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

March 11, 2015

To:

Hon. Mark A. Sanders
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226-1425

Dan Barlich
Juvenile Clerk
Children's Court Center
10201 Watertown Plank Rd.
Milwaukee, WI 53226

Paul G. Bonneson
Law Offices of Paul G. Bonneson
631 N. Mayfair Rd.
Wauwatosa, WI 53226

Matthew Richard Westphal
Asst. District Attorney
Office of the District Attorney
10201 Watertown Plank Rd.
Wauwatosa, WI 53226

Peter O. Bockhorst
Bockhorst Law Offices
510 N. 27th St.
Milwaukee, WI 53208

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

Whakesha W.
2802 W. Atkinson Ave., #303
Milwaukee, WI 53209

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

2015AP3-NM	In re the termination of parental rights to, Elijah F.C., Jonah F.C., and Uniahla A.C., persons under the age of 18: State of Wisconsin v. Whakesha W. (L.C. #2013TP74)
2015AP4-NM	In re the termination of parental rights to Jonah F.C., a person under the age of 18: State of Wisconsin v. Whakesha W. (L.C. #2013TP75)
2015AP5-NM	In re the termination of parental rights to Uniahla A.C., a person under the age of 18: State of Wisconsin v. Whakesha W. (L.C. #2013TP76)

Before Neubauer, P.J. [1]

In these consolidated termination-of-parental-rights (TPR) cases, Whakesha W. appeals from orders involuntarily terminating her rights to three of her children, Elijah F.C., Jonah F.C., and Uniahla A.C. Whakesha'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). Whakesha received a copy of the report and was advised of her right to file a response but she has not done so. After considering the no-merit report and independently reviewing the record, we conclude there are no issues with arguable merit for appeal. We accept the no-merit report and summarily affirm the orders.

Child abuse allegations that included using a leather belt and leaving welts prompted the Bureau of Milwaukee Child Welfare (BMCW) to remove Elijah, Jonah, Uniahla, and Emmanuel, another of Whakesha's children, from her home. BMCW alleged each was a child in need of protection or services (CHIPS). Efforts to reunite the family failed and BMCW filed TPR petitions alleging continuing CHIPS. *See* WIS. STAT. § 48.415(2). The jury found that the State satisfactorily proved the termination ground. The trial court terminated Whakesha's parental rights to Elijah, Jonah, and Uniahla.[2] This no-merit appeal followed.

As the no-merit report observes, the dispositional orders and extensions were reduced to writing and included written TPR warnings. *See* WIS. STAT. § 48.415(2)(a)1. Also, the record

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] The TPR petition involving Emmanuel is not on appeal here.

establishes that mandatory time limits were either met or extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2).

The no-merit report addresses whether a claim could be made that insufficient evidence supports the jury's verdicts. "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). We affirm the fact finder's decision if there is any credible evidence that under any reasonable view supports it; we search 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.

To prove continuing CHIPS, the State had to establish that: (1) Elijah, Jonah, and Uniahla had been adjudged CHIPS and placed outside the home for a cumulative total period of at least six months pursuant to one or more court orders containing the required TPR notice;[3] (2) BMCW had made a reasonable effort to provide court-ordered services; (3) Whakesha had failed to meet the conditions established for the safe return of the children to her home; and (4) it was substantially likely that she would not meet the conditions of return within nine months after the grounds-phase trial. *See* WIS. STAT. § 48.415(2)(a).

Over the five-day trial, the jury heard testimony from numerous professionals involved with Whakesha and the children, as well as from Whakesha herself. It heard that BMCW provided a panoply of services, assistance, and therapies; that Whakesha was inconsistent in her participation, failed to complete several, denied her bipolar-II diagnosis, and failed to meet her

[3] Whakesha did not dispute this element at trial.

children's behavioral needs; that her living situation was unsuitable; that she seemed unable to consistently interact appropriately with the children and their foster parents; that she never progressed to unsupervised visits; and that the court eventually suspended visitation. The jury was entitled to find that the State proved the elements by clear and convincing evidence.

The no-merit report also considers whether the trial court erred in ordering the suspension of visitation between Whakesha and the children. No arguable issue could arise in this regard.

The trial court may issue an injunction prohibiting the respondent from visitation during the pendency of a TPR if it is in the child's best interests. WIS. STAT. § 48.42(1m)(c). "The determination of a child's best interests in a termination proceeding depends on firsthand observation and experience with the persons involved and, therefore, is left to the discretion of the trial court." ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

At the visitation hearing, written and testimonial information described Whakesha's inappropriate demeanor, behavior, and conversation during visits with the children, and the visits' impact on the children. The court stated that everything it read and heard compelled it to conclude that continuing the visits was not in the children's best interests. No arguable challenge could be made to the discretionary suspension order because the court examined the relevant facts, applied a proper standard of law and used a demonstrated rational process to reach a conclusion a reasonable judge could reach. *See* ***id.***

Finally, the report considers whether the trial court's decision to order the TPR represented an erroneous exercise of discretion. Any challenge in that regard would be frivolous.

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 child's best interests drives the court's inquiry, but it is the court's "wise and compassionate discretion" that ultimately determines whether termination will promote those interests. ***Julie A.B.***, 255 Wis. 2d 170, ¶42.

The trial court here did not approach its decision as though "termination [was] the rule" because the jury found that grounds existed. *See* ***id.*** Rather, it carefully summarized the witnesses' testimony and credibility and discussed the statutory factors as each pertained to the children individually. The comprehensive oral decision, including denial of the petition in regard to Emmanuel, demonstrates wise and compassionate discretion. Our independent review reveals no other arguable issues.[4]

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

[4] This court examined on its own whether an arguable challenge exists to the jury pool and makeup. Whakesha, an African-American, raised a challenge under ***Batson v. Kentucky***, 476 U.S. 79 (1986), after the State used a peremptory challenge to strike an African-American juror. The State may not base a peremptory challenge solely on race. ***Id.*** at 89. The State said it struck the juror as she voiced a belief that physical discipline is acceptable. The trial court found it a race-neutral reason, thus making a peremptory challenge permissible. A challenge on this point would have no merit.

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved of further representation of Whakesha in this matter.

Diane M. Fremgen
Clerk of Court of Appeals