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**DISTRICT I**

July 14, 2020

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

2020AP807-NM  
2020AP808-NM  
2020AP809-NM

In the interest of D.H., a person under the age of 18: State of  
Wisconsin v. D.H. (L.C. # 2018TP160, 2018TP162, 2018TP163)

Before Brash, 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).**

<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.

Steven Zaleski, counsel for D.H., has filed a no-merit report in these consolidated appeals of orders terminating D.H.'s parental rights to his children, D.H. (born 9/1/2010), D.H. (born 9/3/2015), and D.H. (born 8/3/2016). *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). D.H. was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, this court concludes that counsel may be allowed to withdraw and the termination of parental rights (TPR) orders may be summarily affirmed. *See* WIS. STAT. RULE 809.21.

On July 17, 2018, the State of Wisconsin filed petitions to terminate D.H.'s parental rights to the three children mentioned above. The petitions alleged abandonment, continuing need of protection or services (CHIPs), and failure to assume parental responsibility. The cases were tried together, and the jury determined that all three grounds existed relative to each child. The cases proceeded to a dispositional hearing, where the court made a verbal decision to terminate D.H.'s parental rights to all three children. The court then entered a written order terminating D.H.'s parental rights, and from which D.H. appealed.

The no-merit report addresses the court's competency to proceed and adherence to statutory deadlines, whether the court's rulings on any pre-trial evidentiary motions were an erroneous exercise of discretion, and whether the voir dire process, jury instructions, or opening and closing statements give rise to any arguably meritorious issues. This court's review of the record confirms counsel's conclusion that all of these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion, and they need not be addressed further.

The no-merit report also discusses the sufficiency of the evidence to support the jury's verdicts as to all three children during the grounds phase of the proceedings. As applied to each child, the jury determined that grounds existed for abandonment, continuing CHIPs, and failure to assume parental responsibility. The evidentiary portion of the trial took place over five days and included testimony from seven witnesses, including testimony from D.H. and the mother of the children.

To prove abandonment, the State needed to show “[t]hat the child has been placed, or continued in a placement, outside the parent’s home by a court order containing the notice required by [law] and the parent has failed to visit or communicate with the child for a period of 3 months or longer.” WIS. STAT. § 48.415(1)(a)2. The record reflects that the three children were placed outside the home pursuant to CHIPs orders entered on April 11, 2017. The dispositional orders entered in the CHIPs proceedings contained the required notice concerning grounds to terminate parental rights, including the ground of abandonment. A.B., a case management supervisor with Children’s Community Services, testified that from August 2017 until April 2018, D.H. did not visit the children or have any communication with them, despite supervised visits being offered to D.H. Based on the evidence presented, the jury found that the grounds for abandonment had been met as to each of the three children. The record supports the jury’s findings, such that any challenge to the sufficiency of the evidence would be without arguable merit.<sup>2</sup>

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<sup>2</sup> Only one ground for termination need be established. *See* WIS. STAT. § 48.415 (“Grounds for termination of parental rights shall be *one* of the following ....”) (emphasis added). Therefore, we need not review the alternate grounds of continuing CHIPs or failure to assume parental responsibility, even if there were an arguable basis for challenging the jury’s verdict as to those grounds.

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court's decision to terminate D.H.'s parental rights at the conclusion of the dispositional phase of the proceedings. This court agrees with counsel that there is no arguable merit to this issue. "The ultimate decision whether to terminate parental rights is discretionary." *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The circuit court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interest of the child. See *Gerald O.*, 203 Wis. 2d at 153-54. Here, the record shows that the circuit court expressly considered the relevant factors in light of the evidence as to each child, made a number of factual findings based on that evidence, and reached a reasonable decision. Any challenge to the circuit court's decision to terminate D.H.'s parental rights as to the three children would be without arguable merit.

Finally, the no-merit report discusses whether there would be any arguable merit to a claim for ineffective assistance of trial counsel. To prevail on a claim of ineffective assistance of counsel, the claimant must establish that counsel's actions constituted deficient performance, and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Upon review of the record and the no-merit report, this court agrees with counsel's analysis and conclusion that any claim of ineffective assistance of trial counsel would lack arguable merit.

This court's independent review of the record discloses no other potential issues for appeal. This court concludes, therefore, that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the orders terminating parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven Zaleski is relieved of any further representation of D.H. in this matter pursuant to 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*