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**DISTRICT I/IV**

April 25, 2018

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

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2018AP383-NM

In re the termination of parental rights to A.J.H., a person under the age of 17: State of Wisconsin v. R. B. (L.C. # 2016TP251)

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

**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).**

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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.

R.B. appeals an order terminating his parental rights to A.J.H. Attorney Jeffrey Jensen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses the sufficiency of the evidence to support a default judgment on grounds and the circuit court's exercise of discretion at disposition. R.B. 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, I agree with counsel's assessment that there are no arguably meritorious appellate issues.

#### *Default Judgment*

The circuit court has discretion to enter a default judgment on the grounds for termination when a parent fails to appear. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768; *see also* WIS. STAT. § 806.02 (default judgment statute). Before making a determination on grounds, however, the court must take evidence as set forth in WIS. STAT. § 48.422(7), even if the petition is not contested.

Here, the circuit court found R.B. in default because he failed to appear at the initial appearance after having been served notice. The court subsequently held a trial on whether to terminate the mother's parental rights. R.B. testified at the mother's trial, and acknowledged that he had been convicted of child abuse for breaking A.J.H.'s leg. That testimony was sufficient to establish by clear and convincing evidence the alleged termination ground under WIS. STAT. § 48.415(9m) of commission of a felony against a child.

*Disposition*

At the dispositional hearing, 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 shows that the circuit court considered each of those factors here. The court noted that there was a high likelihood that A.J.H. would be adopted by his foster parents, with whom he had bonded during the three years that he had been placed with them; that A.J.H. was seven years old, in good health and on track developmentally, with some behavioral issues that the court attributed to uncertainty about his situation; that A.J.H. had not had contact with R.B. for over a year and a half, and no longer had a substantial relationship with R.B. or other paternal family members; that A.J.H. had alternately expressed the wish to be reunited with his mother or to stay with his foster parents; that A.J.H. had been placed outside the home for almost three and a half years, or half his life; that despite making some progress dealing with his alcoholism and other issues, R.B. was not in a position to provide stable care for A.J.H. in the near future. The court then concluded that termination of parental rights was in A.J.H.'s best interests. In sum, the record shows that the circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

*Conclusion*

In addition to the potential issues discussed by counsel, I note that it appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. I have discovered no other arguably meritorious grounds for an

appeal. I 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 R.B.'s parental rights to A.J.H. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey Jensen is relieved of any further representation of R.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*