



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](http://www.wicourts.gov)

**DISTRICT IV/II**

April 22, 2015

To:

Hon. John V. Finn  
Circuit Court Judge  
Portage Co. Courthouse  
1516 Church Street  
Stevens Point, WI 54481-3598

Delorma Nowicki  
Juvenile Clerk  
Portage Co. Courthouse  
1516 Church Street  
Stevens Point, WI 54481-3598

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

Michael J. McKenna  
Portage Co. Corporation Counsel  
1516 Church Street  
Stevens Point, WI 54481-3501

Olivia K.  
2601 Indiana Ave., #28  
Stevens Point, WI 54481

Karen Lueschow  
Attorney at Law  
1547 Strongs Ave., Ste. B  
Stevens Point, WI 54481

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

---

2015AP117-NM

In re the termination of parental rights to Nolan K., a person under the age of 18: Portage Co. DHHS v. Olivia K. (L.C. # 2014TP71)

Before Brown, C.J.<sup>1</sup>

Olivia K. appeals from a circuit court order terminating her parental rights to Nolan K.

Olivia's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m).

---

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

Olivia received a copy of the report and has not filed a response to it.<sup>2</sup> Upon consideration of the report and an independent review of the record, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The Portage County Department of Health and Human Services petitioned to terminate Olivia’s parental rights on the grounds that Nolan was a child in continuing need of protection or services, WIS. STAT. § 48.415(2), and Olivia had failed to assume parental responsibility for Nolan, § 48.415(6). A jury found the grounds for termination, and the circuit court thereafter terminated Olivia’s parental rights after a dispositional hearing.

The no-merit report addresses: (1) whether there were any procedural defects, (2) whether the evidence supported the jury verdict that there were grounds to terminate Olivia’s parental rights, (3) whether the circuit court properly exercised its discretion in making various evidentiary rulings, and (4) whether the circuit court properly exercised its discretion determining that it was in the child’s best interest to terminate Olivia’s parental rights. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We conclude that the evidence supports the jury’s verdict that there were grounds to terminate Olivia’s parental rights. “When reviewing a jury’s verdict, we consider the evidence in

---

<sup>2</sup> On March 4, 2015, Olivia advised this court that she did not agree with counsel’s decision to file a no-merit report, and she desired to discharge counsel and proceed pro se or with retained counsel. Our March 6 order gave Olivia until March 19 to confirm her intentions. She did not respond to the March 6 order. Our April 1 order determined that this appeal would continue as a no-merit appeal, and we gave Olivia until April 10 to file a response to counsel’s no-merit report. She has not done so.

the light most favorable to the verdict.” *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854. At trial, evidence was taken from child welfare professionals, a mental health professional, a foster parent, Olivia, and witnesses who testified in favor of Olivia. The circuit court found that Nolan was a child in need of protection or services who had been placed outside of Olivia’s home for six months or longer. The jury found that Portage County Department of Health and Human Services made reasonable efforts to provide court-ordered services, Olivia failed to meet the conditions for Nolan’s return, it was not substantially likely that Olivia would meet those conditions within nine months following the jury trial, and Olivia had failed to assume parental responsibility for her child. The jury’s findings are supported in the trial record. We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence of the continuing CHIPS and failure to assume parental responsibility grounds to terminate Olivia’s parental rights.

The decision to terminate parental rights is within the circuit court’s discretion. *B.L.J. v. Polk Cnty. DSS*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). The circuit court must consider the statutory factors to determine if termination is in the child’s best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court considered the appropriate factors: the likelihood of the child’s adoption after termination, the child’s age and health, the child’s substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the child as a result of the termination. The court’s findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and all the factors weighed in favor of the court’s discretionary determination that it was in the child’s best interests to terminate Olivia’s parental rights. We agree with counsel’s conclusion that an appellate challenge on this basis would lack arguable merit.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. See *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted “upon a showing of good cause in open court ... and only for so long as is necessary.” WIS. STAT. § 48.315(2). The record shows that the circuit court found good cause to toll the time limits, and Olivia did not object. The court complied with WIS. STAT. § 48.424(4) with regard to scheduling the dispositional hearing. There would be no arguable merit to a challenge to the circuit court’s competency to proceed based on a failure to comply with statutory time limits.

We agree with appellate counsel that there would be no arguable merit to a challenge to the circuit court’s evidentiary rulings.

In addition to the issues discussed above, we independently reviewed the record. Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the order terminating Olivia’s parental rights, and relieve Attorney Leonard Kachinsky of further representation of Olivia in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of further representation of Olivia K. in this matter.

---

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