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**DISTRICT II**

December 12, 2018

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

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2018AP1559-NM      In re the termination of parental rights to C.L.M., a person under  
the age of 18: Kenosha County DHS v. L.T.C. (L.C. #2017TP66)

Before Reilly, P.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).**

L.T.C. appeals from an order involuntarily terminating his parental rights to his biological daughter, C.L.M. Appellate counsel has filed a no-merit report pursuant to WIS. STAT.

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

RULES 809.107(5m) and 809.32, *Anders v. California*, 386 U.S. 738 (1967), and *Brown Cty. v. Edward C.T.*, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). L.T.C. received a copy of the report and has filed a response. Upon consideration of the no-merit report and response, and an independent review of the record, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

C.L.M. was removed from the home in 2014, when she was about two months old. Kenosha County filed a petition alleging she was a child in need of protection or services (CHIPS). C.L.M. was allowed to return home under a consent decree. The consent decree was vacated in 2015. On June 15, 2015, the circuit court entered a CHIPS dispositional order placing C.L.M. outside the home. The court-ordered conditions of return included that L.T.C. maintain a suitable residence, demonstrate the ability to manage a household competently and independently, have regular contact with C.L.M., and demonstrate appropriate parenting skills. L.T.C. was on probation in connection with a drug conviction.

A trial reunification was attempted starting February 29, 2016. It abruptly ended in May 2016 when police raided L.T.C.'s apartment for drugs. L.T.C. has remained incarcerated since May 18, 2016, due to the revocation of his probation and his new felony drug convictions. Specifically, on January 23, 2017, L.T.C. pled guilty to felony drug charges with offense dates spanning from February 4 to May 11, 2016. In pertinent part, he received an eight-year bifurcated sentence with three years of initial confinement, to run consecutive to his post-revocation prison sentence.

On September 6, 2017, the County filed a petition to terminate L.T.C.'s parental rights on grounds of continuing CHIPS, *see* WIS. STAT. § 48.415(2), and failure to assume parental responsibility, *see* § 48.415(6).<sup>2</sup> In April 2018, the circuit court granted the County's motion for partial summary judgment on the continuing CHIPS ground. After a dispositional hearing, the court entered an order terminating L.T.C.'s parental rights. He appeals.

Counsel's no-merit report addresses whether the circuit court properly granted partial summary judgment at the fact-finding phase. Summary judgment may be granted at the fact-finding stage of a termination proceeding where there are no facts in dispute and the applicable legal standards have been satisfied. *Steven V. v. Kelley H.*, 2004 WI 47, ¶5, 271 Wis. 2d 1, 678 N.W.2d 856. In this case, the County's summary judgment motion alleged that there was no genuine issue of material fact as to whether L.T.C. was unfit under WIS. STAT. § 48.415(2)(a), which requires the County to prove that: (1) C.L.M. was adjudged in need of protection or services and placed outside the home for six months or longer pursuant to one or more court orders containing the statutory TPR notice; (2) the County made reasonable efforts to provide the services ordered by the court; (3) L.T.C. failed to meet the conditions established for the safe return of C.L.M.; and (4) there was a substantial likelihood that L.T.C. would not meet those conditions within the next nine months. *See* § 48.415(2)(a); WIS JI-CHILDREN 324A. In support, the motion attached documents including the original and revised CHIPS dispositional orders placing C.L.M. outside the home, L.T.C.'s written answers in response to the County's request

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<sup>2</sup> In January 2018, the County filed an amended petition adding abandonment under WIS. STAT. § 48.415(1)(a)2., as a third unfitness ground.

for admissions, and certified papers from L.T.C.'s criminal case. L.T.C. did not file an affidavit or other response opposing summary judgment.

We agree with appellate counsel's conclusion that there is no merit to an argument challenging the circuit court's partial summary judgment. In his signed written answers, L.T.C. admitted to each of the four elements. The documents attached to the County's summary judgment motion further show the existence of each element. For example, the three years' worth of CHIPS dispositional orders placing C.L.M. outside the home establish the first element, while the certified documents from L.T.C.'s criminal conviction establish that he will be incarcerated and unable to provide a suitable residence in the pertinent nine-month period. Additionally, L.T.C.'s trial counsel agreed on the record that due to his incarceration, L.T.C. had not met the conditions of return and would not meet them within the next nine months.

Next, the no-merit report discusses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating L.T.C.'s parental rights. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit court expressly considered the statutory factors in light of the appropriate legal standard and the facts of record. In deciding that termination was in C.L.M.'s best interest, the court determined that she had bonded with her foster family and was likely to be adopted, and that she was placed outside the home for a significant majority of her life and had a "minimal relationship with biological relatives." The court's discretionary decision to terminate L.T.C.'s

parental rights demonstrates a rational process that is justified by the record. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

In his response, L.T.C. suggests that the circuit court docket entries do not match up with the dates of relevant hearings and orders in the record and that the docket has been “doctored” or “altered.” L.T.C. is mistaken. His confusion arises from the fact that the CHIPS case and the TPR case are separate matters for which there are separate docket entries and separate circuit court records.<sup>3</sup> L.T.C. also complains that the record is incomplete because it does not reflect that his retained counsel was permitted to withdraw from representation in the CHIPS case at an August 30, 2017 hearing. This is irrelevant to L.T.C.’s TPR case where he was, in fact, represented by appointed counsel. Similarly, that the attorney appointed to represent L.T.C. for purposes of the TPR matter did not represent him at the permanency plan hearing does not give rise to a meritorious issue.

L.T.C. also suggests that the circuit court improperly granted summary judgment because he was pursuing a direct appeal of his criminal convictions. That L.T.C. is appealing his 2017 convictions does not create a genuine issue of material fact as to the likelihood of meeting his return conditions within nine months after summary judgment. L.T.C. was found unfit due to continuing CHIPS, *see* WIS. STAT. § 48.415(2), not based on his commission of a crime, *see, e.g.*, § 48.415(9m) (permitting an unfitness finding based on a parent’s commission of a felony

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<sup>3</sup> For example, L.T.C. asserts that the presiding judge was assigned on March 28, 2017, and that the docket was altered to show an assignment date of September 13, 2017. The record shows that, while this same judge was assigned earlier in the CHIPS case, he was not assigned to hear the TPR petition until September 13, 2017. This is consistent with the fact that the TPR action was not commenced until September 6, 2017.

against a child “as evidenced by a final judgment of conviction”).

In his response, L.T.C. asserts that “incarceration is not itself a sufficient basis to terminate parental rights.” This appears to be a reference to *Kenosha Cty. DHS v. Jodie W.*, 2006 WI 93, ¶¶19, 49, 293 Wis. 2d 530, 716 N.W.2d 845 (a parent’s incarcerated status does not in itself demonstrate unfitness, and “a parent’s failure to fulfill a condition of return due to his or her incarceration, standing alone, is not a constitutional ground for finding a parent unfit”). Unlike the mother in *Jodie W.*, L.T.C. was not found unfit solely based on his incarceration. In *Jodie W.*, there was “no evidence of previous involvement by social services.” *Id.*, ¶4. Here, C.L.M. was placed on a CHIPS order long before L.T.C.’s incarceration. The trial reunification was terminated because L.T.C. chose to engage in criminal conduct. He was found unfit because of his own actions and due to myriad circumstances, not simply based on his incarcerated status. There is no arguable merit to a challenge based on the holding in *Jodie W.*

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Eileen T. Evans of further representation in this matter. Therefore,

IT IS ORDERED that the order terminating L.T.C.’s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Eileen T. Evans is relieved from further representing L.T.C. 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*