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February 13, 2013

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

2012AP2458-NM	In re the termination of parental rights to Robkeisha J., a person under the age of 18: State of Wisconsin v. Tondalia K. (L.C. # 2012TP39)
2012AP2459-NM	In re the termination of parental rights to Anita J., a person under the age of 18: State of Wisconsin v. Tondalia K. (L.C. # 2012TP40)

Before Blanchard, J.

Tondalia K. appeals an order terminating her parental rights to her children, Robkeisha J. and Anita J. Attorney Crystal Saltzwadel has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v. California*, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32

(2011-12);¹ *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the circuit court's exercise of discretion at the dispositional hearing. Specifically, the report focuses on whether the circuit court properly considered Tondalia's cognitive limitations during the dispositional phase of the proceedings. Tondalia was sent a copy of the report and has filed two responses. Upon reviewing the entire record, as well as the no-merit report and responses, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

On February 15, 2012, the State filed petitions for termination of Tondalia's parental rights as to her children, Robkeisha and Anita, alleging that the children were in continuing need of protection or services (CHIPS) and, as an alternate ground, that Tondalia had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). After a hearing on the grounds for the petition, the circuit court made a finding of parental unfitness pursuant to WIS. STAT. § 48.424. The court then heard testimony at the dispositional hearing and found that it was in the best interests of the children to terminate Tondalia's parental rights.

In order to establish the termination ground of CHIPS, the State needed to show: (1) that the children had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) that the county department of health and human services had made reasonable efforts to provide the services ordered by the court; (3) that Tondalia failed to meet the conditions established for the safe return of the children; and (4) that there was a substantial likelihood that

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Tondalia would not meet the conditions within the next nine months. *See* WIS. STAT. § 48.415(2).

On the first element, the State introduced evidence that the children had been placed outside the home pursuant to CHIPS orders entered in November 2008 and subsequent extension orders, which contained statutory notice of TPR proceedings. On the second element, the State elicited testimony from Antoinette David, who had worked with Tondalia as a case manager with Children's Service Society of Wisconsin (CSSW). David testified that Tondalia received services from CSSW, including parenting classes, supervised visits with her children, and therapy. The State also elicited testimony from Nicole Spees, who had worked with Tondalia as a safety services manager with the Bureau of Milwaukee Child Welfare (the "Bureau"). Spees testified that she performed weekly case management with Tondalia and also contracted services with other providers who assisted Tondalia with home management, finances, and obtaining community resources. Tondalia also testified at the grounds hearing that she received individual therapy and domestic violence counseling.

With regard to Tondalia's progress toward meeting the conditions of safe return and likelihood of future progress, Nicole Spees testified that Tondalia had difficulty understanding how her domestically violent relationship with the children's father and her impulsive decisions could impact the children's safety. Amy Lemberger, Tondalia's treating therapist, testified that Tondalia does not understand the impact that her domestic violence issues have on her children. Lemberger testified that she did not believe Tondalia would meet the conditions for safe return within the next nine months. Tondalia testified at the grounds hearing that she has a history of domestic violence issues. She also testified that, at the time of the hearing, she was not employed and that she recently had been living in a homeless shelter. The evidence in the record

is sufficient to support the court's finding that all of the required CHIPS elements had been established under WIS. STAT. § 48.415(2), such that an appeal on that basis would be without merit.

Any challenge to the circuit court's exercise of discretion in the disposition phase of the proceedings would likewise be without merit. At the dispositional hearing, the circuit court was required to consider such factors as the likelihood of the children's adoption, the age and health of the children, the nature of the children's relationship with Tondalia, the wishes of the children, and the duration of the children's separation from Tondalia, with the prevailing factor being the best interests of the children. *See* WIS. STAT. § 48.426(2) and (3). The record shows that the circuit court did so. The court noted that the children suffered from a dysfunctional and violent environment in their birth home and that the children had positive relationships with their foster parent, who wanted to adopt them. The circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

The no-merit report also addresses the issue of whether there would be arguable merit to pursuing on appeal the issue of whether the circuit court improperly considered Tondalia's cognitive limitations in its decision. The circuit court noted in a letter explaining its decision that Tondalia has been diagnosed with cognitive delays that affect her ability to parent. This statement is supported by the record, and the record also indicates that the service providers who assisted Tondalia with parenting skills and her own mental health were aware of her limitations and took them into consideration when working with her.

Antoinette David testified at the grounds hearing that Tondalia has some cognitive delays and that it did not appear that she was gaining knowledge from her interaction with the parenting

aide she had been assigned. David further testified that she did not believe Tondalia fully comprehended her own special needs and her children's needs. Lynn Bade, Tondalia's case manager, testified that despite the parenting classes, domestic violence prevention, and other specialized services that have been provided to her, Tondalia is unable to apply what she learns to meet the conditions for the safe return of her children.

The ultimate determination of whether to terminate parental rights is discretionary with the circuit court. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 150, 551 N.W.2d 855 (Ct. App. 1996). Given that there is ample evidence in the record concerning the impact of Tondalia's cognitive limitations on her parenting abilities, we cannot conclude that the circuit court erroneously exercised its discretion when it factored those limitations into its decision.

After reviewing the entire record, the no-merit report, and responses, we have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*, 386 U.S. 738, and WIS. STAT. RULE 809.32. Therefore,

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

IT IS FURTHER ORDERED that Attorney Saltzwadel is relieved of any further representation of Tondalia K. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals