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**DISTRICT III/IV**

July 30, 2014

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

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2014AP1145-NM

In re the termination of parental rights to Lee T., a person under the age of 18: Taylor County Human Service v. Jonathan T. (L.C. #2013TP5)

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

Jonathan T. appeals an order terminating his parental rights to Lee T.<sup>2</sup> Attorney Melissa Peterson has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS.

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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 references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> The record contains discrepancies as to Jonathan's and Lee's names. We refer to Jonathan and Lee as clarified by counsel.

STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses: (1) whether there was sufficient evidence at trial to support the court's finding that there were grounds to terminate Jonathan's parental rights; and (2) whether the circuit court properly exercised its discretion by determining that termination of Jonathan's parental rights was in Lee's best interests. Jonathan was sent a copy of the report, but has not filed a response. Upon our independent review of the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

On September 20, 2013, the State petitioned to terminate Jonathan's parental rights to Lee,<sup>3</sup> alleging the following grounds: (1) Jonathan had abandoned Lee under WIS. STAT. § 48.415(1); and (2) Jonathan had failed to assume parental responsibility under § 48.415(6). Jonathan contested the petition. Following a trial to the court, the court found that grounds existed to terminate Jonathan's parental rights on both grounds. The court also found that termination of Jonathan's parental rights was in Lee's best interests.

The no-merit report addresses whether there would be arguable merit to a claim that there was insufficient evidence to support the court's finding of grounds for termination. We agree with counsel's assessment that an argument that the evidence was insufficient would lack arguable merit.

Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424(2) and 48.31(1). When we review findings made in a trial to the court, we

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<sup>3</sup> The State also petitioned to terminate the parental rights of Lee's mother. Lee's biological mother's parental rights are not at issue in this appeal.

review the evidence in the light most favorable to the findings made by the trial court. *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169.

The evidence at trial established the following. Jonathan lived with Lee for the first five months of Lee's life in 2002, and then Jonathan was incarcerated for most of the time between 2002 and 2012. Jonathan's mother took over the responsibility of raising Lee when Lee was around six months old. Lee was removed from his grandmother's care in 2011 pursuant to a CHIPS order after Lee's grandmother had a medication overdose. In the summer of 2012, Jonathan and Lee were involved in a car accident in which Lee was seriously injured, and Taylor County Human Services informed Jonathan he would have to complete an AODA assessment to reestablish visitations with Lee. Jonathan never underwent an AODA assessment; Jonathan had no contact with Lee, or Taylor County Human Services regarding Lee's welfare, between September 2012 and the November 2013 trial as to grounds.

We agree with counsel's assessment that the trial evidence was sufficient to support the circuit court's findings that grounds existed to terminate Jonathan's parental rights based on abandonment.<sup>4</sup> See WIS. STAT. §§ 48.415(1)(a)2., (1)(a)3., and (1)(c) (abandonment established by proof that the child was placed outside the home by court order and the parent failed to visit or communicate with the child for three months or longer, or that the parent left the child with another person and failed to communicate with the child for a period of six months or longer,

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<sup>4</sup> Because there would be no arguable merit to a challenge to the circuit court's finding as to grounds based on abandonment, we do not reach the issue of whether failure to assume provided additional grounds.

without good cause). Accordingly, a challenge to the circuit court's findings as to grounds would lack arguable merit.

Next, the no-merit report addresses whether the circuit court properly exercised its discretion in determining that termination of Jonathan's parental rights was in Lee's best interests. *See* WIS. STAT. §48.426 (at disposition, prevailing factor is best interests of the child). The evidence at the dispositional hearing established that Lee was likely to be adopted by his current foster parents; that Lee had been in foster care from ages nine to twelve, and that he was in good health; and that Lee wished to be adopted by his current foster parents. The court applied the evidence from the grounds phase and the dispositional hearing to the statutory factors in determining that termination was in Lee's best interests. *See* WIS. STAT. § 48.426(3). We agree with counsel's assessment that an argument that the circuit court erroneously exercised its discretion by determining that termination of Jonathan's parental rights was in Lee's best interests would lack arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the order terminating Jonathan's parental rights. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the order terminating Jonathan's parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Melissa Peterson is relieved of any further representation of Jonathan T. in this matter. *See* WIS. STAT. RULE 809.32(3).

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