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DISTRICT I

September 3, 2025

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Circuit Court Judge
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D.C.-S.

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

2025AP1356-NM	In re the termination of parental rights to J.P., a person under the age of 18: State of Wisconsin v. D.C.-S. (L.C. # 2023TP195)
2025AP1357-NM	In re the termination of parental rights to J.P., a person under the age of 18: State of Wisconsin v. D.C.-S. (L.C. # 2023TP196)

Before Colón, P.J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

D.C.-S. (Dino) appeals from orders terminating his parental rights to J.P. (Owen), born in March 2020, and to J.P. (Alan), born in March 2021.[2] Appellate counsel, Attorney David

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Malkus, filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also* ***Anders v. California***, 386 U.S. 738 (1967). Dino was advised that he had the right to respond to the no-merit report, but he has not responded. Upon consideration of the no-merit report and following a review of the records as mandated by ***Anders***, the court concludes that Dino could not raise any arguably meritorious issue for appeal. Therefore, we summarily affirm the orders terminating his parental rights. *See* WIS. STAT. RULE 809.21.

On March 10, 2021, the Division of Child Protective Services (CPS) received a report of abuse to an unborn child. The reporter alleged that M.P. (Mara) was consuming alcohol, cocaine, and other controlled substances while pregnant. Mara gave birth to Alan approximately one week later. Tests of Alan's urine and meconium revealed the presence of cocaine. Mara was also found to have cocaine in her system, but she was allowed to take Alan home from the hospital pursuant to a safety plan. On April 21, 2021, Mara's grandmother, N.G. (Nina), contacted a CPS assessment worker and reported that Mara had left Alan and his one-year-old brother Owen unsupervised for three days and had not yet returned home. The assessment worker reached Mara by telephone. She admitted that she had been using crack cocaine, and she did not know the whereabouts of her children. CPS workers attempted to contact Owen's adjudicated father, Dino, but Dino lived separately from Mara, and CPS was unable to contact him. CPS removed Owen and Alan from Mara's care, and the circuit court entered an order temporarily placing both children with Nina.

[2] We use pseudonyms to refer to the children and their family members, both for ease of reading and to protect confidentiality. *See* WIS. STAT. RULE 809.81(8).

The State next filed petitions alleging that Owen and Alan were children in need of protection or services (CHIPS). DNA testing conducted during the CHIPS proceedings confirmed that Dino was Alan's biological father. On September 27, 2021, the circuit court entered orders finding that both children were in need of protection or services and placing them outside their parents' homes.

On August 3, 2022, Owen and Alan were placed in Dino's home for a trial reunification, but in January 2023, Nina contacted the family's case manager and reported that Alan was hurt. The case manager investigated and concluded, among other matters, that Alan was bruised "all over his body" and had cocaine metabolites in his blood. On January 12, 2023, the children were removed from Dino's home on an emergency basis and placed with foster parents. Dino was allowed to resume contact with the children approximately six weeks later but his visits were supervised, and he never again had unsupervised contact with either child.

On November 17, 2023, the State filed petitions to terminate Dino's parental rights to Owen and Alan on the ground of abandonment and on the ground that they were children in continuing need of protection or services (continuing CHIPS).[3] Dino opposed the petitions, and the matters proceeded to a four-day bench trial that began on July 29, 2024. At the conclusion of the trial, the circuit court found that the State had failed to prove abandonment but had proved the allegations of continuing CHIPS, and the circuit court therefore found that Dino was an unfit

[3] The petitions also sought termination of Mara's parental rights. The orders finding Mara in default and the subsequent judgments terminating her parental rights are not at issue here, and we do not discuss them.

parent. Following a dispositional hearing that concluded on January 2, 2025, the circuit court found that termination of Dino's parental rights was in the best interests of the children.

We first consider whether Dino could raise an arguably meritorious claim that the circuit court lost competency to proceed by failing to meet mandatory statutory deadlines. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. After a termination of parental rights petition is filed, the circuit court has 30 days to conduct an initial hearing and determine whether any party wishes to contest the petition. WIS. STAT. § 48.422(1). If a party contests the petition, the circuit court must set a date for a fact-finding hearing, which must begin within 45 days of the initial hearing. § 48.422(2). If grounds for termination are established, the circuit court may delay the dispositional hearing until "no later than 45 days after the fact-finding hearing." WIS. STAT. § 48.424(4). When the statutory time limits cannot be met, the circuit court may grant continuances "only upon a showing of good cause ... on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases." WIS. STAT. § 48.315(2). Failure to object to a continuance, however, "waives any challenge to the court's competency to act during the period of delay or continuance." § 48.315(3).

In this case, the circuit court granted continuances that extended the proceedings beyond the statutory deadlines but the circuit court found good cause for granting those continuances. Dino requested some of those continuances and did not object to any of them. Accordingly, he cannot mount an arguably meritorious challenge to the circuit court's competency to proceed based on a failure to comply with statutory time limits.

