



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 II

April 1, 2015

To:

Hon. Jason A. Rossell
Circuit Court Judge
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Janell Thwing
Juvenile Clerk
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Philip J. Brehm
23 W. Milwaukee St., #200
Janesville, WI 53548

Mary M. Hart
Asst. District Attorney
Molinaro Bldg.
912 56th St.
Kenosha, WI 53140

Susan E. Alesia
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Dina R. M.
2514 54th St., Lower
Kenosha, WI 53140

Jodi L. Meier
1020 56th St.
Kenosha, WI 53140-3738

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

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- | | |
|-------------|--|
| 2015AP31-NM | In re the termination of parental rights to Tyshaiah M. H., a person under the age of 18: Kenosha County Department of Human Services v. Dina R. M. (L.C. #2013TP44) |
| 2015AP32-NM | In re the termination of parental rights to Javeyia S. M., a person under the age of 18: Kenosha County Department of Human Services v. Dina R. M. (L.C. #2013TP45) |
| 2015AP33-NM | In re the termination of parental rights to Dinasia R. M., a person under the age of 18: Kenosha County Department of Human Services v. Dina R. M. (L.C. #2013TP46) |
| 2015AP34-NM | In re the termination of parental rights to Joshua R. M., a person under the age of 18: Kenosha County Department of Human Services v. Dina R. M. (L.C. #2013TP47) |
| 2015AP35-NM | In re the termination of parental rights to Jeremiah A. M., a person under the age of 18: Kenosha County Department of Human Services v. Dina R. M. (L.C. #2013TP48) |

Before Reilly, J.¹

Dina R. M. appeals from orders terminating her parental rights to her five children. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Dina was served with a copy of the report and advised of her right to file a response. No response has been received from Dina. Based upon the no-merit report and an independent review of the circuit court records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* "Grounds for termination must be proven by clear and convincing evidence." *Ann M.M. v. Rob S.*, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993); *see also* WIS. STAT. §§ 48.31(1) and 48.424(2). If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Julie A.B.*, 255 Wis. 2d 170, ¶26. The court then proceeds to the second phase, which is the dispositional phase. *Id.*, ¶28. The court must then determine whether the parent's rights should be terminated. *Id.* The best interests of the children is the prevailing factor considered by the trial court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the

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.

agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Dina's four oldest children were taken into care by the Kenosha County Department of Human Services in December 2010. They were found to be children in need of protection and services (CHIPS) by orders entered January 31, 2011.² Dina's youngest son was removed from her care approximately four and one-half months after his birth in 2012, and was also placed under a CHIPS order. The petitions for termination of parental rights were filed August 14, 2013, and alleged that the children remained in continuing need of protection and services because Dina failed to meet conditions established for return of the children to her home and was unlikely to meet those conditions in the next nine months.³ *See* WIS. STAT. § 48.415(2). The cases were tried to the court over six days. The court determined that the children were continuing CHIPS and that Dina would be unable to meet the conditions for return in the next nine months. Dina failed to appear at the disposition hearing. Although the court found her in default, it recognized that she was still represented by counsel at the hearing. *See Dane Cnty. DHS v. Mable K.*, 2013 WI 28, ¶48, 346 Wis. 2d 396, 828 N.W.2d 198 ("A parent's attorney may act on behalf of a parent who does not appear in person."). It took testimony and determined that the termination of Dina's parental rights was in the children's best interests.

² The children were then around six years, four years, two years, and two months old.

³ The petitions regarding the two youngest children also alleged that Dina had failed to assume parental responsibility. The circuit court concluded that ground was not established.

Counsel's no-merit report addresses as potential appellate issues whether Dina's waiver of her right to a jury trial was knowing and voluntary, whether there was sufficient evidence to support the circuit court's determination that grounds for termination existed, whether the dispositional decision was an erroneous exercise of discretion or otherwise failed to consider the best interests of the children, whether applicable time limits were properly extended for good cause, and whether Dina was denied the right to the effective assistance of counsel. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit.

Our review of the records discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the orders terminating Dina's parental rights, and discharge appellate counsel of the obligation to represent Dina further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Philip J. Brehm is relieved of any further representation of Dina R. M. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals