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**DISTRICT III**

June 19, 2019

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

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2019AP67-NM

Pierce County Department of Human Services v. M. S.  
(L. C. No. 2018TP3)

Before Hruz, 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).**

Counsel for M.S. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

concerning termination of parental rights to her daughter, and from the denial of a postdisposition motion. M.S. was advised of her right to respond and has failed to respond. 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 orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On July 4, 2016, at approximately four months of age, M.S.'s child was removed from her care and that of the child's adjudicated father, due to significant head and neck injuries to the child. The child was placed in pediatric intensive care with symptoms indicative of abusive trauma. Specific symptoms included bruising on her face, inability to support her head with her neck muscles, fullness to her anterior fontanelle, lack of responsiveness to certain stimuli, and intermittent vomiting. Her symptoms and external injuries did not match the history provided by M.S. and the baby's father, who were the child's only known caregivers at the time of the initial contact. After evaluation by hospital physicians, the child was diagnosed with: (1) additional significant internal injuries, including bilateral subdural hematoma with chronic and acute bleeding, which required two external drains for approximately six days to remove the blood and excess cerebral spinal fluid in order to decrease swelling around the brain; (2) bilateral retinal hemorrhaging with petechiae; and (3) subdural hematoma in the upper spinal column, extending to cervical, thoracic and lumbar canals.

Information from the medical reports and interaction with M.S. and the child's father indicated several threats that required immediate control in order to assure the child's safety, and three present dangers were identified: (1) the child was currently being maltreated at the time of the report or contact; (2) the child had unexplained injuries; and (3) the child required medical attention. Additional present danger threats were identified after the Pierce County Department

of Human Services (the Department) completed its evaluation: (1) severe to extreme maltreatment of the child was suspected, observed or confirmed; (2) the child had multiple or different kinds of injuries; and (3) the child had injuries to her face and head. Two physicians both stated, “This is not a single event. She has chronic and acute blood—old and new blood. This was multiple events over time.”

The Department concluded that lack of intervention was likely to result in additional severe harm and quite possibly death. Two impending threats were also identified that required immediate and long-term intervention to control. The child was, and continued to be, extremely vulnerable due to her history of abuse and neglect, as well as her age, which made her completely dependent on adults for all basic needs. The impending threats were that one or both parents were dangerously impulsive or could not control their behavior; and that the child had exceptional needs that the parents were unable or unwilling to meet. Upon speaking with doctors and reviewing the Department’s assessment, a social worker, in consultation with an investigator and the police, made the decision to take temporary physical custody of the child with placement at Children’s Hospital–St. Paul, Minnesota, until the child was medically stable to be discharged to foster care. A temporary physical custody order was entered on July 6, 2016.

The child was placed in a foster home on or about July 12, 2016. On September 21, 2016, M.S. consented that the child was in need of protection and services on the basis of neglect and abuse. *See* WIS. STAT. § 48.13(3) and (10). A dispositional order was entered on October 14, 2016, continuing the child’s out-of-home placement. M.S. signed an attached Notice Concerning Grounds To Terminate Parental Rights form, acknowledging “[t]he court has orally informed me of the applicable grounds for termination of parental rights, and I have received a copy of this notice.”

Numerous follow-up appointments with medical providers were required for M.S.'s daughter. The hemorrhaging in the eyes took significant time to clear, and the child had some greying of the eyes, which optometrists monitored. The foster family provided wound care for the drain sites that were sutured. The child was on anti-seizure medication and was at risk of developing excess spinal cerebral fluid buildup that she could not drain on her own. The child received monthly services to monitor her development, and twice-monthly services for speech concerns. The impact of the abuse and neglect episodes remains unknown and is not likely to be fully identified until the child is of school age.

M.S. and the child's father were identified as substantial maltreaters. M.S. was convicted of felony child abuse of her daughter, and she was sentenced to eight years' initial incarceration and five years' extended supervision. During her interview with law enforcement, M.S. reported the child was perhaps hurt when she and the child's father were fighting and the child somehow got under them when the father pinned M.S. onto the bed. This story, however, did not match the layout of the furniture that was observed on the assessment worker's initial visit to the home.