We next consider whether Dino could mount an arguably meritorious challenge to the proceedings because the circuit court failed to advise him at the initial hearing that he had the right to a jury trial. *See* ***M.W. v. Monroe Cnty. DHS***, 116 Wis. 2d 432, 439, 342 N.W.2d 410 (1984). We conclude that he could not do so.

Pursuant to WIS. STAT. § 805.18(1), courts must disregard procedural defects that do not affect the substantial rights of the parties. A procedural error does not affect a party's substantial rights unless a reasonable possibility exists that the error contributed to the outcome of the action or proceeding. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768. Here, Dino was represented by counsel at the initial hearing, and his counsel requested a jury trial on his behalf before the hearing concluded. *See* WIS. STAT. § 48.422(4) (providing that any party whose rights may be affected by an order terminating parental rights shall be granted a jury trial if the request is made before the end of the initial hearing). Dino thus knew about and preserved his right to a jury trial, and he did not surrender that right until he waived it in open court many months later. Accordingly, the circuit court's failure to advise him of the right to a jury trial does not provide an arguably meritorious basis for relief. *See* ***Racine Cnty. Human Servs. Dep't v. Latanya D.K.***, 2013 WI App 28, ¶¶20-21, 346 Wis. 2d 75, 828 N.W.2d 251.

We next consider whether Dino could mount an arguably meritorious challenge to his jury waiver. We agree with appellate counsel's conclusion that he could not do so. "The right to a jury trial in a termination [of parental rights] case is statutory, not constitutional." ***Walworth Cnty. DHHS v. Andrea L.O.***, 2008 WI 46, ¶29, 309 Wis. 2d 161, 749 N.W.2d 168. No statutory procedure governs a parent's withdrawal of a jury demand, ***id.***, ¶30, and the circuit court is not required to engage in a personal colloquy on the record before accepting a jury waiver, ***Latanya D.K.***, 346 Wis. 2d 75, ¶21. Nonetheless, the circuit court did conduct a colloquy with Dino on

the record at his final pretrial conference and determined that he entered his jury waiver "freely, voluntarily, intelligently [a]nd with an understanding of all of his rights." Further pursuit of this issue would be frivolous within the meaning of ***Anders***.

We next consider whether Dino could pursue an arguably meritorious challenge to the circuit court's findings of continuing CHIPS and that he was an unfit parent. We will not set aside a circuit court's findings of fact following a bench trial unless they are clearly erroneous. WIS. STAT. § 805.17(2). We will reject a challenge to the sufficiency of the evidence presented at such a trial if "there is any credible evidence to sustain the verdict." ***St. Croix Cnty. DHHS v. Michael D.***, 2016 WI 35, ¶¶10, 29, 368 Wis. 2d 170, 880 N.W.2d 107.

To prove that a parent is unfit on the ground of continuing CHIPS, the State must show that: (1) the child in question was adjudged to be in need of protection and services and was placed outside the parent's home for a cumulative period of six months or longer pursuant to one or more court orders containing required termination of parental rights warnings; (2) the relevant agency made a reasonable effort to provide court-ordered services; and (3) the parent failed to meet the conditions for the child's safe return to the parent's home. WIS. STAT. § 48.415(2)(a)1.-3.; WIS JI—CHILDREN 324.[4] The State has the burden of proving its allegations by clear and

[4] A party seeking to terminate parental rights to a child on the ground of continuing CHIPS must in some circumstances prove an additional element—that the parent will not meet the conditions of return within the next nine months—but only if the child has been placed outside the home for less than 15 of the most recent 22 months. *See* WIS. STAT. § 48.415(2)(a)3. Absent the predicate placement condition, the fact finder should not consider the forward-looking element. WIS JI—CHILDREN 324, n.2. Here, no party disputed that Owen and Alan had been placed outside of Dino's home for more than 18 of the 22 months preceding the July 29, 2024 trial date. Accordingly, the State was not required to prove the forward-looking element, and the circuit court did not consider it.

convincing evidence. WIS. STAT. § 48.31(1). If the State carries its burden, the circuit court must find the parent unfit. WIS. STAT. § 48.424(4).

The trial evidence included certified court records from the CHIPS proceedings as well as testimony from Dino and from two CPS case workers. The evidence established that Owen and Alan were placed outside of Dino's home pursuant to CHIPS orders that contained warnings about termination of parental rights. Dino acknowledged that he was present in court on September 27, 2021, when the circuit court imposed the CHIPS orders, and that he had the assistance of a Spanish-language interpreter during the hearing. The CHIPS orders contained a variety of conditions that Dino was required to meet before the children could return to his home, including but not limited to: controlling his drug and alcohol use; visiting with his children regularly; supervising his children and placing their needs above his own; meeting the children's medical needs; and providing safe care for the children.

The family's case manager, Donece Raybon, testified that Dino's primary language was Spanish, and therefore she typically communicated with Dino with the assistance of a Spanish-language interpreter. Raybon then testified about the agency's efforts to provide services to Dino. These services included parenting classes with a Spanish-speaking parenting resource, supervised visitation, information about and notice of the children's health care appointments, and multiple referrals for substance abuse (AODA) treatment.

