program designed to quickly reunify parents with their children, that he had not worked to meet the conditions of return established by the circuit court's order in the underlying CHIPS case, and that he and Carlisa H. had ended overnight visits with Quintasiaona H. because they were too stressful. Based on this testimony, there would be no arguable merit to a claim that there was insufficient evidence to find Dennis M. to be an unfit parent because he had failed to assume parental responsibility.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in determining that terminating Dennis M.'s parental rights was in Quintasiaona H.'s best interest. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the child's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the circuit court must also consider factors including, but not limited to:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3).

In its extensive oral decision, the circuit court made findings of fact based on the testimony it heard during the dispositional phase, addressing the factors set forth in WIS. STAT. § 48.426(3). The circuit court explained that Quintasiaona H. went home from the hospital with her foster mother because her biological parents recognized that they could not care for her at that point due to the circumstances of her birth, not because they had done anything wrong. To the contrary, the circuit court noted that Dennis M. and Carlisa H. have five older children that they have raised well. The circuit court found that the Bureau reasonably inferred at the outset that Quintasiaona H.'s placement with her foster mother would be short-term because Dennis M. and Carlisa H. would be able to pull things together to bring the child home. But the circuit court found that this did not happen, in part due to health problems of each parent and their other responsibilities. They did not participate in Quintasiaona H.'s daily life, consistently visit with her, attend her medical appointments or go to the hospital when she had surgery.

The circuit court found that Quintasiaona H.'s foster mother was devoted to her well-being and had done an exemplary job caring for her, especially given her special needs due to her premature birth. Quintasiaona H. was bonded to her foster mother and was happy in her home. The circuit court found that it was highly likely that Quintasiaona H. would be adopted by her foster mother, who was the only mother she had ever known because she had never lived with her parents. The circuit court found that the only relationships Quintasiaona H. had with her biological mother and father's families were with her five older siblings, who she had visited on occasion over the course of her life. The circuit court found that the foster mother had expressed a willingness to continue those relationships, though the court noted that the decision would ultimately be the foster mother's to make. Based on these factors, the circuit court reasonably concluded termination was in Quintasiaona H.'s best interest. There would be no arguable merit to a challenge to the circuit court's exercise of discretion in terminating Dennis M.'s parental rights.

The no-merit report next addresses two arguments that Dennis M. told his lawyer he wanted this court to consider. First, Dennis M. states that the initial agreement with the foster parent was broken. He argues that the foster mother agreed that she would care for Quintasiaona H. only until his personal situation improved to the point where he could care for his child. Although the biological parents and the Bureau initially believed that Quintasiaona H. would be able to join her biological parents within a short period of time, Dennis M. and Carlisa H. were unable to meet the conditions for her return as anticipated. Acting in accord with the law that governs children in Quintasiaona H.'s situation, the State filed the petition to terminate Dennis M.'s parental rights because he failed to assume parental responsibility for her.

The State caused the termination petition to be filed, not the foster mother. She did not break any agreement by continuing to care for Quintasiaona H.

Second, Dennis M. states that he is now receiving Social Security Disability income and could care for Quintasiaona H. at home. The circuit court was aware of this information during the dispositional hearing when it decided that termination was in Quintasiaona H.'s best interest. Although Dennis M.'s stable income is a positive factor with regard to his ability to provide for his children, the circuit court was required to weigh all of the different factors in the case to determine what would be in Quintasiaona H.'s best interest. There would be no arguable merit to an appellate challenge based on either of these claims.

Our independent review of the record reveals no other potential issues of arguable merit. Therefore, we affirm the order terminating Dennis M.'s parental rights and relieve Attorney Gregory Bates of further representation of Dennis M. in this matter.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Dennis M. in this matter. *See* WIS. STAT. RULE 809.32(3).

---

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