A petition to involuntarily terminate the parental rights of M.S. was filed, on the grounds of abandonment; child in continuing need of protection or services (CHIPS); and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (2) and (6). After M.S. failed to appear for a scheduled initial appearance, and following the circuit court's concerns that there was a failure to personally serve M.S. with a copy of the termination petition, the court found good cause to continue the hearing, so that service by publication could be made on M.S. A subsequent hearing was held, and M.S. again did not appear. The court noted proof of publication was on file. The Department and the guardian ad litem requested a default judgment

on the grounds phase. Testimony was then taken from the child protection social worker who had been on the case since its inception.

The social worker advised the circuit court how the Department came to be involved in the case, as well as the efforts made to provide court-ordered services, the child's injuries, that M.S. had been charged and convicted for the injuries the child sustained, and that M.S. "fled and she is awaiting sentencing once she is picked up." She testified M.S. had not complied fully with any of the conditions of the CHIPS order for the return of the child, including, but not limited to, failure to complete AODA, mental health, or parenting assessments. She also testified as to her belief that M.S., who "was missing in action" and had not been seen in the past three months, would be unable to comply with the dispositional order within the statutory period.<sup>2</sup> She also testified that M.S. had not seen her daughter for approximately one year. The court entered a default judgment on the grounds phase, and it further found that sufficient evidence had been presented to prove grounds and that M.S. was an unfit parent.

M.S. appeared for a subsequent status hearing, and the circuit court advised her of the circumstances under which it had entered the default judgment on the grounds phase. A dispositional hearing was subsequently held. At the conclusion of the testimony, the guardian ad litem stated during closing argument: "So I've carefully analyzed, outlined factors one through six [under WIS. STAT. § 48.426(3)]. Every single one of those tells me that the best interest of

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<sup>2</sup> We note the language in WIS. STAT. § 48.415(2)(a) (2015-16), regarding the substantial likelihood of a parent meeting the CHIPS requirements in the nine-month period after the fact-finding hearing, was recently omitted by the Wisconsin legislature when it rewrote the statute. *See* § 48.415(2)(a)3. However, the underlying CHIPS orders in the present case that contained the requisite notice requirements, the petition for termination of parental rights, and the relevant grounds phase proceedings all occurred under the previous version of the statute. Accordingly, we shall not further address the issue.

the child calls for termination, so I ask the Court to do that.” The court then discussed the evidence under the § 48.426(3) statutory factors, including the likelihood of adoption, the age and health of the child, the relationship with the biological parents, and the lack of harm by severing the nonexistent parental relationship. The court also implicitly found the child would enter into a more stable and permanent family relationship upon termination of parental rights, after noting that the child had been separated from her biological parents from the age of approximately four months, which was two years prior to the date of the dispositional hearing. The court then found it was in the child’s best interest to terminate M.S.’s parental rights.

M.S. filed a postdisposition motion to vacate the dispositional order, based on her claim that the circuit court had erroneously exercised its discretion by defaulting her on the grounds phase. During an evidentiary hearing on the motion, M.S. testified that she had absconded from Wisconsin for nearly six months because she was afraid of going to prison, and she did so without telling anyone that she was leaving or what her new address would be. During this time, she was homeless. She returned because “I got pregnant when I was in Houston and I was really sick and people were trying to prostitute me, so I went back to my family.” M.S. further testified that she came to be returned to the Pierce County jail because “[o]ne of my best friends was really worried about me because, I guess, like, the lifestyle I was living, I wasn’t safe and they were concerned about me, so they called the police on me and I was arrested.” She testified that several weeks later she first appeared in the present matter, where the court “talk[ed] to [her] about the [TPR] petition having been published in a local paper, a newspaper.” The court denied the motion to reopen the default based upon a finding of a lack of excusable neglect, and also based upon a finding of egregious conduct by M.S. in absconding to Houston during the CHIPS proceedings without letting anyone know her whereabouts.

The no-merit report addresses whether the circuit court properly exercised its discretion when it granted a default at the grounds phase, terminated M.S.'s parental rights at the dispositional phase, and denied M.S.'s postdisposition motion. The no-merit report also addresses whether M.S. was denied the effective assistance of counsel. We are satisfied that the no-merit report properly analyzes the issues raised, and we will not further address them.<sup>3</sup>

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

Therefore,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of his obligation to further represent M.S. 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*

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<sup>3</sup> Mandatory time limits were complied with, or properly extended with good cause, without objection. *See* WIS. STAT. § 48.315(3).