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/IV

January 6, 2017

To:

Hon. David C. Swanson
Circuit Court Judge
Childrens Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

Josh Steib, 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 Attorney's Office
10201 Watertown Plank Rd.
Wauwatosa, WI 53226

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

D. L.
915 N. Rogers St., Apt. 10
Bloomington, IN 47404

Michael J. Vruno Jr.
Legal Aid Society of Milwaukee
10201 Watertown Plank Rd.
Milwaukee, WI 53226

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

2016AP1973-NM In re the termination of parental rights to Z.L., a person under the age of 18: State of Wisconsin v. D. L. (L.C. # 2014TP323)

Before Blanchard, J.

D.L. appeals an order terminating his parental rights to Z.L. Attorney Christine Quinn has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);[1] ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v.***

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Wisconsin Court of Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses D.L.'s waiver of a jury trial, the sufficiency of the evidence on the grounds for termination, and the court's exercise of discretion regarding disposition. D.L. was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

Jury Waiver

There is a statutory right to a jury trial in a termination of parental rights case. WIS. STAT. § 48.422(4). Although it is not constitutionally required, courts are urged to engage in a colloquy to determine that a withdrawal of a jury demand is knowing and voluntary. ***Walworth County DHS v. Andrea L.O.***, 2008 WI 46, ¶34, 309 Wis. 2d 161, 749 N.W.2d 168.

The record contains a plea colloquy in which the circuit court ascertained that D.L. understood his right to a jury trial and that he had freely decided to waive that right in favor of a bench trial. We agree with counsel's assessment that the colloquy was sufficient and that the record does not show any other basis to challenge the jury waiver.

Sufficiency of the Evidence

The State alleged three grounds for terminating D.L.'s parental rights: that D.L. had abandoned Z.L.; that D.L. had failed to assume parental responsibility for Z.L.; and that Z.L. was a child in continuing need of protection or services.

First, the circuit court found based on the undisputed testimony of a caseworker and D.L. himself that D.L. had moved to Indiana and had failed to communicate with Z.L. for two periods

of more than three months each while a dispositional order was in place. *See* WIS. STAT. § 48.415(1)(a)2.; WIS JI—CHILDREN 305 (Abandonment requires a showing that: (1) a child was placed outside of the parent's home by court order; (2) the parent was provided adequate notice of the placement; and (3) the parent failed to visit or communicate with the child for a period of three months or longer.).

Additionally, the court determined that Z.L. was a child in continuing need of protection and services because: (1) Z.L. had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) the county department of health and human services had made reasonable efforts to provide the services ordered by the court (notwithstanding the obstacles posed by D.L.'s residence in another state); (3) D.L. failed to meet the conditions established for the safe return of the child (despite making some progress, such as completing a parenting course); and (4) there was a substantial likelihood that D.L. would not meet the conditions within the next twelve months (given his reliance on others to make arrangements for him). *See* WIS. STAT. § 48.415(2); WIS JI—CHILDREN 324. Again, the court's findings were all supported by the caseworker's testimony.

Finally, the court also made findings supported by the caseworker's testimony that D.L. had not developed a substantial relationship with the child—meaning the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. *See* WIS. STAT. § 48.415(6); WIS JI—CHILDREN 346. In sum, we see no arguable basis to challenge the sufficiency of the evidence to support the circuit court's determination that D.L. is unfit to serve as a parent based upon multiple statutory grounds.

Disposition

During the dispositional phase, a circuit court is required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parents or other family members, the wishes of the child, and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record demonstrates that the circuit court did so. The court noted that Z.L. was highly adoptable because she had no health or behavioral issues and her foster parent had indicated a desire to adopt her; that Z.L. did not have substantial relationships with either parent or her half-siblings, whom she hardly knew since the period of separation was Z.L.'s entire life; and that Z.L. was too young to express her wishes, but appeared happy in her placement. In short, the record shows that the circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

We have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order terminating D.L.'s parental rights to Z.L. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine Quinn is relieved of any further representation of D.L. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals