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**DISTRICT I**

June 12, 2014

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

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2014AP570-NM

State of Wisconsin v. Amanda G.  
(L.C. 2012TP307)

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

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<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.

Consideration of this case was delayed because the appeals for the child's mother and father share an appellate record. We will extend the deadline for deciding this case to the date of this order. See *Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995) (we may extend the time to issue a decision in a TPR case).

Amanda G. appeals from a trial court order terminating her parental rights to Nylah D.F.<sup>2</sup> Amanda G.'s appointed attorney, Steven W. Zaleski, has filed a no-merit report. *See Brown County v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. Amanda G. has not filed a response. This court has considered counsel's report and has independently reviewed the record. This court agrees with counsel's conclusion that an appeal would lack arguable merit. Therefore, the order terminating Amanda G.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Nylah D.F. was born in December 2010. For the first three months of her life, she lived with Amanda G. in several settings, including a shelter.<sup>3</sup> Because the Bureau of Child Welfare had been involved with Amanda G. concerning the welfare of her other children, including four children who were adopted after Amanda G.'s parental rights were terminated, social workers were involved with Amanda G. as soon as Nylah D.F. was born. When Amanda G. and Nylah D.F. left the hospital after Nylah D.F.'s birth, an in-home safety plan was put into place. The plan included various programs that Amanda G. needed to participate in, such as parenting assistance, crisis intervention counseling, and meeting with a home health nurse. When Amanda G. did not follow through on the safety plan and there were concerns about Nylah D.F.'s safety, Nylah D.F. was taken into custody in March 2011, when she was three months old.

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<sup>2</sup> The parental rights of Amanda G.'s father were also terminated. The father's rights are not at issue in this appeal and will not be addressed.

<sup>3</sup> It is undisputed that Nylah D.F.'s father did not live with Amanda G. and Nylah D.F.

Nylah D.F. was found to be a child in need of protection or services and placed outside her mother's home. She was placed with a married couple who serve as her foster parents and she has remained with them ever since.

In December 2012, the State moved to terminate Amanda G.'s parental rights on two grounds: continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2) & (6). Amanda G. participated in the litigation, appearing at each court hearing. In November 2013, on the day that a jury trial on the grounds for termination was scheduled to begin, Amanda G. decided to stipulate to the failure-to-assume-parental-responsibility ground. The continuing CHIPS ground was dismissed. The trial court conducted a colloquy with Amanda G., accepted the stipulation, and heard testimony from a family case manager that allowed the trial court to make a finding that there was a factual basis for the failure-to-assume-parental-responsibility ground alleged in the petition.

The case proceeded to a dispositional hearing. Although Amanda G. did not testify, her attorney presented the testimony of Nylah D.F.'s paternal grandfather, who expressed interest in serving as Nylah D.F.'s guardian.<sup>4</sup> Ultimately, the trial court determined that terminating Amanda G.'s parental rights was in Nylah D.F.'s best interests. This appeal follows.

The no-merit report addresses four issues: (1) whether the trial court adhered to statutory time limits; (2) whether Amanda G.'s stipulation to the failure-to-assume-parental-responsibility ground was valid, including whether there was sufficient evidence to support the stipulation;

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<sup>4</sup> The father participated in the dispositional hearing and likewise argued that the petition should be dismissed and that his father should be appointed Nylah D.F.'s guardian.

(3) whether the trial court erroneously exercised its discretion when it decided to terminate Amanda G.'s parental rights; and (4) whether Amanda G.'s trial counsel provided ineffective assistance. We agree with appellate counsel that there would be no merit to raising these issues in a post-disposition motion or on appeal, and we will briefly address each of the potential issues counsel has identified.

We begin with the statutory time limits. We have examined the record and we agree with counsel that at each hearing, “the trial court either acted within the applicable deadlines or found good cause to extend them.” Further, Amanda G. did not object to any of the extensions. There would be no merit to asserting that the trial court failed to follow the statutory rules concerning time limits.

Next, we consider Amanda G.'s decision to stipulate to a single ground for termination: failure to assume parental responsibility. In *Brown County DHS v. Brenda B.*, our supreme court summarized the applicable legal standards:

A parent who chooses to enter a no contest plea during th[e grounds] phase is giving up valuable protections and must have knowledge of the rights being waived by making the plea.

The principles and analysis of *Bangert* apply.<sup>5</sup> The [trial] court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. This colloquy is governed by the requirements of [WIS. STAT.] § 48.422(7) and notions of due process.

If the parent can later show that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, that parent has made a prima facie case that the plea was not knowing, voluntary, and

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<sup>5</sup> See *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

intelligent. At that point, the burden shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently pled no contest.

*Brenda B.*, 2011 WI 6, ¶¶34-36, 331 Wis. 2d 310, 795 N.W.2d 730 (citations omitted).

The trial court conducted an extensive colloquy with Amanda G. that spanned over fifteen pages of the transcript. The trial court addressed Amanda G.'s understanding of the rights she was giving up, told her that it would decide at the dispositional hearing whether to terminate her parental rights or dismiss the petition, and explained that the focus at the dispositional hearing would be on Nylah D.F.'s best interests. The trial court also established that no promises or threats were made to force Amanda G. to enter the stipulation. In short, the transcript demonstrates that the trial court complied with the dictates of WIS. STAT. § 48.422(7), *Brenda B.*, and *Oneida County DSS v. Therese S.*, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122.

As part of its compliance with WIS. STAT. § 48.422(7), the trial court heard testimony from the family case worker concerning the factual basis for the stipulation. The trial court accepted the worker's testimony, which included details about Amanda G.'s non-compliance with the in-home safety plan, the intensive services that were offered, and the events that led the Bureau to take Nylah D.F. into custody for her protection. The trial court found that Amanda G. had not accepted or exercised significant responsibility for Nylah D.F.'s daily supervision, education, protection or care, and that the State had proven the failure-to-assume-parental-responsibility ground by clear, convincing, and satisfactory evidence. *See* WIS. STAT. § 48.424(4). Amanda G.'s stipulation and the worker's testimony support these findings. There

would be no merit to challenging Amanda G.'s stipulation or alleging that there was no factual basis for the stipulation.

The third issue is whether there would be any merit to challenging the trial court's decision to terminate Amanda G.'s parental rights. The decision to terminate a parent's rights is discretionary and the best interests of the child is the prevailing standard. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple 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).

Here, there would be no merit to challenging the trial court's exercise of discretion. The trial court considered the statutory factors and found that each one weighed in favor of termination. For example, the trial court said that the likelihood of adoption by the foster parents was "absolutely certain." The trial court recognized that Nylah D.F., who was nearly age three at

the time of the dispositional hearing, had lived all but the first three months of her life with her foster parents. The trial court said that Nylah D.F. was “healthy” and “happy” and that there were no impediments to adoption.

The trial court found that the only substantial relationship Nylah D.F. had with any of her biological relatives was with Amanda G., but it also found that “it is a very, very unhealthy relationship” which “will not be harmful to terminate.” This finding was supported by testimony that Nylah D.F. experienced anxiety after supervised visits with Amanda G. and told her foster parents that she (Nylah D.F.) was “bad” or “naughty” and that Amanda G. was mad. The trial court also found that the foster parents would “continue to foster” Nylah D.F.’s relationships with her biological siblings, with whom she has had visits arranged by her foster parents and the siblings’ adoptive parents.

The trial court noted that Nylah D.F. was “too young to express” her wishes, but said that Nylah D.F.’s actions—such as seeking comfort from her foster parents when she is scared—demonstrate that her foster parents are her “de facto mother and father.” The trial court found that terminating Amanda G.’s parental rights would give Nylah D.F. “a more stable and permanent family relationship.” Finally, the trial court discussed at length why it did not believe that dismissing the petition in favor of granting guardianship to Nylah D.F.’s paternal grandfather—who had met Nylah D.F. about four times, all occurring in the three months before trial—would be preferable to allowing Nylah D.F. to stay where she “is fully integrated in the (foster parents’) household and ... is viewed by the other kids in the home as a sister.”

Ultimately, the trial court found that, having considered the statutory factors, termination of Amanda G.’s parental rights was in Nylah D.F.’s best interests. The trial court’s findings are

supported by the record and reflect a proper exercise of discretion. An appellate challenge to the trial court's exercise of discretion would lack arguable merit.

Finally, the no-merit report states that appellate counsel has not identified anything in the record indicating that trial counsel was ineffective. We, too, have not identified an issue of merit with respect to trial counsel's performance, which included the presentation of an alternative to termination—a guardianship with Nylah D.F.'s paternal grandfather—and active cross-examination and argument.

Upon the foregoing,

IT IS ORDERED that Attorney Steven W. Zaleski is relieved of any further representation of Amanda G. on appeal.

IT IS FURTHER ORDERED that the order terminating Amanda G.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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