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January 2, 2015

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

2014AP2377-NM State v. Torrence R. (L. C. #2013TP196)

Before Stark, J.¹

Counsel for Torrence R. has filed a no-merit report concluding there is no arguable basis for Torrence to challenge an order terminating his parental rights to his son, Zachariah.² Upon this court's independent review of the record, no issue of arguable merit appears.

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.

The jury found three grounds for terminating Torrence’s parental rights: Zachariah’s continuing need for protection and services (CHIPS), Torrence’s failure to assume parental responsibility and abandonment. To establish continuing need of protection and services, the State had to prove by clear and convincing evidence that: (1) Zachariah was placed outside Torrence’s home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination notice required by law; (2) the Bureau of Milwaukee Child Welfare made reasonable efforts to provide services ordered by the court to assist Torrence in meeting the conditions of return; (3) Torrence failed to meet those conditions; and (4) there was a substantial likelihood that Torrence would not meet the conditions within a nine-month period following the conclusion of the hearing. *See* WIS. STAT. § 48.415(2).

To establish Torrence’s failure to assume parental responsibility, the State needed to prove that Torrence failed to establish a substantial parental relationship with Zachariah, meaning acceptance and exercise of significant responsibility for his daily supervision, education, protection and care. *See* WIS. STAT. § 48.415(6). A substantial parental relationship is assessed based on the totality of the circumstances throughout the child’s life. *Tammy W.G. v. Jacob T.*, 2011 WI 30, ¶38, 333 Wis. 2d 273, 797 N.W.2d 854.

² Cases appealed under WIS. STAT. RULE 809.107 “shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant’s reply brief” The no-merit report was filed on November 10, 2014. Torrence’s response was due November 24, 2014, but he did not file one. Thus, an opinion from this court was due December 26, 2014. Conflicts in this court’s calendar and the size of the record in this matter have resulted in a short delay in the opinion’s release. It is therefore necessary for this court to sua sponte extend the deadline for a decision in this case. *See* WIS. STAT. RULE 809.82(2)(a) (“the court upon its own motion ... may enlarge or reduce the time prescribed by these rules or court order for doing any act”); *Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). We extend our deadline accordingly.

To establish abandonment, the State had to prove that Zachariah was placed outside of Torrence's home pursuant to a court order that contained the termination of parental rights notice, and Torrence failed to visit or communicate with Zachariah for a period of three months or longer. *See* WIS. STAT. § 48.415(1)(a)2. However, Torrence could prove by a preponderance of evidence that he had a good reason for failing to visit Zachariah. *See* sec. 48.415(1)(c).

The record discloses no arguable basis to challenge the sufficiency of the evidence to support the jury's verdict on all three grounds for termination. The verdict must be upheld if there is any credible evidence which, under any reasonable view, fairly admits of an inference that supports the jury's finding. *Foseid v. State Bank of Cross Plains*, 197 Wis. 2d 772, 782, 541 N.W.2d 203 (Ct. App. 1995). Evidence provided by two social workers who managed Zachariah's case and Torrence's own testimony support the verdict.

Zachariah lived with his mother until August 2011, when he was removed by the Bureau pursuant to a CHIPS order. Upon establishing Torrence's paternity, Torrence was provided with a copy of the CHIPS order which required him to complete a number of conditions before Zachariah could be placed in his care. The order gave him notice that failure to complete the conditions could result in termination of his parental rights. The State filed the petition on June 17, 2013, after Zachariah had been out of a parental home for twenty-two months.

Zachariah's present and former social workers testified regarding Torrence's failure to meet the CHIPS conditions and his overall lack of willingness to obtain placement of Zachariah. Torrence failed to engage in visits or services despite multiple efforts by the Bureau encouraging him to do so, including phone calls, in-person conversations, a scheduled trip to Torrence's home at which Torrence did not appear, free bus tickets and monthly letters. A social worker testified

Torrence expressed disinterest in visitation and a desire to have Zachariah placed with his mother or possibly his grandmother. Torrence had his first and only visit with Zachariah on July 20, 2012. Torrence refused to participate in required safety assessment meetings with the Bureau, random drug tests, and domestic violence counseling. He failed to attend any of Zachariah's doctors' appointments; provide Zachariah with any food, clothing, education, shelter or gifts; or have any contact with Zachariah for more than six months. When Zachariah was placed in foster care in the Eau Claire area, Torrence failed to visit him even when free bus tickets were offered. He wanted four-year-old Zachariah to come to him instead.

Torrence's own testimony supports the jury's verdicts. He testified he could not spell Zachariah's name, never attended a birthday party and did not participate in any of the services required by the CHIPS order except that he took Zachariah for a haircut "once or twice." When asked what he had done to show the Bureau he was able and willing to care for Zachariah, he responded, "I don't know what I showed you people because it's not my job to show you guys anything." Torrence explained that he believed the CHIPS conditions were not relevant and he did not want to visit Zachariah because the setting of the visits reminded him of jail. Although Torrence indicated the reason for his failure to meet the CHIPS conditions was the mother's failure to keep him informed, he admitted he had received and read the CHIPS order and had never called the Bureau to inquire about Zachariah.

Near the end of the trial, Torrence's counsel attempted to call Zachariah's mother to testify by telephone. The purpose of her proposed testimony is unclear and there is no reasonable likelihood any testimony she provided would cause a jury to reach a different conclusion on any of the three grounds for termination of Torrence's rights.. The court refused to allow her to testify by telephone under WIS. STAT. § 807.13 because it was important for the

jury assessing her credibility to observe her demeanor. The rights of Zachariah's mother were terminated at this same hearing and the court noted that a likely reason for her unwillingness to testify in person was that she had two outstanding warrants for her arrest. Because the court properly exercised its discretion, the decision to require in-person testimony presents no arguable issue for appeal. See *Town of Geneva v. Tills*, 129 Wis. 2d 167, 176, 384 N.W.2d 701 (1986).

After the jury found grounds for terminating Torrence's parental rights, the court appropriately exercised its discretion by terminating those rights at the disposition hearing. Zachariah's case worker and the current foster mother testified about Zachariah's successful adjustment to life with his foster family, the positive progress he made developmentally and the foster parents' desire and ability to adopt him. The court considered the factors set out in WIS. STAT. § 48.426(3) and appropriately found it would be in Zachariah's best interest to terminate Torrence's parental rights.

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

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

IT IS FURTHER ORDERED that attorney Christine Quinn is relieved of her obligation to further represent Torrence in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals