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**DISTRICT IV/I**

March 17, 2015

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

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2015AP102-NM

In re the termination of parental rights to Michael D., a person under the age of 18: Waushara County Department of Human Services v. Casey D. (L.C. #2014TP3)

Before Curley, P.J.<sup>1</sup>

Casey D. appeals an order terminating her parental rights to Michael D. Counsel for Casey D., William E. Schmaal, filed a no-merit report. *See Brown Cnty. v. Edward C.T.*, 218

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<sup>1</sup> 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.

Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) & 809.32. Casey D. was informed of her right to file a response to the no-merit report, but she has not done so. After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the order terminating Casey D.'s parental rights. *See* WIS. STAT. RULE 809.21.

Michael D. was born on July 3, 2012. He was placed in foster care when he was six months old. On October 9, 2014, the Waushara County Department of Human Services petitioned for involuntary termination of Casey D.'s parental rights on the grounds that Michael D. continued to be in need of protection and services. *See* WIS. STAT. § 48.415(2). The day the fact-finding hearing was scheduled, Casey D. consented to voluntary termination. The circuit court held a dispositional hearing three weeks later and entered an order terminating Casey D.'s parental rights.

The no-merit report first addresses whether Casey D.'s decision to voluntarily terminate her parental rights was knowingly, intelligently and voluntarily made. *See* WIS. STAT. § 48.41. Casey D. testified extensively about her decision to voluntarily terminate her parental rights. Her lawyer questioned her about her decision in order to ascertain that she understood all of the rights she was giving up and to ensure that she had made the decision after thinking it over carefully and discussing it with others, including her mother. Casey D. also testified that she understood the decision was irrevocable. After her testimony, the circuit court concluded that Casey D.'s decision to consent to termination of her parental rights was made knowingly, intelligently and voluntarily. There would be no arguable merit to a challenge to Casey D.'s decision to consent to termination of her parental rights.

The no-merit report next addresses whether the circuit court properly exercised its discretion at the disposition hearing in deciding that it was in Michael D.'s best interest to terminate Casey D.'s parental rights. The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (1) the likelihood of adoption after termination; (2) the age and health of the child; (3) whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements. *See* § 48.426(3).

In reaching its decision that termination was in Michael D.'s best interest, the circuit court first noted that Michael D. had already spent most of his life in foster care, eighteen months of the twenty-six months he had been alive. The circuit court considered the fact that Michael D. was thriving and happy in his foster home, living with foster parents who had taken care of him every day and every night, and were ready to make him their son. The circuit court considered the fact that Michael D. was likely to be adopted because his foster parents wanted to adopt him and his maternal grandmother had also asked to be considered as an adoptive resource. Based on all of these circumstances, the circuit court properly exercised its discretion in concluding that termination of Casey D.'s parental rights was in Michael D.'s best interests. *See Gerald O.*, 203 Wis. 2d at 152 (A circuit court "properly exercises its discretion when it examines the relevant

facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.”). An appellate challenge to that determination would lack arguable merit.

Although not explicitly addressed as a separate issue in the no-merit report, we have also considered whether there would be arguable merit to a claim that Casey D. should have been allowed to revoke her consent to the petition. Casey D. appeared when the disposition hearing was already underway to inform the circuit court that she no longer wanted to consent to termination. The circuit court listened carefully to what Casey D. wanted to say to the court, and then explained to her that she had already consented to termination and the focus of the hearing was now on what was best for Michael D. Casey D. was informed that her decision to consent to termination was irrevocable when she made it and the circuit court was permitted by statute to proceed directly to disposition after she gave consent. *See* WIS. STAT. § 48.41. Moreover, as the circuit court explained to Casey D., she had not met the conditions for the return of her child even though he had been in foster care for over a year and a half. There would be no arguable merit to a claim that Casey D. should have been allowed to revoke her consent to the petition at the dispositional hearing.

Our independent review of the record reveals no other potential issues. We therefore conclude that there is no arguable basis for reversing the order terminating Casey D.’s parental rights. Any further proceedings would be without arguable merit.

IT IS ORDERED that the order terminating the parental rights of Casey D. to Michael D. is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that William E. Schmaal is relieved of any further representation of Casey D. on appeal.

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