Raybon testified that Owen and Alan remained outside of Dino's home from the date of the CHIPS orders until August 3, 2022, when the children returned to Dino's home for a trial reunification. Raybon testified that Alan suffered substantial bodily harm during the trial reunification and both children "tested positive for cocaine" at the end of the trial period.

Raybon also testified that Dino was unable to explain these occurrences or identify their cause. The children were therefore removed from Dino's home on January 12, 2023, and never returned. Although supervised visits resumed after six weeks, Dino missed multiple visits, and he struggled to discipline the children when the visits took place. Further, Dino did not participate in the children's health care treatment or consult with their health care providers.

Raybon further testified, and Dino did not dispute, that Dino repeatedly declined AODA treatment for himself because, in his view, he did not have any treatment needs. The testimony reflected that Dino maintained that position even after he was arrested in May 2023, found to be intoxicated, and charged with possessing cocaine, a charge that he resolved with a guilty plea and a deferred prosecution agreement. Finally, Raybon testified that Dino agreed to participate in drug testing twice a week but missed many tests.

In light of the foregoing, the circuit court properly found that the State proved the elements of continuing CHIPS and that Dino was therefore an unfit parent. The findings are supported by the evidence and are not clearly erroneous. Accordingly, we agree with appellate counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

We also agree with appellate counsel that Dino could not pursue arguably meritorious claims for relief based on pretrial or trial rulings. As appellate counsel explains, Dino's trial counsel filed a motion *in limine* with numerous requests that the circuit court largely granted, and trial counsel mounted appropriate objections to testimony and evidence as the trial unfolded. To the extent that the circuit court's evidentiary rulings were adverse to Dino, our review satisfies us that the rulings were properly based on the law and the facts and do not provide grounds for an arguably meritorious claim that the circuit court erroneously exercised its discretion. *See* ***State v.***

Jackson, 2014 WI 4, ¶45, 352 Wis. 2d 249, 841 N.W.2d 791 (reflecting that a decision to admit or exclude evidence rests in the circuit court's discretion and is entitled to great deference). Further discussion of the circuit court's evidentiary rulings is not required.

We last consider whether Dino could mount an arguably meritorious challenge to the decision to terminate his parental rights. The decision to terminate parental rights lies within the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The prevailing factor is the child's best interests. WIS. STAT. § 48.426(2). In determining the best interests of the child, a circuit court must consider: (1) "[t]he likelihood of the child's adoption after termination"; (2) "[t]he age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home"; (3) "[w]hether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships"; (4) "[t]he wishes of the child"; (5) "[t]he duration of the separation of the parent from the child"; and (6) "[w]hether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements." § 48.426(3).

At the dispositional hearing, the State presented testimony from Raybon and from the foster mothers for Owen and Alan. Dino testified on his own behalf and presented testimony from a psychologist who had conducted a bonding study. At the conclusion of the testimony, the circuit court considered each of the statutory factors in light of the evidence presented.

The circuit court found that Owen and Alan were very likely to be adopted by their respective foster families, each of which had completed the licensing process for adoption and

had expressed a commitment to adopting. The circuit court found that both children had been removed from Dino's care in April 2021, when they were very young, and each child had spent most of his life outside of Dino's home. The circuit court noted that Owen had been living with his foster family for nearly two years and that Alan had been living with his foster family for one year, and the circuit court found that both children were bonded with their foster families. As to the children's wishes, the circuit court found that Owen, who was four years old, and Alan, who was three years old, were too young to express meaningful preferences about adoption.

The circuit court next found that both children had a substantial bond with Dino and that severing the children's relationship with him would cause each child some harm, but the circuit court determined that the harm would be less substantial than the harm that each child would suffer if removed from his foster placement. The circuit court also found that the children were bonded to each other but the potential harm that they would suffer from severing their legal relationship would be diminished by their foster families' willingness to maintain contact with each other. The circuit court further found that neither child had a substantial bond with any other biological family members and that severing the children's legal relationships with those biological family members would therefore not be harmful.

Finally, the circuit court found that the children would likely remain in foster care indefinitely if Dino's parental rights were not terminated. In light of the long period of time that the children had lived apart from Dino and the significance of the bond that each child had with his foster family, the circuit court found that termination of Dino's parental rights would permit each child to formalize his place in a long-standing adoptive home that could meet his needs. The circuit court therefore concluded that termination of Dino's parental rights was in the best interests of both children.

The records show that the circuit court properly exercised its discretion. The circuit court examined the relevant facts, applied the proper standard of law, and used a rational process to come to a reasonable conclusion. *See* ***Gerald O.***, 203 Wis. 2d at 152. An appellate challenge to the circuit court's decision to terminate Dion's parental rights would lack arguable merit.

Our independent review of the records does not reveal any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the orders terminating D.S.-C.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of D.S.-C. in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals