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**DISTRICT I**

February 25, 2020

To:

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

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2019AP2380-NM

State of Wisconsin v. D. L. B. (L.C. # 2017TP173)

2019AP2381-NM

State of Wisconsin v. D. L. B. (L.C. # 2017TP174)

Before Dugan, 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).**

D.L.B. appeals orders terminating his parental rights to two of his children, Q.B. and A.B, both boys. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) & 809.32. D.L.B. was served with a copy of the report and advised of his right to file a response. He has not filed a response. Based on our review of the no-merit report and our independent review of the circuit court record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that no issue of arguable merit could be raised on appeal and summarily affirms the orders.

Q.B. was born on January 5, 2014. A.B. was born on May 14, 2015. The children were detained on February 19, 2016, and found to be in need of protection and services on April 28, 2016. The State petitioned to terminate D.L.B.'s parental rights to the children on July 27, 2017, alleging that they continued to be in need of protection and services and that D.L.B. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) & (6). On August 20, 2018, D.L.B. pled no-contest to the allegation that the children continued to be in need of protection and services in exchange for the State's promise to hold the disposition hearing in abeyance for six months to allow him additional time to meet the conditions for return. The first of several disposition hearings commenced nine months later. The circuit court then terminated D.L.B.'s parental rights to both children.

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

The no-merit report first addresses whether the procedures used to terminate D.L.B.'s parental rights to Q.B. and A.B. were fundamentally fair. A parent has a due process right to fundamentally fair procedures during proceedings involving the termination of parental rights. *See Santosky v. Kramer*, 455 U.S. 745, 753-57 (1982). D.L.B. was appointed counsel at public expense. The circuit court complied with statutory procedures and other case law in all respects. D.B.L. exercised his right to judicial substitution and to a jury trial, although he later decided not to proceed with the trial. Our review of the transcripts and record persuades us that the proceedings were fundamentally fair. Therefore, we conclude that there would be no arguable merit to this claim.

The no-merit report next addresses whether D.L.B.'s jury trial waiver during the grounds phase of proceedings was knowingly, voluntarily, and intelligently made. The circuit court conducted a thorough colloquy with D.B.L. about the rights he was waiving before accepting his no-contest pleas in accord with WIS. STAT. § 48.422(7). In addition, the circuit court heard testimony from D.L.B.'s family case manager that established that there was an adequate factual basis for the circuit court to conclude that grounds existed to terminate D.L.B.'s parental rights. Therefore, there would be no arguable merit to an appellate challenge to D.L.B.'s jury trial waiver.

The no-merit report next addresses whether the circuit court properly exercised its discretion in deciding that it was in the children's best interest to terminate D.L.B.'s parental rights.<sup>2</sup> The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

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<sup>2</sup> The circuit court addressed termination of parental rights petitions involving five of D.L.B.'s eight children at the disposition hearing. The circuit court dismissed the termination petitions involving three of the five children, but granted the petitions as to A.B. and Q.B.

The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (1) the likelihood of adoption after termination; (2) “[t]he age and health of the child”; (3) “[w]hether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships”; (4) “[t]he wishes of the child”; (5) “[t]he duration of the separation of the parent from the child”; and (6) “[w]hether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child’s current placement, the likelihood of future placements and the results of prior placements.” *See* § 48.426(3).

The circuit court found that the following facts supported termination of D.L.B.’s parental rights. Q.B. and A.B. were thriving in a loving and stable foster home, where they had been living over the last three years since they were twenty-three months old and eleven months old, respectively. The circuit court found that both children were very bonded with each other and with their foster parents, whom they called “mama” and “dada.” The circuit court found that the children’s foster parents wanted to adopt both boys and were approved to do so. The circuit court also found that A.B. had special medical needs and behavioral problems that his foster parents were addressing well, but that would make it unlikely that he would be adopted in the future by people other than his current foster parents. The circuit court noted that the foster parents were willing to let the children have a relationship with D.L.B. as long as it was safe and appropriate

for them. The circuit court also found that the foster parents recognized that Q.B. and A.B. had a strong bond with their other siblings and said they would facilitate and encourage this relationship.<sup>3</sup>

In addition, the circuit court found that the duration of Q.B. and A.B.'s separation from their parents, in the context of their ages when they were removed, made their relationship with their biological parents more fragile than that of their older siblings. The circuit court found that terminating D.L.B.'s parental rights would allow Q.B. and A.B. to enter into a stable situation moving forward. Based on these findings, the court properly exercised its discretion in concluding that termination of D.L.B.'s parental rights was in the children's best interest. *See Gerald O.*, 203 Wis. 2d at 152 (A circuit court "properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach."). Based on our review of the record, which supports the circuit court's findings, we conclude that an appellate challenge to that determination would lack arguable merit.

Our independent review of the record reveals no other potential issues. We, therefore, conclude that there is no arguable basis for reversing the orders terminating D.L.B.'s parental rights. Any further proceedings would be without arguable merit.

IT IS ORDERED that the orders terminating the parental rights of D.L.B. to his children Q.B. and A.B. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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<sup>3</sup> Two of Q.B. and A.B.'s siblings were in one foster placement at the time of the hearing, and a third sibling was with a second foster family.

IT IS FURTHER ORDERED that Attorney Karen Lueschow is relieved of further representation of D.L.B.

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*