



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 III/II

January 7, 2015

To:

Hon. James C. Babler
Circuit Court Judge
Barron County Justice Center
1420 State Hwy. 25 North, Room 2601
Barron, WI 54812-3006

Andrew Joseph Harrington
Liden & Dobberfuhr SC
P.O. Box 137
425 E. La Salle Ave.
Barron, WI 54812

Tammy Vucenic
Juvenile Clerk
Barron County Justice Center
1420 State Hwy. 25 North, Room 2602
Barron, WI 54812-3009

Leonard D. Kachinsky
Sisson & Kachinsky Law Offices
103 W. College Ave., #1010
Appleton, WI 54911-5782

John C. Bachman
John Bachman Law Office
P.O. Box 477
Eau Claire, WI 54702-0477

Mandy B.
1331 1st Ave.
Cumberland, WI 54829

Elizabeth J. Smith
Attorney at Law
P.O. Box 535
Rice Lake, WI 54868

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

2014AP2501-NM	In re the termination of parental rights to Devon W., a person under the age of 18: Barron County Department of Health and Human Services v. Mandy B. (L.C. #2014TP1)
2014AP2502-NM	In re the termination of parental rights to Amanda W., a person under the age of 18: Barron County Department of Health and Human Services v. Mandy B. (L.C. #2014TP2)

Before Neubauer, P.J.¹

Mandy B. appeals from orders terminating her parental rights to her two children. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and

¹ 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.

809.32. Mandy was served with a copy of the report and advised of her right to file a response. No response has been received. Based upon the no-merit report and an independent review of the circuit court records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

The petitions for termination of parental rights alleged that Mandy had failed to assume parental responsibility for the children and that the children were in continuing need of protection or services. *See* WIS. STAT. § 48.415(2), (6). The sheriff served Mandy with the petitions and summons giving notice of the hearing to be held March 12, 2014. Each summons stated that “**IF YOU FAIL TO APPEAR**, the court may hear testimony in support of the allegations in the attached petition and grant the request of the petitioner to terminate your parental rights.” (Emphasis in original.) Mandy did not appear at the initial appearance. A default finding was entered against Mandy on the grounds for termination and evidence proving up those allegations was put on the record.

Mandy appeared telephonically at the adjourned initial appearance conducted for the children’s father on April 25, 2014. When the default finding was raised, Mandy’s attorney was told to file a motion to reopen. Mandy was specifically ordered to stay in contact with the public defender and cooperate with her attorney. She was also specifically ordered to appear at future court hearings and informed a pretrial conference was scheduled for May 28, 2014. A motion to reopen the default finding was not filed until June 4, 2014, two days before the scheduled jury trial regarding grounds to terminate the father’s rights.² At a telephonic conference conducted on

² The motion asserted that Mandy did not remember being personally served with the petitions and that she was ill during that time and sometimes under heavy sedation.

June 4, 2014, Mandy's attorney explained that he had been appointed at the end of April and that he had left messages for Mandy and received one message back on May 5, 2014, but that he had not spoken with Mandy until June 3, 2014. The circuit court denied Mandy's motion to reopen the default judgment finding that she had not demonstrated excusable neglect in not appearing at the March 12, 2014 initial appearance and she had made little effort to offer a timely explanation for her non-appearance. Mandy did not appear at the disposition hearing held July 15, 2014. The court determined that the termination of Mandy's parental rights was in the children's best interests.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Id.*, ¶26. The second phase is the dispositional phase. *Id.*, ¶28. The court must determine whether the parent's rights should be terminated. *Id.* The best interests of the children is the prevailing factor considered by the circuit court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Counsel's no-merit report addresses as potential appellate issues whether the circuit court properly found Mandy in default, whether denial of her motion to reopen was a proper exercise of the circuit court's discretion, whether there were any procedural defects in the proceedings, and whether the circuit court properly exercised its discretion in determining that termination

was in the children's best interest. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768, recognizes that a default judgment may be entered in a termination of rights case when a party fails to comply with a court order. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

Our review of the records discloses no other potential issues for appeal.³ Accordingly, we accept the no-merit report, affirm the orders terminating Mandy's parental rights, and discharge appellate counsel of the obligation to represent Mandy further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of any further representation of Mandy B. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ We have considered whether Mandy had a statutory or constitutional right to notice of or to be present at the June 4, 2014 telephonic conference at which her motion to reopen was decided. It does not appear that any notice was given of the conference because the motion to reopen was handled with immediacy with the jury trial just two days away. Mandy was represented by counsel and that was sufficient. *See State v. Shirley E.*, 2006 WI 129, ¶46, 298 Wis. 2d 1, 724 N.W.2d 623 (parent appears by counsel even if parent does not appear in person); *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768 (although parent was not physically present, parent appeared at hearing by counsel).