



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 I/II**

April 26, 2017

To:

Hon. David C. Swanson  
Circuit Court Judge  
Children's 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

Jenni Spies-Karas  
Assistant District Attorney  
10201 W. Watertown Plank Rd.  
Milwaukee, WI 53226-3532

Steven Zaleski  
The Zaleski Law Firm  
10 E. Doty St., Ste. 800  
Madison, WI 53703

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

N. G. 518180  
Racine Corr. Inst.  
P.O. Box 900  
Sturtevant, WI 53177-0900

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:

---

2017AP363-NM

In re the termination of parental rights to G.L.F., a person under the age of 18: State of Wisconsin v. N.G. (L.C. #2015TP66)

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

N.G. appeals from a circuit court order terminating his parental rights to G.L.F. N.G.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m). N.G. received a copy of the report and has not filed a response to it. Upon consideration of the report

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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 State of Wisconsin petitioned to terminate N.G.'s parental rights on the grounds that G.L.F. was in need of continuing protection and services and N.G. had failed to assume parental responsibility for G.L.F. WIS. STAT. §§ 48.415(2), (6). N.G. pled no contest to the continuing CHIPS ground. After a dispositional hearing, the circuit court terminated N.G.'s parental rights.

The no-merit report addresses: (1) whether there were any procedural defects in the proceeding and whether statutory time limits were observed; (2) whether the requirements of WIS. STAT. § 48.422(7) were met when N.G. pled no contest to the continuing CHIPS ground; (3) whether there would be arguable merit to a challenge to the circuit court's denial of the mother's motion to dismiss the termination of parental rights petition, a motion in which N.G. joined; (4) whether the circuit court properly exercised its discretion in determining that it was in the child's best interest to terminate N.G.'s parental rights; and (5) whether the record contains an issue with arguable merit relating to the assistance provided by trial counsel. 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 have considered whether there would be any arguable merit to a claim that there were procedural defects in the proceeding or that the circuit court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *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).

Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3). The circuit court found good cause to toll the ch. 48 time limits on several occasions, and N.G. did not object. We see no procedural defects in the proceeding. We agree with counsel that there would be no arguable merit to an appeal on these bases.

N.G. joined in the mother's motion to dismiss the termination of parental rights petition because the most recent CHIPS order was not properly extended and did not include the termination of parental rights warnings. The circuit court denied the motion on the merits. Thereafter, N.G. entered a no contest plea to the continuing CHIPS ground for termination. On this record, we apply *County of Racine v. Smith*, 122 Wis. 2d 431, 436-37, 362 N.W.2d 439 (Ct. App. 1984), and hold that N.G.'s no contest plea waived any issue arising from the motion to dismiss.

We turn to N.G.'s no contest plea. Before taking a parent's no contest plea to the grounds for termination of parental rights, the circuit court must conduct a colloquy with the parent in accordance with WIS. STAT. § 48.422(7). *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must determine that the parent's admission is made voluntarily and that the parent understands "the nature of the acts alleged in the petition and the potential dispositions," along with the constitutional rights waived by the parent's decision not to contest the grounds for termination. *Id.* (citation omitted). The court must also "[e]stablish whether any promises or threats were made" and that the admission has a factual basis. *Id.* (citation omitted). The parent must understand that the stipulation to grounds "will result in a finding of parental unfitness." *Id.*, ¶10. A court must inform the parent that at the second stage of the termination proceeding, the court will hear evidence that will result in either the termination of the parent's rights or dismissal of the termination petition. *Id.*, ¶16.

“[T]he 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).

With one exception, discussed below, the record establishes that the circuit court conducted a proper colloquy with N.G. before accepting his no contest plea to the ground for termination. The circuit court advised N.G. of his rights in the proceeding, the rights waived by his stipulation to the grounds for terminating his parental rights, and the possible dispositions. There was a factual basis for N.G.’s plea to the continuing CHIPS ground.

During the colloquy, the circuit court did not confirm that N.G. understood that the Wis. STAT. § 48.415(2) continuing CHIPS ground requires that the child have been adjudged in need of protection and services and placed outside the home for a cumulative period of six months or longer. Notwithstanding this omission, we conclude that no arguable appellate issue is present. First, N.G. has not filed a response to the no-merit report in which counsel highlights this deficiency in the colloquy. Second, the termination of parental rights warnings incorporated into prior CHIPS orders explained this ground. Third, at the hearing at which the State proved the continuing CHIPS ground to which N.G. pled no contest, the State presented evidence that the child had been subject to CHIPS orders and had been placed outside of the home for longer than six months. Even if N.G. were to allege that he did not know that the child had to be adjudged in need of protection and services and placed outside of the home for six months, the State would be able to refer to the totality of the record to show that N.G. had the requisite information. *See State v. Bangert*, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986). We agree with counsel that this issue lacks arguable merit for appeal.

Based on the foregoing and considering the totality of the record, we conclude that N.G.'s no contest plea was knowing and voluntary. We agree with counsel that an appeal on this basis would lack arguable merit.

The decision to terminate parental rights is within the circuit court's discretion. *B.L.J. v. Polk Cty. DSS*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991), *modified on other grounds by Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶5, 255 Wis. 2d 170, 648 N.W.2d 402. 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 the factors all weighed in favor of a determination that it was in the child's best interests to terminate N.G.'s parental rights. We agree with counsel that an appeal on this basis would lack arguable merit.

The no-merit report addresses whether trial counsel was ineffective.<sup>2</sup> We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether the record indicates that an ineffective assistance

---

<sup>2</sup> The no-merit report does not cite a specific basis for an ineffective assistance of counsel claim. N.G. did not file a response to the no-merit report.

claim would have sufficient merit to require appointed counsel to file a postconviction motion and request a *Machner* hearing. *State v. Allen*, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we “should identify issues of arguable merit even if those issues were not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those issues were not preserved for appeal”).

Our review of the record confirms counsel’s conclusion that there is no basis to challenge trial counsel’s performance. At the plea taking, the circuit court confirmed that no one had coerced N.G. into his no contest plea and that he was acting of his own free will. The court also asked N.G. whether he had sufficient time to discuss plea-related matters with his counsel and whether he was satisfied with counsel’s representation. N.G. responded that he was “definitely” satisfied. The record demonstrates that there were opportunities for N.G. to tell the circuit court that he was dissatisfied with counsel. The record does not support an ineffective assistance of counsel claim.

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 affirm the order terminating N.G.’s parental rights and relieve Attorney Steven Zaleski of further representation of N.G. 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 Steven Zaleski is relieved of further representation of N.G. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

---

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