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**DISTRICT I/II**

June 1, 2016

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

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2016AP719-NM

In re the termination of parental rights to W.T.M., a person under the age of 18: State of Wisconsin v. W. H. M. (L.C. #2014TP225)

Before Gundrum, J.<sup>1</sup>

W.H.M. appeals a circuit court order terminating his parental rights to his son, W.T.M.

Appellate counsel for W.H.M. filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m)

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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.

and 809.32. W.H.M. received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. WIS. STAT. RULE 809.21.

W.T.M. was detained on May 7, 2013, and placed in out-of-home care when his sisters were physically abused by W.H.M. At that time, W.T.M. was less than four months old. He was found to be a child in need of protection or services on October 2, 2013.

On August 28, 2014, the State of Wisconsin petitioned to terminate W.H.M.'s parental rights to W.T.M. on grounds that (1) he failed to assume parental responsibility and (2) W.T.M. was a child in continuing need of protection or services. *See* WIS. STAT. § 48.415(2), (6). A jury found that both grounds were proven,<sup>2</sup> and the circuit court subsequently terminated W.H.M.'s parental rights after a dispositional hearing. This no-merit appeal follows.

The no-merit report addresses the following issues: (1) whether the evidence at W.H.M.'s trial was sufficient to support the jury's verdicts, (2) whether the circuit court properly exercised its discretion at disposition by terminating W.H.M.'s parental rights, and (3) whether the circuit court lost competency to proceed due to the failure to comply with mandatory time limits. We agree with appellate counsel that these issues would not have arguable merit for appeal.

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<sup>2</sup> The jury was unanimous as to the failure to assume parental responsibility ground. One juror dissented on the continuing need of protection or services ground.

With respect to the sufficiency of the evidence, we must consider the evidence in a light most favorable to the jury's verdicts. *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854. Our review of the trial transcripts persuades us that the State produced ample evidence to prove both grounds for termination, i.e., that W.H.M. failed to assume parental responsibility and that W.T.M. was a child in continuing need of protection or services. *See* WIS. STAT. § 48.415(2), (6).

With respect to the circuit court's decision at disposition to terminate W.H.M.'s parental rights, the record demonstrates that the court properly exercised its discretion. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit court's remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of W.T.M. to terminate W.H.M.'s parental rights.

Finally, with respect to the issue of competency, we are satisfied that the circuit court had it in this case. Although both the jury trial and dispositional hearing were held outside the mandatory time limits of WIS. STAT. ch. 48, the court found good cause to grant continuances for each event. This was permitted under WIS. STAT. § 48.315(2). Moreover, W.H.M.'s failure to object to the continuances waived any challenge to the court's competency to act. *See* § 48.315(3).

In addition to the above issues, we have reviewed other potential issues that arise in cases tried to a jury (e.g., jury selection, evidentiary rulings, jury instructions, etc.). We see no issues with arguable merit for appeal.<sup>3</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Eileen T. Evans of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating W.H.M.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Eileen T. Evans is relieved of any further representation of W.H.M. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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<sup>3</sup> One issue not addressed by the no-merit report bears mentioning. At trial, W.H.M. moved for a mistrial when his probation officer revealed that she specializes in sex offenders. W.H.M. had hoped to keep his history as a sex offender from the jury on grounds of relevance and prejudice. The circuit court denied the motion after noting that W.H.M.'s status as a sex offender may impact his ability to assume parental responsibility and meet conditions of return (particularly, when it came to finding suitable housing). It then instructed the jury to consider the information for that purpose only. Reviewing the circuit court's actions, we are satisfied that they were proper and do not present issues of arguable merit.