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

DISTRICT I

August 22, 2016

To:

Hon. David C. Swanson
Children's Court Center
10201 W. Watertown Plank Road
Wauwatosa, WI 53226

Josh Steib, Juvenile Clerk
10201 W. Watertown Plank Road
Milwaukee, WI 53226

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

Claire Starling
Assistant District Attorney
10201 W. Watertown Plank Road
Wauwatosa, WI 53226

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

R. G.
1220 W. Vliet Street
Milwaukee, WI 53205

Peter M. Koneazny
3rd. Floor - N
728 N. James Lovell Street
Milwaukee, WI 53233-2408

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

2016AP1252-NM In re the termination of parental rights to M. G., a person under the age of 18: State of Wisconsin v. R. G. (L.C. # 2015TP206)

Before Kessler, J.[1]

R.G. appeals an order terminating his parental rights to M.G.[2] R.G.'s appointed attorney, Christine M. Quinn, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per

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

[2] The parental rights of M.G.'s mother were also terminated. The mother's rights are not at issue in this appeal and will not be addressed.

curiam), and WIS. STAT. RULES 809.107(5m) and 809.32. R.G. has not filed a response. This court has considered counsel's report and has independently reviewed the record. This court agrees with counsel's conclusion that an appeal would lack arguable merit. Therefore, the order terminating R.G.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

M.G. was born on August 1, 2013. She was removed from her mother's care by the Bureau of Milwaukee Child Welfare when she was six days old due to concerns stemming from the mother's failure to follow through with court conditions and services recommended to make M.G. safe. R.G. was unavailable to care for M.G. because he was incarcerated. On August 9, 2013, M.G. was placed at the same foster home as her biological siblings.

In June 2015, the State moved to terminate the parental rights of both parents. As to R.G., the petition alleged three grounds for terminating his parental rights: (1) abandonment, *see* WIS. STAT. § 48.415(1)(a)2.; (2) continuing need of protection and services (CHIPS), *see* § 48.415(2); and (3) failure to assume parental responsibility, *see* § 48.415(6).

In exchange for his admission to the abandonment ground, the State agreed to a ninety-day adjournment of the dispositional phase, which gave R.G. an opportunity to work on his court-ordered conditions of return for M.G. At the dispositional hearing, six witnesses testified, including three who were called on R.G.'s behalf. Ultimately, the trial court determined that terminating R.G.'s parental rights was in M.G.'s best interests. This appeal follows.[3]

[3] Record items 45, 47, and 48, which are transcripts, appear to be misdated. However, when comparing the transcripts to the docket entries, it is clear to this court that the misdated transcripts relate to the proceedings that took place on September 21, 2015, December 2, 2015, and December 7, 2015.

The no-merit report addresses four issues: (1) whether the trial court adhered to statutory time limits; (2) whether R.G.'s no-contest plea was knowingly, intelligently, and voluntarily entered; (3) whether R.G.'s trial counsel was ineffective for failing to call visitation worker witnesses on his behalf; and (4) whether the trial court erroneously exercised its discretion when it decided to terminate R.G.'s parental rights. We agree with appellate counsel that there would be no merit to raising these issues in a post-disposition motion or on appeal, and we will briefly address each of the potential issues counsel has identified.

We begin with the statutory time limits. With one exception, the trial court either acted within the applicable deadlines or found good cause to extend them. *See* WIS. STAT. § 48.315(2). Although the scheduling of the jury trial on grounds was outside of the forty-five day statutory time limit and the trial court did not explicitly toll the time limits or state good cause for doing so, neither party objected to the scheduling. *See* WIS. STAT. §§ 48.315(3), 48.422(2). Additionally, as appellate counsel points out, the record reveals that the attorneys and the trial court scheduled the trial for the first available date based upon their respective calendars. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752. There would be no merit to asserting that the trial court failed to follow the statutory rules concerning time limits. Insofar as the dispositional hearing was delayed, clearly this was done in an effort to afford R.G. extra time to satisfy the court-ordered conditions of return and the parties agreed with the trial court's finding that there was good cause for the extension. *See* WIS. STAT. § 48.424(4).

Next, we review R.G.'s decision to enter a no-contest plea to a single ground for termination: abandonment. In ***Brown County DHS v. Brenda B.***, our supreme court summarized the applicable legal standards:

> A parent who chooses to enter a no contest plea during th[e grounds] phase is giving up valuable protections and must have knowledge of the rights being waived by making the plea.
>
> The principles and analysis of ***Bangert*** apply.[4] The [trial] court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. This colloquy is governed by the requirements of [WIS. STAT.] § 48.422(7) and notions of due process.
>
> If the parent can later show that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, that parent has made a prima facie case that the plea was not knowing, voluntary, and intelligent. At that point, the burden shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently pled no contest.

Brenda B., 2011 WI 6, ¶¶34-36, 331 Wis. 2d 310, 795 N.W.2d 730 (citations omitted).

Consistent with ***Brenda B.***, the trial court conducted an extensive colloquy with R.G. The trial court addressed R.G.'s understanding of the rights he was giving up, told him that it would decide at the dispositional hearing whether to terminate his parental rights or dismiss the petition, and explained that the focus at the dispositional hearing would be on M.G.'s best interests. The trial court established that no threats were made to force R.G. to enter a no-contest plea. The trial court also confirmed that R.G. understood that if his no-contest plea was accepted, the trial court would "be required to find [him] unfit as a parent." In short, the transcript demonstrates that the trial court complied with the dictates of WIS. STAT. § 48.422(7), ***Brenda B.***, and ***Oneida County DSS v. Therese S.***, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122.

[4] *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

Next, the no-merit report states that appellate counsel has not identified anything in the record indicating that trial counsel was ineffective. Specifically, counsel considered whether R.G.'s trial counsel should have called visitation worker witnesses to testify on his behalf. R.G.'s trial counsel called R.G.'s psychologist, Dr. Jay Allen, and a family support specialist, Verlinda Sloan, who supervised R.G.'s visits with M.G. Both of these individuals provided favorable testimony regarding R.G.'s ability to parent M.G.

At the beginning of the hearing, however, R.G.'s trial counsel advised the trial court that he had issued subpoenas to "about six" people but only Allen and Sloan had appeared in response. Trial counsel further informed the court that he did not have the return of the subpoena information from the Sheriff's department, so he was "not in a position to ask that the [c]ourt issue capiases" and said he would decide about that at the end of the hearing. At the end of the hearing, trial counsel did not mention the missing witnesses.

We will sustain counsel's strategic decisions as long as they are reasonably supported by the circumstances of the case. *See* ***State v. Balliette***, 2011 WI 79, ¶26, 336 Wis. 2d 358, 805 N.W.2d 334 (explaining that we give great deference to counsel's strategic decisions). Here, R.G.'s trial counsel elicited favorable testimony from the two witnesses who responded to their subpoenas, in addition to the testimony of R.G. himself. The record further reveals that trial counsel diligently cross-examined the witnesses called by the State. Rather than compelling witnesses to come and testify on R.G.'s behalf, trial counsel proceeded to use the favorable testimony he had elicited in an effort to convince the trial court that termination was not in M.G.'s best interests. R.G. would not be able to establish deficient performance in this regard. *See* ***id.***, ¶25 ("[C]ounsel is 'strongly presumed to have rendered' adequate assistance within the bounds of reasonable professional judgment. A court must be vigilant against the skewed

perspective that may result from hindsight, and it may not second-guess counsel's performance solely because the defense proved unsuccessful.") (citations omitted).

We have not identified any other issue of merit with respect to trial counsel's performance, which included a detailed closing argument where counsel stressed the important bond R.G. had with M.G. and R.G.'s successes in achieving stability. Trial counsel zealously argued that these factors, and others, justified maintaining the legal relationship, rather than terminating R.G.'s parental rights.

The last issue is whether there would be any merit to challenging the trial court's decision to terminate R.G.'s parental rights. At the dispositional hearing, the trial court was required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parents or other family members, the wishes of the child, and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2), (3). After listening to the testimony of six witnesses, the trial court methodically went through each factor and reasonably applied the proper legal standard to the facts of record when reaching its disposition.

We have discovered no other arguably meritorious grounds for an appeal. Accordingly, we accept the no-merit report, affirm the order terminating R.G.'s parental rights, and discharge appellate counsel of the obligation to represent R.G. further in these appeals.

Upon the foregoing,

IT IS ORDERED that the order terminating R.G.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine M. Quinn is relieved of any further representation of R.G. on appeal.

Diane M. Fremgen
Clerk of Court of Appeals