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**DISTRICT I/II**

June 28, 2017

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

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2017AP744-NM

In the interest of L.L.W., a person under the age of 17:  
State of Wisconsin v. C.B. (L.C. #2015TP344)

Before Reilly, P.J.<sup>1</sup>

C.B. appeals from an order terminating his parental rights to his daughter. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. C.B. was served with a copy of the report and advised of his right to file a response. He has not filed

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

a response. Based upon an independent review of the no-merit report and circuit court record, this court concludes that no issue of arguable merit could be raised on appeal and affirms the order.

The petition for the termination of C.B.'s parental rights was filed December 18, 2015, and alleged that he had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6). C.B.'s child was taken into care by the Bureau of Milwaukee Child Welfare right after her birth in September 2014. Although C.B. requested DNA testing in late 2014 to determine if he was the child's father and gave a DNA sample in March 2015, he could not be found to be given the confirming test result. In June 2016, C.B. was located as he was incarcerated at the Federal Correctional Institution in Oxford, Wisconsin. C.B. and his child have never met. The child has also never had contact with C.B.'s family.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, "a contested termination proceeding involves a two-step procedure." *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Id.*, ¶26. Here C.B. stipulated that a ground for termination existed.<sup>2</sup>

The second phase is the dispositional phase. *Id.*, ¶28. The court must determine whether the parent's rights should be terminated. *Id.* The best interest of the child is the prevailing factor

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<sup>2</sup> On the jury trial date, C.B. waived his right to a jury trial and then entered a stipulation to the failure to assume parental responsibility ground.

considered by the circuit court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

The disposition hearing was held on two dates and the court heard testimony from the child's foster mother, the case worker, C.B.'s mother, and C.B. The court issued a written decision concluding that termination of C.B.'s parental rights was in the child's best interest as she had no relationship with C.B. or his family and had always been in the care of her foster family, who wanted to adopt her. The court rejected C.B.'s request that the child be placed with his mother until he was released from prison and able to care for the child.<sup>3</sup>

Counsel's no-merit report addresses as potential appellate issues whether the circuit court met its obligations under WIS. STAT. § 48.422(7) in accepting C.B.'s stipulation to the failure to assume parental responsibility ground, whether C.B.'s stipulation was knowingly and voluntarily made, and whether the dispositional decision was an erroneous exercise of discretion or otherwise failed to consider the best interests of the child. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

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<sup>3</sup> C.B. testified that his release date was April 12, 2017 and that he would first be released to a half-way house.

We have also considered whether C.B.'s waiver of his right to a jury trial was proper and the circuit court's denial of C.B.'s motion to adjourn the disposition hearing to allow more time to develop information about the appropriateness of placement with C.B.'s mother. The colloquy conducted with C.B. about waiving a jury trial was complete and demonstrates that the waiver was knowingly and voluntarily made. The court properly exercised its discretion in refusing to delay the proceeding further.

Our review of the record discloses no other potential issues for appeal.<sup>4</sup> Accordingly, we accept the no-merit report, affirm the order terminating C.B.'s parental rights, and discharge appellate counsel of the obligation to represent C.B. further in this appeal.

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 Eileen T. Evans is relieved of any further representation of C.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

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<sup>4</sup> No issue of arguable merit arises from the fact that C.B. was unable to appear personally at any of the hearings. The circuit court made a record of the efforts made to produce C.B. from the Oxford prison and that the federal authorities refused to do so. C.B. appeared by either video conferencing or telephone at the critical hearings and the circuit court assured that he could hear all the testimony and consult with his attorney when necessary.

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

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