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**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  
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**DISTRICT I/IV**

July 13, 2016

To:

Hon. Rebecca Lynn Grassl Bradley  
Circuit Court Judge  
Judge Swanson, Children's Court  
10201 W. Watertown Plank Rd.  
Wauwatosa, WI 53226

Josh Steib  
Juvenile Clerk  
Children's Court Center  
10201 W. Watertown Plank Rd.  
Milwaukee, WI 53226

Christine M. Quinn  
P.O. Box 70055  
Milwaukee, WI 53207

Sara J.S. Waldschmidt-DeSmet  
Assistant District Attorney  
10201 W Watertown Plank Rd  
Wauwatosa, WI 53226-3532

Bureau of Milwaukee Child Welfare  
Arlene Happach  
635 N. 26th St.  
Milwaukee, WI 53233-1803

J. R. D.  
3407 A N. 13th. St.  
Milwaukee, WI 53206

Eileen T. Evans  
Law Office of Eileen T. Evans LLC  
P.O. Box 64  
West Bend, WI 53095-0064

Michael J. Vruno Jr.  
Legal Aid Society of Milwaukee  
10201 Watertown Plank Rd.  
Milwaukee, WI 53226

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

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2016AP1012-NM

In re the termination of parental rights to W.T.M., a person under the age of 18: State of Wisconsin v. J. R. D. (L.C. # 2014TP225)

Before Blanchard, J.<sup>1</sup>

J.R.D. appeals a circuit court order terminating her rights to her son, W.T.M., now aged three. Attorney Christine M. Quinn filed a no-merit report pursuant to WIS. STAT. RULES

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

809.107(5m) and 809.32. J.R.D. was served with a copy of the no-merit report and advised of her right to file a response, but did not do so. After independently reviewing the record and counsel's no-merit report, we conclude that there are no issues with arguable merit on appeal. Therefore, we summarily affirm the order terminating J.R.D.'s rights to W.T.M. WIS. STAT. RULE 809.21.

W.T.M. was taken into protective custody on May 7, 2013, with an order for temporary nonsecure physical custody entered on May 9, 2013, following the alleged physical abuse of his sisters by his father, W.H.M. W.T.M. was just under four months of age at the time. On October 2, 2013, the circuit court found W.T.M. a child in need of protective services, placed W.T.M. out of the home, and warned J.R.D. of the applicable grounds for termination of parental rights and the conditions necessary for W.T.M.'s return to the home.

The State petitioned for termination of J.R.D.'s parental rights on August 28, 2014, on the grounds that (1) W.T.M. was a child in continuing need of protection and services, and (2) J.R.D. failed to assume parental responsibilities. *See* WIS. STAT. § 48.415(2) and (6). Following a jury trial at which the jury unanimously concluded that both grounds were proven as to J.R.D., the circuit court conducted a dispositional hearing and terminated J.R.D.'s parental rights. This no-merit appeal follows.

The no-merit report addresses two issues: (1) whether the evidence was sufficient to support the two grounds for termination of parental rights found by the jury, and (2) whether the circuit court erroneously exercised its discretion at disposition in terminating J.R.D.'s parental rights. We agree with appellate counsel that neither issue has arguable merit on appeal.

When reviewing the sufficiency of the evidence, we consider the evidence in the light most favorable to the jury's verdict. *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854. Our review of the record of the jury trial indicates that the State presented detailed evidence relating to the conditions the CHIPS court set for W.T.M.'s return and the many efforts made to assist J.R.D. in meeting the conditions for return, including evidence that J.R.D. failed to demonstrate through her conduct that she was able to care adequately for W.T.M. on a full-time basis and attend to her own mental health needs and would likely, based upon risk assessment testing and her failure to complete all programming made available to her successfully, have similar difficulty in the ensuing months ahead. Further, the evidence, including the testimony of the assigned family case manager, child visitation personnel, and J.R.D., supports the jury finding that the Bureau of Milwaukee Child Welfare made reasonable efforts to assist J.R.D. in meeting the conditions of return.<sup>2</sup> Similarly, the evidence indicating that J.R.D. failed to exercise significant responsibility for W.T.M.'s protection, education, daily supervision, and care, as well as evidence indicating that J.R.D. remained in a relationship that exposed W.T.M. to domestic violence, supports the jury's verdict that J.R.D. failed to assume parental responsibilities.

Our review of the circuit court's decision at disposition to terminate J.R.D.'s parental rights is confined to whether the circuit court appropriately exercised its discretion. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. In determining whether the

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<sup>2</sup> The circuit court, finding no factual dispute, granted, without objection from J.R.D., the State's motion for a directed verdict on the jury question of whether W.T.M. had been adjudged in need of protection and services and placed outside of the home for a cumulative period of six months or longer pursuant to a court order containing the termination of parental notice as required by law.

circuit court appropriately exercised its discretion, we review whether the circuit court considered the factors outlined in WIS. STAT. § 48.426(3) to determine what disposition is in the “best interests of the child” pursuant to § 48.426(2).

The record reflects that the circuit court properly exercised its discretion, noting that the parents had, indeed, made progress, but that most of the progress came after the jury verdict. The circuit court also noted that, at the time of disposition, W.T.M. was nearly three years old<sup>3</sup> and had been placed outside of the home, most of it with the foster family, for eighty-eight percent of his life. The circuit court found that W.T.M. had bonded with his foster family and that the foster family indicated that it was very likely the foster parents would adopt W.T.M. Further, the circuit court found that W.T.M. would be able to enter into a more stable, permanent family relationship as a result of termination. The circuit court found that W.T.M. had substantial ties to his biological family, but that it would not be harmful to W.T.M. to sever those ties. Noting that the jury found a basis for termination of J.R.D.’s parental rights by clear, convincing, and satisfactory evidence, the circuit court, considering all relevant statutory factors, concluded that it was in W.T.M.’s best interests that J.R.D.’s parental rights to him be terminated. The circuit court properly exercised its discretion in terminating J.R.D.’s parental rights.

We also review two other potential issues that appellate counsel did not discuss: (1) whether the many delays and resulting deviations from the applicable Chapter 48 mandatory time limits in concluding these proceedings raise competency issues, and (2) whether the circuit

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<sup>3</sup> Given W.T.M.’s young age, the circuit court noted that W.T.M. was not able to express his wishes and could not understand the weight of the issues before the court.

court should have granted the mistrial that J.R.D. sought as a result of a probation officer's reference to the phrase "sex offender" in relation to the father's [W.H.M.'s] transfer of probation supervision, a matter that had arisen in the context of the admissibility of W.H.M.'s convicted sex offender status on a motion *in limine*.

There is no question that there were numerous delays and that the trial and the dispositional hearing were held outside of mandatory time limits.<sup>4</sup> However, the circuit court found good cause for continuing the matters, and J.R.D. did not object. WISCONSIN STAT. § 48.315(2) permits extensions of the mandatory time limits under the circumstances presented in this case. In addition, J.R.D.'s failure to object to the continuances forfeits any challenge to the circuit court's competency to act. *See* § 48.315(3).

In denying the motion for the mistrial, the circuit court properly exercised its discretion. *See State v. Patterson*, 2009 WI App 161, ¶33, 321 Wis. 2d 752, 776 N.W.2d 602. The circuit court retains discretionary authority to determine whether to admit particular evidence. *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. In this case, the circuit court determined that the evidence relating to W.H.M.'s sex offender status, the inferences arising from the evidence, and the testimony at issue were relevant to the issues presented to the jury and that any resulting prejudice did not outweigh the probative value of the evidence. Further, the circuit court provided the jury with a special instruction related to the

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<sup>4</sup> There was a nine-month gap between the trial and the dispositional hearing, which included a change of judge. The circuit court judge who completed the disposition ordered the transcripts and scheduled the court's oral decision for a date after which it would receive the transcripts, advising the parties that the hearing would be rescheduled if the court had not yet received the transcripts.

jury's use of the evidence in its deliberations. We conclude the circuit court acted within its discretionary authority in admitting the underlying evidence and in denying the mistrial.

Upon our independent review of the record, we find no other arguable bases for reversing the order of termination of J.R.D.'s parental rights. We conclude that any further proceedings would be wholly frivolous within the meaning of WIS. STAT. RULES 809.107(5m) and 809.32.

Accordingly,

IT IS ORDERED that the order terminating J.R.D.'s parental rights to W.T.M. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine M. Quinn is relieved of any further representation of J.R.D. in this matter pursuant to WIS. STAT. RULE 809.32(3).

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