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March 8, 2016

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

2016AP3-NM	In re the termination of parental rights to T.C., a person under the age of 18: Fond du Lac County DSS v. F.C. (L.C. # 2013TP55)
2016AP144-NM	In re the termination of parental rights to A.C., a person under the age of 18: Fond du Lac County DSS v. F.C. (L.C. # 2013TP54)

Before Blanchard, J.¹

Attorney Len Kachinsky, appointed counsel for F.C., has filed a no-merit report in these consolidated appeals concerning orders terminating F.C.'s parental rights to A.C. and T.C. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit

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.

report addresses whether there would be arguable merit to any claims based on procedural or evidentiary issues; the sufficiency of the evidence at trial to support the jury findings as to grounds for termination; or the circuit court's exercise of discretion in terminating F.C.'s parental rights. F.C. was sent a copy of the report, but has not filed a response. Upon our independent review of the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

On November 18, 2013, the State petitioned to terminate F.C.'s parental rights to A.C. and T.C. The petitions alleged the following grounds for termination: (1) A.C. and T.C. were children in continuing need of protection or services (CHIPS) under WIS. STAT. § 48.415(2); and (2) F.C. had abandoned A.C. and T.C. under § 48.415(1). F.C. denied the allegations in the petitions and requested a jury trial. The jury found that grounds existed to terminate F.C.'s parental rights. The circuit court then found that termination of F.C.'s parental rights was in A.C. and T.C.'s best interests.

The no-merit report addresses whether there would be arguable merit to any claim of procedural defects in the proceedings. Counsel notes that the circuit court did not inform F.C. of her right to judicial substitution, but that the circuit court was not required to do so. *See Steven V. v. Kelley H.*, 2004 WI 47, ¶52 & n.9, 271 Wis. 2d 1, 678 N.W.2d 856 (holding that "the circuit court does not have a statutory duty to inform a party in a TPR case of the right to a continuance to consult with counsel about judicial substitution," and expressly overruling prior case law that held the court had a duty to inform a party in a TPR action of the right to judicial substitution). We also agree with counsel that there would be no arguable merit to any claims contending that the circuit court failed to follow statutory time limits or to continue hearings

beyond those time limits for good cause; challenging the circuit court's evidentiary decisions; or claiming error in the court granting F.C.'s motion for a mistrial at the first trial as to grounds.

The no-merit report also addresses whether there would be arguable merit to a claim that there was insufficient evidence to support the jury's finding of grounds for termination. We agree with counsel's assessment that an argument that the evidence was insufficient to support the jury's findings would lack arguable merit. *See* WIS. STAT. §§ 48.424(2) and 48.31(1) (grounds for termination must be established by clear and convincing evidence); *State v. Quinsanna D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752 (a jury's determination that grounds exist for termination will be upheld so long as there is any credible evidence to support that determination). Here, the evidence at the fact-finding hearing, including testimony by F.C. and Fond Du Lac County social workers and treatment providers, was sufficient to support the jury verdicts.

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion in determining that termination of F.C.'s parental rights was in A.C. and T.C.'s best interests. At the dispositional hearing, the circuit court considered the relevant evidence and applied the relevant statutory factors in reaching its decision. We agree with counsel's assessment that an argument that the circuit court erroneously exercised its decision in determining that termination of F.C.'s parental rights was in A.C. and T.C.'s best interests would lack arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the orders terminating F.C.'s parental rights. We conclude that any further appellate

proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the orders terminating F.C.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Len Kachinsky is relieved of any further representation of F.C. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals