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

August 26, 2015

To:

Hon. Rebecca Lynn Grassl Bradley
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

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

Christine M. Quinn
P.O. Box 70055
Milwaukee, WI 53207

Claire Starling
Assistant District Attorney
Milwaukee County District Attorneys Office
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

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

L.H.

Anne S. McIntyre
Legal Aid Society of Milwaukee Guardian
Ad Litem Division
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

Dennis Schertz
Schertz Law Office
P.O. Box 133
Hudson, WI 54016

Chris R. Velnetske
Velnetske Law Offices
212 N. Green Bay Rd., Ste. 101
Thiensville, WI 53092

Catherine J. Flaherty
2500 E. Newton Ave.
Milwaukee, WI 53211-2620

H. H., Jr.

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

2015AP628-NM	In re the termination of parental rights to H. H., III, a person under the age of 18: State of Wisconsin v. H. H., Jr. (L.C. #2013TP302)
2015AP629-NM	In re the termination of parental rights to K. H.-H., a person under the age of 18: State of Wisconsin v. H. H., Jr. (L.C. #2014TP85)
2015AP976-NM	In re the termination of parental rights to H. H., III, a person under the age of 18: State of Wisconsin v. L. H. (L.C. #2013TP302)
2015AP977-NM	In re the termination of parental rights to K. H.-H., a person under the age of 18: State of Wisconsin v. L. H. (L.C. #2014TP85)

Before Reilly, J.[1]

The trial court terminated the parental rights of H.H., Jr., and L.H. to their nonmarital children, H.H., III, a son, and K.H-H, a daughter. H.H., Jr. and L.H. both appeal. H.H., Jr.,'s appellate counsel, Attorney Dennis Schertz, and L.H.'s appellate counsel, Attorney Christine M. Quinn, each filed and served a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), ***Brown Cnty. v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998), and WIS. STAT. RULES 809.107(5m) and 809.32. Neither H.H., Jr. nor L.H. submitted a response. We have considered the no-merit reports, and we have independently reviewed the shared record. We conclude that further proceedings would lack arguable merit, and we summarily affirm the orders terminating the parental rights of H.H., Jr. and L.H.

BACKGROUND

L.H. was pregnant with H.H., III, when she entered a residential treatment facility. She delivered H.H., III on September 7, 2012. The treatment facility discharged L.H. in December 2012, because she was using cocaine during visits with the child's father, H.H., Jr. The State thereafter immediately detained H.H., III, filed a petition alleging that he was a child in need of protection or services (CHIPS), and placed him with P.A.H., who is one of H.H., Jr.'s nieces.

On March 6, 2013, the trial court presiding in the CHIPS matter concluded that H.H., III was a child in need of protection or services, finding that both H.H., Jr., and L.H. are

[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.

"dangerously impulsive," "will not or cannot control their behaviors," and "have uncontrolled AODA issues."[2] The trial court assigned the Bureau of Milwaukee Child Welfare (the Bureau) primary responsibility for providing services to H.H., III and his family, imposed conditions that H.H., Jr. and L.H. were required to satisfy before the child could return to his parents' home, and ordered both parents to complete any services that the Bureau required to meet those conditions. The CHIPS order also placed H.H., III in the home of S.H., another of H.H., Jr.'s nieces.

On October 7, 2013, the State petitioned to terminate H.H., Jr.'s and L.H.'s parental rights to H.H., III. As grounds, the State alleged both that he was a child in continuing need of protection or services and that his parents had failed to assume parental responsibility for him. *See* WIS. STAT. § 48.415(2), (6).

L.H. delivered K.H.-H. on December 6, 2013. The infant tested positive for cocaine at birth and exhibited drug withdrawal symptoms. K.H.-H. was detained at the hospital for a week and then placed with foster parents, A.B. and R.B. Three months later, a family court commissioner determined in an uncontested proceeding that K.H.-H. was a child in need of protection or services and continued her foster care placement.[3] Meanwhile, in the TPR matter involving H.H., III, the trial court granted the State's motion to place him with his sister in the home of A.B. and R.B.

[2] The Honorable Karen E. Christenson presided over the CHIPS and entered the order declaring H.H., III a child in need of protection or services. The CHIPS proceedings are not before us.

[3] Pursuant to WIS. STAT. § 757.69(1)(g)5., a court commissioner may conduct uncontested proceedings under WIS. STAT. § 48.13 concerning children alleged to be in need of protection or services.

On April 22, 2014, the State filed a petition to terminate H.H., Jr.'s and L.H.'s parental rights to K.H.-H. The sole ground alleged was that H.H., Jr. and L.H. had failed to assume parental responsibility for K.H.-H. *See* WIS. STAT.§48.415(6). Pursuant to the agreement of all parties, the trial court joined the TPR proceedings involving H.H., III and K.H.-H.

Both H.H., Jr. and L.H. disputed the allegations in the TPR petitions for some time and requested a bench trial. On the September 22, 2014 trial date, however, L.H. decided to enter a no-contest plea to the allegations that she failed to assume parental responsibility for H.H., III and K.H.-H. The trial court accepted L.H.'s stipulation and then conducted a bench trial regarding the grounds alleged for terminating H.H., Jr.'s parental rights. The State prevailed.

The trial court subsequently held a two-day dispositional hearing that began on November 6, 2014, and concluded on December 9, 2014. Following the hearing, the trial court found that terminating the parental rights of H.H., Jr. and L.H. was in the best interest of their children.

COMPLIANCE WITH STATUTORY TIME LIMITS

We first consider whether H.H., Jr. and L.H. could raise an arguably meritorious claim that the trial court failed to meet mandatory statutory time limits and thereby lost competency to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. After a termination of parental rights petition is filed, the trial court has thirty days to conduct an initial hearing and determine whether any party wishes to contest the petition. WIS. STAT. § 48.422(1). If a party contests the petition, the trial court must set a date for a fact-finding hearing, which must begin within forty-five days of the initial hearing. Sec. 48.422(2). If grounds for

termination are established, the trial court may delay the dispositional hearing until "no later than 45 days after the fact-finding hearing." WIS. STAT. § 48.424(4).[4]

When the statutory time limits cannot be met, continuances may be granted "only upon a showing of good cause in open court … and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases." WIS. STAT. § 48.315(2). Failure to object to a continuance, however, "waives any challenge to the court's competency to act during the period of delay or continuance." Sec. 48.315(3).

In this case, the trial court on several occasions granted continuances that extended the proceedings beyond the statutory deadlines, but neither H.H., Jr. nor L.H. objected to the delays. Accordingly, neither H.H., Jr. nor L.H. can mount an arguably meritorious challenge to the trial court's competency to proceed based on failure to comply with statutory time limits. *See* ***id.***

APPOINTMENT OF GUARDIANS AD LITEM FOR H.H., Jr. and L.H.

We next consider whether either H.H., Jr., or L.H. could pursue an arguably meritorious challenge to the trial court order appointing each of them a guardian ad litem, given that the psychologists who evaluated H.H., Jr. and L.H. did not opine that either of them was incompetent. *Cf.* WIS. STAT. § 48.235(1)(g) (requiring appointment of a guardian ad litem for a parent who is subject to termination of his or her parental rights if any assessment or examination

[4] The deadlines in WIS. STAT. §§ 48.422(1)-(2) and 48.424(4) are subject to an exception applicable to Native American children that is not relevant here.

reveals that the parent is not competent). Any such challenge would be frivolous. H.H., Jr., and L.H., by advocacy counsel, each moved for the appointment of a guardian ad litem. Accordingly, neither H.H., Jr. nor L.H. could challenge the order granting the motions. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (litigant cannot attack a ruling that he or she sought).

Moreover, the trial court may appoint a guardian ad litem "in any appropriate matter" under ch. 48. *See* WIS. STAT. § 48.235(1)(a). The decision rests in the trial court's discretion. *See* Judicial Council Note, 1990, § 48.235. We will uphold a discretionary decision "if the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record." ***State v. Seigel***, 163 Wis. 2d 871, 881-82, 472 N.W.2d 584 (Ct. App. 1991). We search the record for reasons to sustain a trial court's exercise of discretion. ***Olivarez v. Unitrin Prop. & Cas. Ins. Co.***, 2006 WI App 189, ¶17, 296 Wis. 2d 337, 723 N.W.2d 131.

Here, advocacy counsel for each parent requested the appointment of a guardian ad litem because each parent was contemplating a stipulation to grounds for termination of parental rights. Counsel for H.H., Jr., explained that, in counsel's view, a guardian ad litem would be helpful in ensuring the validity of such a stipulation in light of a psychological evaluation revealing that H.H., Jr. has an IQ "in the mid 60's." Although counsel for L.H. did not spell out the basis for requesting a guardian ad litem for her, the record shows that the psychologist who evaluated L.H. at the outset of the CHIPS proceedings determined that her IQ is 65, "within the range of mild intellectual disability (formerly mild mental retardation)." The trial court, while not finding either parent incompetent, explained that guardians ad litem could be of assistance to advocacy counsel. A challenge to the appointments would lack arguable merit.

WAIVER OF THE RIGHT TO A JURY TRIAL

"A parent who contests a TPR petition has a statutory right to a jury trial at the fact-finding hearing at which his or her parental unfitness is adjudicated…." ***Steven V. v. Kelley H.***, 2004 WI 47, ¶3, 271 Wis. 2d 1, 678 N.W.2d 856. Here, H.H., Jr. and L.H. each told the trial court that he or she had decided to waive the right to a jury trial and have a bench trial instead.

In the no-merit report submitted on behalf of L.H., her appellate counsel examines whether a parent whose best interests are represented by a guardian ad litem may give up the right to a jury trial in the grounds phase of a TPR proceeding. We agree with appellate counsel that this issue lacks arguable merit. The appointment of a guardian ad litem for a parent litigating a WIS. STAT. ch. 48 proceeding does not bar the parent from pursuing his or her own wishes with the assistance of advocacy counsel. *See* ***E.H. v. Milwaukee Cnty.***, 151 Wis. 2d 725, 728, 737-38, 445 N.W.2d 729 (Ct. App. 1989). The appointment of a guardian ad litem for each parent therefore is not a reason to challenge the parents' decisions. To the contrary, the appointments help to ensure that the parents had appropriate assistance and advice during the proceedings.

We next consider whether any other basis exists to challenge the jury waivers. The trial court "should ensure that the individual's rights in a [TPR] proceeding are not waived involuntarily or without adequate understanding." ***Manitowoc Cnty. Human Servs. Dep't v. Allen J.***, 2008 WI App 137, ¶16, 314 Wis. 2d 100, 757 N.W.2d 842. In this case, the trial court conducted a colloquy, first with H.H., Jr. and then with L.H., to establish each parent's

understanding of the nature of a jury trial and to determine whether each parent sought to waive the right to such a trial voluntarily.

The trial court explained to both H.H., Jr. and L.H. that, in a jury trial, twelve people listen to the evidence, and the State cannot prevail unless ten of the twelve jurors agree that the State met its burden of proving the grounds alleged for terminating parental rights.[5] Both parents said they understood.

H.H., Jr. and L.H. each told the trial court that he or she did not want a jury trial and had made the decision to request a bench trial after discussing the matter with counsel. The guardian ad litem for each parent opined that a bench trial was in the ward's best interests.

The trial court concluded that H.H., Jr. and L.H. each knowingly, voluntarily, and understandingly waived the right to a jury trial. We are satisfied that neither H.H., Jr. nor L.H. could mount an arguably meritorious challenge to the waiver.

L.H.'s STIPULATION TO GROUNDS FOR TERMINATION

On the day set for trial, L.H. told the trial court that she wanted to enter a no-contest plea to the allegations that she failed to assume parental responsibility for H.H., III and K.H.-H. Before accepting a no-contest plea in the grounds phase of a termination of parental rights proceedings, the trial court must conduct a colloquy with the parent in accordance with WIS.

[5] The rules of civil procedure govern termination of parental rights proceedings. ***Door Cnty. DHFS v. Scott S.***, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999). Accordingly, a verdict agreed to by ten of twelve jurors is sufficient to constitute the verdict of the jury. *See* WIS. STAT. § 805.09.

STAT. § 48.422 (7); ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The statute requires the trial court to: (1) address the parent and determine that the admission is made voluntarily and understandingly; (2) establish whether any promises or threats were made to elicit an admission; (3) establish whether a proposed adoptive parent for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising parental rights; and (5) make such inquiries as satisfactorily establish a factual basis for the admission. *See* § 48.422(7). The trial court must also ensure that parents "understand that acceptance of their plea will result in a finding of parental unfitness." ***Therese S.***, 314 Wis. 2d 493, ¶10.

Further, when accepting a parent's plea in the grounds phase of a TPR proceeding, the trial court must tell the parent that, during the later dispositional phase of the proceedings, "the court will hear evidence ... and then will either terminate the parent's rights or dismiss the petition if the evidence does not warrant termination." ***Id.***, ¶16. Additionally, "the court must inform the parent that '[t]he best interests of the child shall be the prevailing factor considered by the court in determining the disposition.'" ***Id.*** (citation omitted).

In this case, L.H. told the trial court that she had reviewed the TPR petitions with her attorney and with her guardian ad litem and that those lawyers were "very helpful" in assisting her to understand the documents. She acknowledged that she was taking medications for a psychiatric condition and for a seizure disorder, but she assured the trial court that her mental and emotional problems were not adversely affecting her ability to make decisions or understand the proceedings. She said she had not been offered money or promised anything to induce her no-contest plea and that she had not been threatened.

The trial court told L.H. that termination of parental rights involves a two-phase procedure. The trial court explained that, in the first phase, the State would have to prove by clear and convincing evidence that grounds existed to terminate her parental rights and that, because she had previously waived her right to a jury, the judge would consider the evidence. The trial court then explained that to prevail on the claim that she failed to assume parental responsibility, the State must prove that she had not established a substantial parental relationship with either child and had "not accepted or exercised significant responsibility for the children's daily supervision, education, protection and care." *See* WIS. STAT. § 48.415(6). The trial court further explained that if the State proved she failed to assume parental responsibility, the trial court would find her an unfit parent. L.H. said she understood. The trial court told L.H. that, if the State established grounds for termination of parental rights in the first phase of the proceedings, then the trial court would determine in the second phase whether termination of her parental rights was in the best interests of H.H., III and K.H.-H. The trial court further explained that L.H. would have the right to offer evidence showing why the court should not terminate her parental rights but the most important factor in the second phase of the proceedings would be the best interests of the children. L.H. said she understood.

The trial court then heard testimony and received documentary evidence to establish a factual basis for the plea. *See* WIS. STAT. § 48.422(7)(c). Jordan Koconis-O'Malley, one of the ongoing case managers for the family, testified that, because L.H.'s parental rights to seven other children had been terminated in the past, and because L.H. admitted using cocaine and marijuana while pregnant with H.H., III, the Bureau obtained a nonemergency order that created rules and conditions L.H. needed to follow to keep placement of him while she and her newborn lived in a

residential treatment facility. Koconis-O'Malley testified that L.H. resumed using cocaine approximately one month after the birth of H.H., III, leading to the child's detention. A certified copy of a court order established the date of detention as December 12, 2012, and Koconis-O'Malley testified that L.H. never thereafter had custody of H.H., III. Koconis-O'Malley also testified that L.H. never assumed regular responsibility for H.H., III's supervision, education, protection, or care and that L.H. had only sporadic, supervised visits with H.H., III from the time he was detained until June 2014, when she stopped visiting with him entirely.

Koconis-O'Malley went on to testify that L.H. delivered K.H.-H. in December 2013. The infant was born with cocaine in her system and never lived with L.H. Koconis-O'Malley testified that L.H. never provided K.H.-H. with daily supervision, education, protection or care, and that L.H. had a total of six supervised visits with K.H.-H. throughout her life. Finally, Koconis-O'Malley told the trial court that the State had identified an adoptive resource for both K.H.-H. and H.H., III.

The record establishes that L.H. entered a valid no-contest plea to the allegations that she failed to assume parental responsibility for H.H., III and K.H-H. The State supported the allegations contained in the petitions for termination of L.H.'s parental rights. The trial court properly concluded that L.H. was an unfit parent. Further appellate proceedings regarding this issue would lack arguable merit.

SUFFICIENCY OF THE EVIDENCE AS TO GROUNDS FOR TERMINATING H.H., JR'S PARENTAL RIGHTS

Whether grounds exist for the termination of parental rights is a question of fact, *see* WIS. STAT. § 48.415, and the State must prove the existence of such grounds by clear and convincing

evidence, *see* ***Steven V.***, 271 Wis. 2d 1, ¶4. We uphold the trial court's factual findings unless they are clearly erroneous. *See* ***State v. Raymond C.***, 187 Wis. 2d 10, 14, 522 N.W.2d 243 (Ct. App. 1994).

To establish that H.H., Jr. failed to assume parental responsibility for H.H., III and K.H-H, the State was required to prove that H.H., Jr. had not had a substantial parental relationship with either child. *See* WIS. STAT. § 48.415(6). The term "'substantial parental relationship' means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." Sec. 48.415(6)(b); *see also* WIS JI—CHILDREN 346.

H.H., Jr. testified for the State as an adverse witness. He said he never lived with H.H., III or K.H.-H., and had seen K.H.-H. six times since she was born. He admitted that he had never gone with either child to a doctor's appointment and had never paid any child support for either child. Although he testified he provided the children with everything they needed, he subsequently clarified that he bought the children some clothes he kept in his home and that he brought some snacks to a visit with H.H., III.

The State then presented testimony from the various professionals who served as ongoing case managers for H.H., Jr. and his family from the time L.H. was pregnant with H.H., III until the date of the hearing. The testimony of the case managers established that H.H., Jr. never lived with either H.H., III or K.H.-H. and never had contact with them that was more extensive than irregular, supervised visits that ended after June 2014. The evidence showed that H.H., Jr. never participated in any type of daily supervision, education, protection, or care of the children.

To prove that H.H., III was a child in continuing need of protection or services,[6] the State was required to establish that: (1) H.H., III was adjudged to be in need of protection and services and placed outside of the home for a cumulative period of at least six months pursuant to a court order containing a termination of parents rights notice; (2) the Bureau made reasonable efforts to provide the services ordered by the court; (3) H.H., Jr. did not meet the conditions for the safe return of the child to the home; and (4) H.H., Jr. was substantially unlikely to meet the conditions for return of H.H., III within a nine-month period after the hearing. *See* WIS. STAT. § 48.415(2)(a); *see also* WIS JI—CHILDREN 324A.

To establish the first element, the State introduced a certified copy of the March 6, 2013 court order determining that H.H., III was a child in need of protection or services and placing him outside his parents' home. Attached to the order is the termination of parental rights notice required by WIS. STAT. § 48.356(2). H.H., Jr. did not dispute that he was in the courtroom when the court issued the March 6, 2013 order, and Koconis-O'Malley testified that she reviewed the document with him.

As to the second and third elements, Koconis-O'Malley and a second ongoing case manager, Heidi Schubkegel, explained the conditions for return of the child and the services offered to assist H.H., Jr. in meeting the conditions. The testimony of the case managers established that H.H., Jr. was required to address and control his substance abuse, submit to random urine analyses, address his domestic violence, and provide basic care and responsibility

[6] As previously explained, the State claimed that only H.H., III, not K.H.-H., was a child in continuing need of protection or services.

for H.H., III. The testimony further established that the ongoing case managers, *inter alia*: (1) arranged an alcohol and drug assessment for H.H., Jr. but he never attended the assessment; (2) arranged numerous alcohol and drug screenings but he refused to participate; (3) referred him for parenting classes but he did not complete the program; and (4) offered him domestic violence counseling but he refused the service. Koconis-O'Malley also testified she was unable to arrange unsupervised visits for H.H., Jr. because his failure to comply with drug and alcohol testing thwarted her efforts to ensure the safety of a child in his care.

To address whether H.H., Jr. was likely to make progress in the future towards fulfilling the conditions necessary for him to take custody of H.H., III, the State presented the report and testimony of a psychologist, Dr. Kenneth Sherry. Sherry said he evaluated H.H., Jr. and determined that he had a verbal IQ of 63, placing him "in the mid ranks of mild mental retardation." Sherry also noted that H.H., Jr. was fifty-seven years old at the time of the evaluation, lived with his mother, never had self-supporting employment, and carried diagnoses of alcohol abuse, cannabis abuse and cocaine abuse, although H.H., Jr. claimed that his chemical abuse was in remission. Because H.H., Jr. had never had consistent work or independent housing, had a chemical abuse history, and had a demonstrated inability to take care of himself, Sherry concluded: "I do not think [H.H., Jr.] would be able to manage the demands of parenting."

At the conclusion of the hearing, the trial court reviewed the evidence presented to support the grounds for terminating H.H., Jr.'s parental rights to H.H., III and K.H.-H. and concluded that the evidence satisfied the elements as to each ground alleged. The trial court's

findings are amply supported by the record and are not clearly erroneous. An appellate challenge would lack arguable merit.

DISCRETIONARY DECISION TO TERMINATE THE PARENTAL RIGHTS OF H.H., JR. AND L.H.

We next consider whether H.H., Jr. and L.H. could mount an arguably meritorious challenge to the decision to terminate their parental rights. The decision to terminate parental rights lies within the trial court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The prevailing factor is the child's best interests. WIS. STAT. § 48.426(2). In considering the best interests of the child, a trial court must consider: (1) the likelihood of adoption after termination; (2) the child's age and health; (3) "[w]hether 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) "[t]he wishes of the child"; (5) "[t]he duration of the separation of the parent from the child"; and (6) "[w]hether 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." Sec. 48.426(3).

At the dispositional hearing, Angela Krueger, a foster care licensing specialist, testified for the State, as did A.B., the foster mother and adoptive resource for the children. The State also presented testimony from Koconis-O'Malley and from Timika Mitchell, who had recently replaced Koconis-O'Malley as ongoing case manager. H.H., Jr. and L.H. both testified in support of maintaining their parental rights and placing the children with P.A.H. P.A.H. testified that she wanted placement of the children, and she described the weekly visits she and her sister,

S.H., continued to have with H.H., III. At the conclusion of the testimony, the trial court considered each of the statutory factors in light of the evidence presented.

The trial court first found that A.B. and her husband, R.B., were committed to adopting H.H., III and K.H.-H. Turning to the age, health, and wishes of the children, the trial court determined that the children were "too young for the court to consider their wishes," but the court nonetheless observed that the older child called A.B and R.B. "momma and dada," which the court viewed as relevant to understanding H.H., III's wishes. The court went on to consider the evidence that both children were born "cocaine positive" and to contrast their condition at birth with the evidence that "both children are generally healthy and thriving in the care of [A.B. and R.B.]."

The trial court next determined that the children did not have a substantial relationship with either parent. The trial court noted that neither child ever lived with H.H., Jr., and H.H., III lived with L.H. "only briefly."[7] The trial court then found that H.H., Jr. and L.H. had only limited contact with H.H., III and K.H.-H. following their out-of-home placements, emphasizing that for a substantial portion of the children's lives, H.H., III and K.H.-H. had not seen their parents at all. As to the relationship the children had with other biological family members, the

[7] In the no-merit report submitted on behalf of L.H., her appellate counsel discusses the trial court's remark that H.H., III lived with L.H. "for approximately one month." Citing the testimony that H.H., III lived with L.H. from his birth in September 2012 until he was placed with P.A.H. in December 2012, appellate counsel concludes that the trial court made an erroneous but insignificant finding of fact. Our review of the record satisfies us that the trial court did not err. The trial court immediately clarified that H.H., III lived with L.H. "only briefly" and went on to make a finding that H.H., III "was placed with P[.A.H.] from December 2012 until March 2013." The record shows that the trial court correctly understood H.H., III's placement history.

trial court recognized that H.H., Jr.'s nieces, P.A.H. and S.H., had served as foster parents for H.H., III. The trial court found that both women had a relationship with the children, particularly H.H., III, but concluded that the relationship was not substantial and "more like a relationship that an aunt would have with a niece and nephew." The trial court acknowledged that severing all contact between H.H., III and the two women could be harmful to him, but the trial court concluded "it would be more harmful to sever the children's relationships with [A.B. and R.B.]" in light of their long-term roles as foster parents.

The trial court then turned to the sixth and final statutory factor, namely, whether termination of parental rights in these cases would enable each child to "enter into a more stable and permanent family relationship." In this regard, the trial court found that the prospects for placing the children with P.A.H. were uncertain. The trial court reviewed the evidence that H.H., III left P.A.H.'s home within three months because she "was unable to complete the licensing process due to an inability to provide proof of income." Further, the trial court noted the evidence that A.B. was actively nurturing the relationships that the children had with P.A.H. and S.H., and the trial court credited the testimony that A.B. would continue to nurture those relationships in the future. Next, the trial court discussed the importance of the sibling bond between H.H., III and K.H.-H. The trial court gave substantial weight to the evidence that A.B. and R.B. would adopt both children and observed that if their current placement terminated, "it is uncertain whether the children could remain together." Finally, the trial court found that A.B. and R.B. had been the "day-to-day parents" for both children for a long time, and the trial court believed the testimony that the children had bonded with A.B. and R.B. and had a secure and loving home with them. The trial court therefore determined that "it is in the best interest of the

children to permanently maintain their bond with [A.B. and R.B.]." Accordingly, the trial court found that the best interests of the children required terminating the parental rights of H.H., Jr. and L.H.

The record shows that the trial court properly exercised its discretion. The trial court examined the relevant facts, applied the proper standard of law, and used a rational process to come to a reasonable conclusion. *See* ***Gerald O.***, 203 Wis. 2d at 152. An appellate challenge to the trial court's decision to terminate the parental rights of H.H., Jr. and L.H. would lack arguable merit.

Based on an independent review of the record, we conclude that no additional issues warrant discussion.[8] Any further proceedings would be without arguable merit.

IT IS ORDERED that the order terminating H.H., Jr.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of H.H., Jr. on appeal. *See* WIS. STAT. RULE 809.32(3).

[8] Appellate counsel for H.H., Jr. examines whether his trial counsel was constitutionally ineffective and concludes that no arguably meritorious basis exists for such a claim. This court independently concludes that the record offers no arguably meritorious basis for challenging the effectiveness of H.H., Jr.'s trial counsel. This court also independently concludes that no basis exists in the record for an arguably meritorious challenge to the effectiveness of trial counsel for L.H.

IT IS FURTHER ORDERED that the order terminating L.H.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine M. Quinn is relieved of any further representation of L.H. on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals