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**DISTRICT III**

July 22, 2014

*To*:

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

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2014AP1084-NM Barron County Department of Human Services v. Melanie K. (L. C. #2013TP15)

Before Hoover, P.J.[1]

Counsel for Melanie K. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order

terminating parental rights to her ten-year-old daughter, C.N. Melanie was informed of her right to file a response to the report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

On January 17, 2012, the Barron County Department of Health and Human Services received a report regarding Melanie's drinking to the point of leaving the child unattended or in the care of her half-sister. An investigation was opened and a protective plan was put into place on January 29, 2012. For a period of time the child was placed with one set of grandparents, and then the other, but ultimately the child was placed in foster care. A CHIPS proceeding was begun, and on July 31, 2012, an order was entered finding neglect and a child in need of protection and services. The order contained conditions for the child's return, as well as warnings regarding the possible termination of parental rights.

On June 18, 2013, a petition was filed seeking termination of parental rights. The grounds alleged were continuing CHIPS and failure to assume parental responsibility, pursuant to WIS. STAT. §§ 48.415(2)(a) and (6)(a). On January 2, 2014, a trial was held and a jury returned verdicts finding the county had proven both grounds. Following a dispositional hearing, the circuit court determined it was in the best interests of the child to terminate Melanie's parental rights.

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

Any challenge to the statutory time limits would lack arguable merit, as the time limits were either waived or tolled for good cause. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶¶38-39, 259 Wis. 2d 429, 655 N.W.2d 752.

Melanie requested a jury trial on grounds. Her attorney agreed the court should answer the special verdict question "yes" regarding whether the child had been placed outside the home for six months or more under a court order containing the termination of parental rights warnings. Although Melanie was present at the time her attorney consented, the circuit court did not inquire whether she understood this would deprive her of a jury determination on that element, or whether she was voluntarily waiving that right.

Regardless, this affected only the first element of the continuing CHIPS ground, rather than a complete withdrawal of the right to a jury determination concerning the CHIPS ground. The other elements of continuing CHIPS were not affected, and the stipulation was made in Melanie's presence in open court. In addition, this element was not contested and ample testimony supported the fact that the child was placed outside Melanie's home for more than six months. Significantly, the CHIPS order itself was admitted into evidence which also contained the termination of parental rights warnings. Accordingly, there is no meritorious basis to argue the failure to conduct a personal colloquy with Melanie improperly deprived her of a jury determination concerning the first element of the continuing CHIPS ground.

The record also discloses no arguable basis to challenge the sufficiency of the evidence. As mentioned, concerning the allegations of continuing CHIPS, the dispositional hearing order placed the child outside the home and contained the requisite termination of parental rights warnings. The child had not resided with Melanie since the date of the order.

There is also no arguable issue whether the County made reasonable efforts to provide the court-ordered services. Melanie was provided numerous services for treating her alcohol issues, assistance in maintaining sobriety, drug testing, individual counseling, parenting education, and supervised visitation, among other things.

Melanie failed to meet the conditions established for the return of the child. She failed to complete AODA treatment or maintain sobriety, did not appear for regular drug testing, missed nearly half of the scheduled visits with the child, stopped attending team meetings, did not participate in counseling, and maintained a relationship with a man although she had been the victim of domestic violence at his hands. Testimony also established it was substantially unlikely Melanie would meet the conditions within the following nine months, as it had already been nearly two years and she had made little progress. This was particularly true given the fact that Melanie failed to complete her established alcohol treatment plan. *See* WIS. STAT. § 48.415(2).

Turning to the alternative ground for termination, a failure to assume parental responsibility is established by proving that Melanie had not had a substantial parental relationship with the child. *See* WIS. STAT. § 48.415(6)(a). "'[S]ubstantial parental relationship' means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." WIS. STAT. § 48.415(6)(b). Failure to assume parental responsibility is determined by consideration of the totality of the circumstances. ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶¶3, 27-35, 333 Wis. 2d 273, 797 N.W.2d 854.

The child was removed from Melanie's home after it was learned Melanie had been drinking and leaving the child unattended, or in the care of an older half-sister. Melanie tested

positive for amphetamines, and there was a domestic violence incident involving Melanie's boyfriend. Melanie's retreat into alcohol was determined to be the primary impediment to her caring for the child, a problem she was unable or unwilling to address. This as well as the abusive relationship exposed the child to a hazardous living situation, and Melanie was never able to maintain a safe and sober living arrangement, or even progress to having unsupervised visits. In this regard, testimony established instances when the supervised visitation agent arrived with the child to find Melanie passed out. The jury reasonably concluded Melanie had not had a substantial parental relationship with the child.

Finally, there is no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated parental rights. The court properly applied the best interests of the child standard and considered the factors set forth in WIS. STAT. § 48.426(3). The court noted the child's adoptability, and that there was a prospective family for her. The court also took into account the child's age and stated it believed she needed a more stable and permanent relationship as she had "been in limbo for more than two years." The court considered the child's wishes and stated the child would "like to have Mom clean and sober and without the bad influences of a boyfriend and be back home." Unfortunately, the court found no real possibility of that ever occurring. The court's discretionary decision to terminate Melanie's parental rights demonstrated a rational process that is justified by the record. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed.

IT IS FURTHER ORDERED that attorney Donna Hintze is relieved of further representing Melanie K. in this matter.

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