



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I**

July 26, 2022

To:

Hon. Marshall B. Murray  
Circuit Court Judge  
Electronic Notice

Tammy Kruczynski  
Juvenile Clerk  
Milwaukee County Courthouse  
Electronic Notice

Charles Kreger  
Electronic Notice

Pamela Moorshead  
Electronic Notice

Division of Milwaukee Child Protective  
Services  
Charmian Klyve  
635 North 26th Street  
Milwaukee, WI 53233-1803

Courtney L.A. Roelandts  
Electronic Notice

J.T.

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

---

2022AP610-NM	In re the termination of parental rights to H.T., a person under the age of 18: State of Wisconsin v. J.T. (L.C. # 2020TP267)
2022AP611-NM	In re the termination of parental rights to J.T., a person under the age of 18: State of Wisconsin v. J.T. (L.C. # 2021TP68)
2022AP612-NM	In re the termination of parental rights to R.T., a person under the age of 18: State of Wisconsin v. J.T. (L.C. # 2021TP69)

Before Donald, 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).**

J.T., by counsel, appeals the circuit court orders terminating his parental rights to three of his children—H.T., J.T., and R.T. Attorney Pamela Moorshead, appointed counsel for J.T., has

---

<sup>1</sup> These appeals are 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.

filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. J.T. was informed of his right to respond to the report, but has not filed a response. Upon consideration of the report, and our independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's orders. See WIS. STAT. RULE 809.21.

The State filed petitions to terminate J.T.'s parental rights to all three children alleging that J.T. failed to assume parental responsibility. See WIS. STAT. § 48.415(6). J.T. contested the petitions and requested a jury trial, but later withdrew the jury trial demand. Following a bench trial, the circuit court found that grounds existed to terminate J.T.'s parental rights and entered a finding of unfitness. The case proceeded to a dispositional hearing, where the circuit court concluded that it was in the children's best interests to terminate J.T.'s parental rights.

The no-merit report first addresses whether the circuit court complied with the statutory deadlines that govern termination of parental rights proceedings. This court agrees with counsel that there is no arguable merit to this issue. In each instance, the court either complied with the applicable deadlines or found good cause for extending the deadlines.

The no-merit report next addresses whether there is arguable merit to a claim that the petitions for termination of parental rights were defective. We agree with counsel that the petitions met the statutory requirements and that there is no arguable merit to this issue.

Next, the no-merit report discusses whether the evidence was sufficient to sustain the circuit court's finding of parental unfitness on the ground of failure to assume parental

responsibility. In reviewing this issue, we must consider the evidence in a light most favorable to the determination made by the court. See *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169. To prove failure to assume parental responsibility, the State was required to prove that J.T. did not have a substantial parental relationship with the children. See WIS. STAT. § 48.415(6)(a); WIS JI—CHILDREN 346. “[S]ubstantial parental relationship’ means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” See § 48.415(6)(b); WIS JI—CHILDREN 346. The circuit court considered testimony from the case manager as well as J.T. himself. Our review of the transcripts persuades us that the State produced ample evidence to prove that J.T. failed to assume parental responsibility. This court is satisfied that there would be no arguable merit to challenging the sufficiency of the evidence to support the circuit court’s findings.

The no-merit report also considers whether there would be arguable merit to an argument that the circuit court referred to an outdated jury instruction when rendering its finding of unfitness and whether the circuit court erred in failing to consider the jury instruction specific to incarcerated parents. In rendering its verdict, the circuit court referred to and read from the substantive jury instruction on failure to assume parental responsibility. However, the court referred to an outdated version of the instruction that contained this language: “The parent’s lack of opportunity or ability to establish a substantial parental relationship is not a defense to failure to assume parental responsibility.” The current jury instruction does not contain that language and instead states, “You may consider the reasons for the parent’s lack of involvement when you assess all of the circumstances throughout the child’s entire life.” We agree with counsel that while the circuit court may have cited an outdated instruction, the circuit court nonetheless relied on the appropriate law when rendering its decision. In *Tammy W-G. v. Jacob T.*, 2011 WI 30,

¶38, 333 Wis. 2d 273, 797 N.W.2d 854, the supreme court required a circuit court to consider the totality of the circumstances when rendering its decision and maintained that “a parent’s lack of opportunity to establish a substantial relationship is not a defense to failure to assume parental responsibility[.]” *Id.* Upon review of the transcripts, we agree with counsel that the circuit court considered the totality of the circumstances in rendering its decision.

As to counsel’s observation that the circuit court did not cite the jury instruction relating to incarcerated parents, we note that while the circuit court did not specifically read from WIS JI—CHILDREN 346B, the circuit court’s thoughtful remarks demonstrate that the court considered J.T.’s incarceration and its effect on his ability to maintain contact with his children. Accordingly, there would be no arguable merit to a challenge on this issue.

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court’s decision to terminate J.T.’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). At the dispositional hearing, the circuit court heard testimony from the case manager and the children’s foster parents. In rendering its decision, the circuit court considered all of the statutory factors set forth in WIS. STAT. § 48.426(3), and concluded that termination of J.T.’s parental rights was in the children’s best interests. This court agrees with counsel that a challenge to the circuit court’s exercise of discretion as to disposition would lack arguable merit.

Finally, the no-merit report considers whether any other issues arose before or during trial. Specifically, counsel addresses joinder and the objections raised during the proceedings.

Upon our review of the record, we agree with counsel’s analysis on these issues and are satisfied that there are no issues of arguable merit as to these issues.

Upon an independent review of the record, we have found no other arguable basis for reversing the orders terminating J.T.’s parental rights. Therefore, any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the circuit court’s orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of J.T. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*