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**DISTRICT II**

November 30, 2016

To:

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

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2016AP1767-NM	In re the termination of parental rights to L.A.-G., a person under the age of 18: Racine County HSD v. M.G. (L.C. # 2014TP44)
2016AP1768-NM	In re the termination of parental rights to K.A.-G., a person under the age of 18: Racine County HSD v. M.G. (L.C. # 2014TP45)

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

In these consolidated cases, M.G. appeals from orders terminating her parental rights to her children, L.A.-G. and K.A.-G. M.G.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. M.G. filed a response. After reviewing the record,

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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.

counsel's report, and M.G.'s response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

L.A.-G. and K.A.-G. were removed from M.G.'s home on November 12, 2012, following an incident of physical abuse with a belt. At that time, they were two years old. The circuit court found them to be children in need of protection or services on September 13, 2013.

On November 17, 2014, the State of Wisconsin petitioned to terminate M.G.'s parental rights on grounds that (1) she failed to assume parental responsibility, and (2) L.A.-G. and K.A.-G. were in continuing need of protection or services. *See* WIS. STAT. § 48.415(2) and (6).

On April 14, 2015, M.G. and the State entered into an agreement to hold the case open for a period of up to nine months. Under the terms of the agreement, M.G. stipulated that L.A.-G. and K.A.-G. were in continuing need of protection or services. The agreement provided that the State would dismiss the petition if M.G. was able to comply with a number of conditions, including that she remain free from illegal drugs. However, if the circuit court found that M.G. failed to comply with the conditions, the matter would proceed to the dispositional hearing. The circuit court accepted the agreement, found that grounds for termination existed, and stayed the dispositional hearing.

On July 31, 2015, the State moved to lift the stay of the dispositional hearing. The motion alleged that M.G. had violated the conditions of the hold open agreement in several ways, including by her repeated use of illegal drugs. Following multiple hearings, the circuit court

granted the motion, and the matter proceeded to the dispositional hearing.<sup>2</sup> At the conclusion of the dispositional hearing, the circuit court terminated M.G.'s parental rights. This no-merit appeal follows.

The no-merit report addresses the following issues: (1) whether the circuit court lost competency to proceed due to the failure to comply with mandatory time limits; (2) whether M.G.'s stipulation as to grounds was knowingly, voluntarily, and intelligently entered; (3) whether the circuit court properly found a violation of the parties' hold open agreement; and (4) whether the circuit court properly exercised its discretion at the dispositional hearing in terminating M.G.'s parental rights. We agree with appellate counsel that these issues would not have arguable merit for appeal.

With respect to the issue of competency, we are satisfied that the circuit court had it in these cases. Any hearing held outside the time limits of WIS. STAT. ch. 48 was done with the parties' consent. M.G.'s failure to object waives any challenge to the circuit court's competency to act. *See* WIS. STAT. § 48.315(3).

With respect to M.G.'s stipulation as to grounds, the record confirms that she knowingly, voluntarily, and intelligently entered it. Before accepting such a stipulation, the circuit court is required to engage the parent in a personal colloquy in accordance with WIS. STAT. § 48.422(7). Additionally, the record must establish that the parent understands the constitutional rights given up by the stipulation. *See Kenosha Cty. DHS v. Jodie W.*, 2006 WI 93, ¶25, 293 Wis. 2d 530,

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<sup>2</sup> M.G. did not appear in the courtroom at disposition. Her attorney indicated that she was upset and did not wish to participate. Given this representation, the circuit court did not err in conducting the proceedings with M.G.'s counsel in M.G.'s absence. *See Dane Cty. DHS v. Mable K.*, 2013 WI 28, ¶48, 346 Wis. 2d 396, 828 N.W.2d 198.

716 N.W.2d 845. The parent must also understand the direct consequences of the stipulation. *See Oneida Cty. Dep't of Soc. Serv. v. Therese S.*, 2008 WI App 159, ¶¶10–11, 314 Wis. 2d 493, 762 N.W.2d 122. Here, the circuit court's colloquy prior to the acceptance of M.G.'s stipulation reflects that it satisfied these requirements.<sup>3</sup> Accordingly, we agree with counsel that any challenge to the stipulation would lack arguable merit.

With respect to the parties' hold open agreement, the record shows that the circuit court properly found that M.G. had violated it. One of the conditions of the agreement was that M.G. "remain free from illegal and nonprescribed drugs for a period of 6 months." The circuit court found that in the months following the stipulation, M.G. did not sustain sobriety and demonstrated in numerous ways that she was continuing to use cocaine. Because the record supports this conclusion, we agree with counsel that any challenge to the circuit court's finding of a violation would lack arguable merit.

Finally, with respect to the decision at the dispositional hearing, the record demonstrates that the circuit court properly exercised its discretion. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the circuit court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit court's remarks reflect that it considered the appropriate factors. Those factors weighed

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<sup>3</sup> In establishing a basis for the stipulation, the circuit court asked M.G. if it could use facts in the petition to find that L.A.-G. and K.A.-G. were in continuing need of protection or services. M.G. agreed that it could.

in favor of a determination that it was in the best interests of L.A.-G. and K.A.-G. to terminate M.G.'s parental rights.

As noted, M.G. filed a response to the no-merit report. In it, she reiterates her love for her children. She also maintains that she did everything that was asked of her, which is contradicted by the record. Although we are sympathetic to M.G.'s response, none of her assertions change our analysis regarding the propriety of the circuit court orders terminating her parental rights. As a result, we are satisfied that her response does not present an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>4</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Gregory Bates of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the orders terminating M.G.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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<sup>4</sup> The orders at issue erroneously indicate that the circuit court found two grounds for termination: (1) failure to assume parental responsibility; and (2) continuing need of protection or services. Although both grounds were alleged in the State's petition, the circuit court found only one (continuing need of protection or services) following the parties' stipulation. In any event, because WIS. STAT. § 48.415 requires only one ground for termination, this error does not affect M.G.'s substantial rights. *See* WIS. STAT. § 805.18. Accordingly, we are satisfied that it does not present an issue of arguable merit.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of M.G. in these matters. *See* WIS. STAT. RULE 809.32(3).

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