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/III

November 14, 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

Eileen T. Evans
Law Office of Eileen T. Evans, LLC
18 E. Washington St.
P.O. Box 64
West Bend, WI 53095

Matthew Richard Westphal
Asst. District Attorney
Milwaukee County District Attorneys Office
Vel R. Phillips Juv. Justice Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226-3532

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

Duke J. Lehto
933 N. Mayfair Rd., Ste 308
Wauwatosa, WI 53226-3432

Lynne A. Levihn
Law Office of Lynne A. Levihn
P.O. Box 99
Milwaukee, WI 53201-0099

V. R.
2200 Kilbourn Ave., Apt. 102
Milwaukee, WI 53233

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

2017AP1637-NM State v. V. R. (L. C. No. 2014TP318)

Before Stark, P.J. [1]

[1] 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.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for V.R. has filed a no-merit report concluding there is no basis to challenge an order concerning termination of V.R.'s parental rights. V.R. was advised of her right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order is summarily affirmed. WIS. STAT. RULE 809.21.

There is no arguable merit to any claim that the circuit court failed to comply with mandatory time limits. All mandatory time limits were complied with or properly extended for good cause without objection. Scheduling difficulties constitute good cause for tolling time limits. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

WISCONSIN STAT. § 48.415 provides that "[a]t the fact-finding hearing the court or jury shall determine whether grounds exist for termination of parental rights …. Grounds for termination shall be one of the following …." The jury determined three of the statutory grounds existed for termination of parental rights: abandonment; the child's continuing need of protection and services (CHIPS); and failure to assume parental responsibility. The no-merit report addresses the ground of abandonment.

We agree with the no-merit report's conclusion that any challenge to the jury's verdict would lack arguable merit. When reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to sustaining the jury's verdict. *See* ***Kinship Inspec. Serv. v. Newcomer***, 231 Wis. 2d 559, 566, 605 N.W.2d 579 (Ct. App. 1999). To prove abandonment, the State was required to prove by clear and convincing evidence that (1) the child was placed

outside of V.R.'s home pursuant to a court order containing the termination of parental rights notice as required by law, and (2) V.R. failed to visit or communicate with the child for three months or longer. *See* WIS JI—CHILDREN 313 (2016).

The CHIPS dispositional order established that the child was placed outside of the home when she was less than six months old by a court order that contained the termination of rights warning.[2] The record also established that V.R. failed to visit or communicate with the child for three months or longer so as to constitute abandonment. *See* WIS. STAT. § 48.415(1); ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 703-07, 530 N.W.2d 34 (Ct. App. 1995). By her own admission, V.R. had not visited the child for two years following removal from the home.

V.R. testified that she had good cause for failing to visit or communicate with the child for two years because she was not allowed to have contact with the child, no one told V.R. about scheduled visits, and when V.R. tried to call the case manager or her supervisor, she received no return calls. However, the record also established a history of mental illness and V.R.'s daily drug use, which produced hallucinations, delusional thinking, and other psychotic processes. The jury was the arbiter of the weight and credibility of the testimony. *See* ***Estate of Dejmal***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). The jury appropriately found V.R. had no good cause for having failed to visit or communicate with the child. The evidence was sufficient for the jury to find grounds for termination of parental rights.

[2] The dispositional order indicates the order was distributed to V.R. and her attorney. Trial testimony also established V.R.'s case worker discussed the goals that were put in place in the dispositional order with V.R. Moreover, V.R. and her attorney were present at the permanency plan review hearing at which the circuit court reviewed V.R.'s progress with the goals in the dispositional order.

There is also no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated V.R.'s parental rights at the dispositional stage of the trial. The court correctly applied the best interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court found adoption very likely with the foster family that had placement of the child for over two years, which constituted the vast majority of the child's life. The court also found the child had no substantial relationship with V.R. or any other relative. The court emphasized it would not be harmful to sever legal relationships at the child's young age, and that termination of parental rights would provide a more stable and permanent family relationship. The court's discretionary decision to terminate V.R.'s parental rights demonstrates a rational process that is supported by the record. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Eileen Evans is relieved of further representing V.R. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals