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**DISTRICT IV/III**

April 16, 2013

To:

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

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2013AP476-NM

In re the termination of parental rights to Anthony S., a person under the age of 18: Dane Co. DHS v. Vernon D. (L.C. # 2012TP35)

Before Thomas Cane, Reserve Judge.<sup>1</sup>

Counsel for Vernon D. has filed a no-merit report concluding there is no arguable basis for Vernon to challenge an order terminating his parental rights to his son, Anthony S. Vernon was advised of his right to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

A jury found that Vernon failed to assume parental responsibility for Anthony. Based on that finding, the circuit court found Vernon unfit and terminated his parental rights.

The no-merit report addresses whether the court adhered to the time limits set out in WIS. STAT. §§ 48.422(1), (2), 48.424(4), and 48.427(1). The circuit court held the fact-finding hearing beyond the forty-five day deadline set in § 48.424(4). However, the court found good cause for the extension as allowed by WIS. STAT. § 48.315(2). In addition, the failure to act within a time specified in WIS. STAT. ch. 48 does not deprive the court of personal or subject matter jurisdiction or of competency to exercise jurisdiction, and failure to object to any delay constitutes a waiver of the right to challenge the court's competency to act. *See* WIS. STAT. § 48.315(3). Therefore, no issue of arguable merit exists regarding the timing of the proceedings.

The Department presented sufficient evidence to support the jury's verdict. The jury found Vernon knew or had reason to believe he was Anthony's father and failed to assume parental responsibility for Anthony. Vernon did not contest the fact that he knew that he was Anthony's father. The finding that he failed to assume parental responsibilities was supported by the evidence of a social worker, Anthony's foster parent, a pediatrician and Vernon himself.

The social worker initiated contact with Vernon three months after Anthony's birth. She arranged one-hour weekly visits. After the initial visit, Vernon did not visit Anthony for nine more months. After that visit, Vernon again waited nine months before visiting Anthony. He never called to inquire how Anthony was doing or to ask about Anthony's considerable medical needs. Vernon moved and failed to provide the social worker with updated contact information.

Anthony's foster mother confirmed Vernon's failure to visit Anthony. She testified Anthony had forty to fifty doctor appointments and has had several surgeries. Vernon attended only one doctor appointment and never called to ask about Anthony, his medications or treatment. Vernon provided no money for Anthony's medical care, exercised no responsibility for Anthony's daily supervision, education or protection. She acknowledged that Vernon provided a couple pairs of pajamas, a pair of pants and a shirt at Christmas time, and that she occasionally cancelled scheduled visits because Anthony was sick.

The pediatrician testified regarding Anthony's medical condition. His condition requires a caregiver to attend many medical appointments and monitor Anthony for signs and symptoms. The caregiver would also have to understand Anthony's cognitive limitations. Vernon never contacted the pediatrician regarding Anthony.

Vernon also confirmed his failure to visit Anthony more than twice in an eighteen-month period. He testified he lived one-half hour away from the foster family. Vernon testified he had a car and knew the foster family's telephone number, but felt he could not contact the foster family or Anthony. He admitted he did not know Anthony's medical needs. He also admitted that while the mother was pregnant, he did not provide any care or assistance. He did not exercise significant daily supervision for Anthony or provide daily education or protection for him. Vernon testified he did not visit Anthony because he was sad and mad that his parents could not accompany him. He also testified he wanted to take Anthony to the fair, but was told he could not do so.

As the trial court noted, of approximately 17,640 hours of Anthony's life, Vernon spent just twelve to fifteen hours with him. He failed to provide any financial support for food,

clothing, medicine or other necessities of life. Vernon was unable to assume the type of parental responsibility necessary to effectively deal with the challenges presented by Anthony's complicated medical needs.

The court appropriately considered the factors set out in WIS. STAT. § 48.426(3) pertaining to disposition, and properly exercised its discretion by terminating Vernon's parental rights. Anthony's foster parents stated their intention to adopt Anthony. At the time of the termination, Anthony was two years old and had been placed outside his parental home for almost his entire life and had never lived with his father or his father's family. The record shows Anthony will be able to enter into a more stable and permanent family relationship upon termination of Vernon's parental rights.

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven Zaleski is relieved of his obligation to further represent Vernon D. in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*