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**DISTRICT I**

December 28, 2021

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B.T.

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

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2021AP1931-NM

In re the termination of parental rights to N.T., a person under the age of 18: State of Wisconsin v. B.T. (L.C. # 2020TP155)

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).**

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

B.T. appeals from an order terminating her parental rights to her child, N.T. Appellate counsel, Steven W. Zaleski, has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also Anders v. California*, 386 U.S. 738 (1967). B.T. was advised of her right to file a response, but she has not responded. Based upon an independent review of the record as mandated by *Anders* and the no-merit report, this court concludes that there are no arguably meritorious issues to pursue on appeal. Therefore, the order terminating B.T.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

In March 2019, fourteen-month-old N.T. was removed from B.T.'s care and placed with a foster family, where N.T. has remained. N.T. was adjudicated to be a child in need of protection or services (CHIPS) in October 2019. *See* WIS. STAT. § 48.13.

In July 2020, the State filed a petition seeking to terminate B.T.'s parental rights.<sup>2</sup> As grounds against B.T., the petition alleged both continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6).

B.T. waived her right to a jury trial, and the case was tried to the court. The trial court determined that both grounds existed for terminating B.T.'s parental rights. The case proceeded to a dispositional hearing. The trial court made findings to support its ultimate decision to terminate B.T.'s parental rights to N.T.

The no-merit report addresses six potential issues, including: the trial court's competency and compliance with mandatory time limits; B.T.'s waiver of her right to a jury trial;

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<sup>2</sup> The petition also sought to terminate the parental rights of N.T.'s father. Ultimately, he voluntarily consented to termination of his parental rights, and his rights were terminated.

the sufficiency of the evidence of grounds for termination; the admission of hearsay statements of B.T.'s therapist; the trial court's discretionary decision to terminate B.T.'s parental rights; and trial counsel's performance. The lengthy no-merit report thoroughly discusses these issues, including references to trial testimony and relevant statutory authority. This court agrees with appellate counsel that there would be no arguable merit to pursuing a post-disposition motion or a merit appeal based on those issues, and we will briefly elaborate on two of the issues below.

We begin with the sufficiency of the evidence. When a termination petition alleges as grounds that a child is in continuing need of protection or services, the State must prove: that the child has been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice; that the applicable agency has made a reasonable effort to provide services ordered by the court; and that the parent has failed to meet the conditions established in the order for the safe return of the child to the parent's home. *See* WIS. STAT. § 48.415(2)(a).<sup>3</sup> The State has the burden to show that grounds for termination exist by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768.

At trial, the primary contested issue with respect to the CHIPs ground was whether B.T. had failed to meet the conditions in the CHIPs order. The State presented evidence that B.T. had not yet succeeded in addressing her mental health and emotional issues, which prevented her from satisfying several conditions in the CHIPs order. For instance, the trial court heard

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<sup>3</sup> If the child has been placed outside the home for *less* than fifteen of the most recent twenty-two months, then the State must also prove “that there is a substantial likelihood that the parent will not meet [the return] conditions as of the date on which the child will have been placed outside the home for 15 of the most recent 22 months.” WIS. STAT. § 48.415(2)(a)3. That provision did not apply here, where N.T. had been placed outside the home since March 2019, well over two years before the August 2021 trial.

testimony that when there was confusion over whether the child was supposed to visit with B.T. at home or at a visitation center, B.T. took the child home, which led to a confrontation with police officers.

The second ground, failure to assume parental responsibility, is established “by proving that the parent ... [has] not had a substantial parental relationship with the child.” WIS. STAT. § 48.415(6)(a). A substantial parental relationship “means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” WIS. STAT. § 48.415(6)(b). When the fact-finder evaluates whether a person has had such a relationship with the child, the fact-finder “may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child.” *Id.* Here, the trial court found that this ground was satisfied in a number of ways, including because of the “hazardous living environment” that existed in March 2019, when N.T. was removed from B.T.’s care.

Based on the existence of evidence supporting both grounds for termination, we conclude with respect to both grounds that there would be no arguable merit to challenging the sufficiency of the evidence to support the trial court’s findings.

Finally, appellate counsel addresses whether the trial court erroneously exercised its discretion when it terminated B.T.’s parental rights to her children. 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 trial court must consider the factors set forth in WIS. STAT. § 48.426(3),

giving paramount consideration to the best interest of the child. *See Gerald O.*, 203 Wis. 2d at 153-54. Here, the record reflects that the trial court expressly considered the relevant factors in light of the evidence, made a number of factual findings based on that evidence, and reached a reasonable decision. For instance, the trial court recognized that N.T., who had lived with a single foster family that wanted to adopt the child, was “very likely to be adopted if termination is granted.” *See* § 48.426(3)(a). We conclude that any challenge to the trial court’s decision to terminate B.T.’s parental rights as to N.T. would be without arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved from further representation of B.T. 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*