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

DISTRICT I/II

October 8, 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 Watertown Plank Rd.
Milwaukee, WI 53226

Michelle Ackerman Havas
Asst. District Attorney
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

Jeff T. Wilson
McDermott, Foley & Wilson, LLP
1200 E. Capitol Dr., Ste. 220
Shorewood, WI 53211

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

Cynthia A. Lepkowski
Legal Aid Society of Milwaukee, Inc.
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

LaShae R.
9221 W. Allyn St., Apt. G
Milwaukee, WI 53224

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

2014AP1872-NM State of Wisconsin v. LaShae R. (L.C. #2013TP279)

Before Reilly, J.[1]

LaShae R. appeals from an order involuntarily terminating her parental rights to her son, Ja'Dorrion R. LaShae's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 and ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). LaShae received a copy of the report and was advised

[1] 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.

of her right to file a response but she has not done so. Upon consideration of the no-merit report and an independent review of the record, we conclude there are no issues that would have arguable merit for appeal. We accept the no-merit report, summarily affirm the order terminating LaShae's parental rights, and relieve Attorney Jeff T. Wilson of further representation of LaShae in this matter.

Ja'Dorrion lived with LaShae and her husband, Ja'Dorrion's father. In February 2013, one-year-old Ja'Dorrion was found to be a child in need of protection or services (CHIPS) and was placed in the home of his maternal grandparents. Although the Bureau of Milwaukee Child Welfare (BMCW) made reasonable efforts to help LaShae meet the goals set for her, she failed to meet the conditions of return. The BMCW filed a termination of parental rights (TPR) petition that alleged continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). After a jury trial, the jury agreed that the State had proved both grounds. The trial court ordered that LaShae's rights be terminated. This no-merit appeal followed.[2]

A review of the record satisfies this court that mandatory time limits either were met or were extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2). Our review also establishes that the petition was in proper form. No issue of arguable merit could arise from either point.

The no-merit report considers whether there exists an arguably meritorious challenge to the jury pool and makeup. LaShae, who is African American, objected to the jury array as it had

[2] The court also terminated Ja'Dorrion's father's parental rights after the same jury found him to be an unfit parent. If he is appealing, it is not a part of this appeal.

a lower percentage of African Americans than does Milwaukee county. She also argued that, as the surname of everyone in the jury array began with the letter A, B, C, D, or E, the selection could not have been random.

"[P]ersons selected for jury service shall be selected at random from the population of the area served by the circuit court." WIS. STAT. § 756.001(4). The jury services coordinator testified telephonically how jurors are summoned and sent to Children's Court. She testified that 450 regular jurors and 350 reserve jurors were summoned for jury duty that day. Less than fifty percent of each group responded. Children's Court draws from the reserve juror pool. Six percent of the reserve pool respondents were African American, compared to about twenty percent in the community at large. Of the forty-seven jurors slotted to go to Children's Court, twelve, including four African Americans, did not report. She also testified that over time, jury services has found no racial disparity whether names are selected purely at random or from a section of the alphabet.

"Disproportionate representation of a group in one array is insufficient to establish a systematic exclusion." ***State v. Pruitt***, 95 Wis. 2d 69, 78, 289 N.W.2d 343 (Ct. App. 1980). LaShae would have to show systematic exclusion of African Americans from jury panels over time. *See* ***id.*** at 77. The court found that jury services attempts to assemble jury pools that reasonably reflect the community. No arguable issue exists, as LaShae could not show systematic exclusion of her race or a prima facie violation of her Sixth Amendment right to a jury pool representing a fair cross-section of the community. *See* ***id.*** at 74-75.

The no-merit report also considers the sufficiency of the evidence to support the court's conclusion that grounds existed for the TPR due to continuing CHIPS and the failure to assume

parental responsibility. "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). This court affirms the fact finder's decision if there is any credible evidence that under any reasonable view supports it and searches the record for evidence that supports the decision, accepting any reasonable inferences the fact finder could reach. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752.

Here, LaShae admitted that she and Ja'Dorrion's father smoked marijuana and frequently fought, both in front of the child. The conflicts involved shouting, cursing, upending furniture, throwing things at one another, setting fire to clothing, and punching holes in the walls. LaShae also engaged in "cutting" behavior in Ja'Dorrion's presence. LaShae testified that she missed court appointments; was unable to schedule therapy and parenting classes; did not show up for mental health, anger management, or counseling appointments due to insurance coverage issues; and thought that three phone calls completed her AODA treatment. She conceded that she was aware of the conditions set for her yet had "not done any of it" because she did not think she needed the services and programs. She acknowledged having notice that a TPR was possible but not until trial did she get the "wake-up call" that her rights really could be terminated. She testified that she now planned to get started on meeting the goals.

The jury heard that Ja'Dorrion, two-and-a-half years old at the time of trial, had been adjudged CHIPS and placed outside the home for six months or longer pursuant to a court order containing the TPR notice required by law. *See* WIS. STAT. § 48.415(2)(a)3. The jury was entitled to believe the professionals who testified regarding the BMCW's many efforts to assist LaShae and the concerns about LaShae's self-harm, anger issues, poor compliance with programs and services, and her failure to meet the conditions necessary for her son's return. The

jury also could have found from the evidence that LaShae had made only limited progress and that it was unlikely that she would satisfy the court-ordered conditions in another nine months. *See* ***id.*** Consequently, an argument that there was no credible evidence to support the court's conclusion would lack arguable merit.

The report also considers the trial court's decision to order the TPR. When deciding whether to terminate parental rights, the trial court must consider the best-interests-of-the-child standard and the factors set forth in WIS. STAT. § 48.426. ***Sheboygan Cnty. DHHS v. Julie A.B.***, 2002 WI 95, ¶¶29-30, 255 Wis. 2d 170, 648 N.W.2d 402; *see also* WIS. STAT. §§ 48.424(3) and 48.426(1). The decision ultimately is a matter of trial court discretion. ***Julie A.B.***, 255 Wis. 2d 170, ¶43.

Here, the court noted the proper standard and thoroughly considered and specifically referenced the factors set out in WIS. STAT. § 48.426(3). It considered that Ja'Dorrion has lived with his maternal grandmother since being removed from his parents' home; the grandmother intends to adopt him; LaShae's parenting problems may be caused or influenced by her immaturity, but the child's interests outweigh hers at this stage; the child is healthy, happy, and being properly cared for; and LaShae has a substantial relationship with the boy and her mother will allow the relationship to continue.

LaShae argued for a guardianship over termination. She conceded that "there was enough instability in [her and her husband's[3]] household that you would question having a very

[3] LaShae and the child's father both were eighteen when Ja'Dorrion was born. They married about eight months later but were separated at the time of trial.

young child living there," and that while it was "[n]ot perhaps a safe household," it was "not the worst," because Ja'Dorrion was fed and clothed. She chalked her poor parenting decisions up to being young and immature. Noting that she has no criminal history, "g[o]t through school, and "works, when she can find work," she questioned why she was being "singled out" from among "literally millions of other young, immature, inadequate parents out there[.]"

A trial court's decision whether to appoint a guardian pursuant to WIS. STAT. § 48.977 rests on a determination of what is in the child's best interests, and is committed to the court's discretion. ***Anna S. v. Diana M.***, 2004 WI App 45, ¶7, 270 Wis. 2d 411, 678 N.W.2d 285. The trial court's overarching concern with granting a guardianship here was Ja'Dorrion's need for permanence and security. It considered that the child had spent a significant amount of time with his grandparents before being detained and was in their care full time since then. Also, termination would not deprive LaShae of contact. A guardianship would not give Ja'Dorrion the "stability … suitability … safety … [and] permanence" the court believed the evidence demonstrated that he needed.

LaShae moved for a directed verdict at the close of the State's case. Construing the motion as one for dismissal, the trial court denied it because, considering the evidence in the light most favorable to the State, credible evidence existed from which the jury could return a verdict for the State. *See* WIS. STAT. § 805.14(3); *see also* ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). No basis exists to reverse the ruling as it was not clearly wrong. *See* ***Olfe v. Gordon***, 93 Wis. 2d 173, 185-86, 286 N.W.2d 573 (1980).

LaShae renewed her motion for dismissal at the close of all the evidence. The court construed the motion as one for a directed verdict. No meritorious issue could arise from the

court's denial of the motion as the evidence was not so clear and convincing that a reasonable, impartial, and properly instructed jury could reach but one conclusion. *See* ***Door Cnty. DHFS v. Scott S.***, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999).

Last, the report addresses whether LaShae arguably could claim that trial counsel was ineffective. One claiming ineffective assistance of counsel must show deficient performance and that such performance prejudiced the defense. ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). Nothing in the record suggests an arguable basis for such a claim but our review is limited because claims of ineffective assistance of trial counsel must first be raised in the trial court. *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

Our independent review revealed no other issues of arguable merit. Accordingly, we accept the no-merit report, affirm the order terminating LaShae's parental rights, and relieve Attorney Jeff T. Wilson of further representation of LaShae in this matter. Therefore,

IT IS ORDERED that the order of the trial court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeff T. Wilson is relieved of further representation of LaShae R. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals