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DISTRICT I

August 20, 2025

To:

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Circuit Court Judge
Electronic Notice

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Milwaukee County Courthouse
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Charmian Klyve
635 North 26th Street
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Courtney L.A. Roelandts
Electronic Notice

A.U.

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

2025AP1318-NM In re the termination of parental rights to R.J.W., a person under the age of 18: State of Wisconsin v. A.U. (L.C. # 2023TP100)

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).

A.U. appeals from an order terminating her parental rights to daughter R.J.W. Appellate counsel, Will Straube, has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32;

[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.

see also ***Anders v. California***, 386 U.S. 738 (1967). A.U. was advised of her right to file a response, but she has not responded. Based upon an independent review of the record and the no-merit report, this court concludes that an appeal would lack arguable merit. Therefore, the order terminating A.U.'s parental rights is summarily affirmed.

In December 2021, Child Protective Services received a referral for neglect/unborn child abuse; A.U. ("Anne")[2] had suffered at least three drug overdoses by that point in her pregnancy, and at least one of those overdoses required administration of naloxone to revive her. When R.J.W. ("Rose") was born on January 18, 2022, she tested positive for THC, but was not removed from her mother's care. CPS received another referral on January 26, 2022. Anne and Rose were staying with Rose's father, C.W. ("Connor"). He had called the police from work after he observed, through home security cameras, that Anne was passed out and Rose could not be seen. Anne had also called the police that day, accusing Connor of taking her pills. Police arrested both Anne and Connor for disorderly conduct, although Connor was later released without being charged. Rose was removed from her parents' home pursuant to a temporary physical custody order entered January 31, 2022. She was adjudicated a child in need of protection or services (CHIPS) in an order dated June 1, 2022, and remained placed outside her home.

On June 27, 2023, the State filed the underlying petition to terminate Anne's parental rights to Rose, alleging two grounds for termination: continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). Anne entered a no contest plea to the

[2] We have assigned pseudonyms to the parents and child in this matter, both for ease of reading and to protect the confidentiality of the proceedings.

failure-to-assume ground. Following a dispositional hearing, the circuit court terminated Anne's parental rights to Rose.[3] Anne appeals.

I. Circuit Court Competency

In the no-merit report, counsel first discusses whether "the petitioner adhere[d] to all mandatory time limits." In TPR cases, the circuit court—not the petitioner—is required to conduct certain proceedings within time frames prescribed by law. *See* WIS. STAT. §§ 48.422(1)-(2), 48.424(4). The time limits cannot be waived, *see* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927, but continuances are permitted for good cause, *see* WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3).

Counsel states, and our review of the records confirms, that the circuit court either acted within applicable deadlines or appropriately found good cause for each continuance. *See* WIS. STAT. § 48.315(2)-(3). There is no arguably meritorious issue based on a failure to comply with statutory deadlines, and no arguable merit to a claim of ineffective assistance for failure to make timely objections. *See* ***State v. Cummings***, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996) ("It is well-established that an attorney's failure to pursue a meritless motion does not constitute deficient performance.").

[3] Connor's parental rights were also terminated on the grounds of continuing CHIPS and failure to assume parental responsibility.

II. Sufficiency of the Petition

The no-merit report next discusses whether the termination petition satisfied the statutory requirements. A TPR petition is required to include certain information "set forth with specificity." WIS. STAT. § 48.42(1). Our review of the record satisfies us that the petition contains the required information. There is no arguable merit to challenging the legal sufficiency of the petition.

III. The No Contest Plea and Sufficiency of the Evidence

The no-merit report next discusses whether "the circuit court properly accept[ed Anne's] no contest plea." Before accepting a no contest plea to a termination petition, the circuit court must engage the parent in a colloquy. WIS. STAT. § 48.422(7); ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The colloquy is required to ensure that the plea is knowing, intelligent, and voluntary and, thus, constitutionally adequate. ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶35, 331 Wis. 2d 310, 795 N.W.2d 730; ***State v. Bangert***, 131 Wis. 2d 246, 265-66, 389 N.W.2d 12 (1986).

Before accepting an admission or plea to the facts in the petition, the circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the admission of facts alleged in the petition. WIS. STAT. § 48.422(7). The circuit court must also ensure that the parent understands the

constitutional rights she is giving up with the plea, ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, ***id.***, ¶10.

Here, the circuit court appropriately engaged Anne in a colloquy. To ensure that Anne understood the nature of the acts alleged in the petition, the court confirmed that she had received and reviewed the petition, and that she had reviewed the materials with counsel. The court reviewed with Anne the constitutional rights she would be giving up with her no contest plea. The court verified that Anne understood each element of the failure to assume ground to which she was pleading. The court explained to Anne that if it accepted her plea, and if it heard sufficient evidence in support of the petition, it would make a finding that she was unfit. The court also reviewed potential dispositions with Anne. Finally, the court asked Anne whether "anyone promise[d] you anything or threaten[ed] you in any way to get you to plead no contest in the grounds phase?" She answered "no." The court also confirmed that Anne discussed her decision to plead with counsel and that counsel was able to answer all of her questions. The circuit court did not expressly establish whether a proposed adoptive resource for Rose had been identified, but the foster parents had previously been identified as a proposed adoptive resource, and WIS. STAT. § 48.422(7) does not require the court to directly address this element with the parent in order for the parent's admission to be valid.

Based on the above, the circuit court concluded that Anne's no contest plea was "informed and voluntary," although it noted that it still had to hear evidence in support of the grounds alleged in the petition. We agree with appellate counsel's analysis that there is no arguable merit to challenging the validity of Anne's no contest plea with respect to either its voluntariness or Anne's knowledge.

As noted, the final step in accepting an admission or plea is for the circuit court to determine whether there is a factual basis for the admission. *See* WIS. STAT. § 48.422(7). Indeed, when a parent does not contest grounds in a petition the court nevertheless "shall hear testimony in support of the allegations in the petition." WIS. STAT. § 48.422(3). The circuit court and the parties agreed to complete the evidentiary portion of the grounds phase with a "prove-up" hearing held just before the disposition hearing.

Failure to assume parental responsibility is established by proving that the parent has not had a "substantial parental relationship" with the child. WIS. STAT. § 48.415(6)(a). A substantial parental relationship "means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." Sec. 48.415(6)(b). The State has the burden to prove grounds by clear and convincing evidence. ***St. Croix Cnty. DHHS v. Michael D.***, 2016 WI 35, ¶28, 368 Wis. 2d 170, 880 N.W.2d 107.

At the prove-up, the State first introduced five documents from the CHIPS proceedings, including the petition and order for temporary physical custody, as well as the petition and order finding Rose in need of protection or services. The State then had the ongoing case manager testify. The manager testified about receiving a referral while Anne was still pregnant with Rose; that Rose tested positive for marijuana at birth, although he acknowledged that the positive test alone was not a basis for taking Rose into custody; and that Anne and Connor had an argument which ended with their arrests, and Anne had some heroin on her at the time of the arrest. The case manager further testified about his agency's concerns with Anne's "dependency on substances to get through every day life and having safe and appropriate relationships." The case manager did acknowledge that Anne was in treatment for her drug issues, but he also noted

that Anne's visitation with Rose never progressed to overnight visits and that someone else was responsible for Rose's day-to-day care since she was about a week old.

The circuit court found that, based on the CHIPS documents and the case manager's testimony, "the State has established a factual basis to find that the parents have failed to assume parental responsibility." Specifically as to Anne, the court explained that

> [Anne] has struggled with drug use prior to [Rose's] birth, struggled with the use of it, sounds like the use of it sounds like prescribed, appropriately prescribed drugs as well as using illegal drugs during the first week or so during [Rose's] life and it interfered with her ability to provide appropriate care for that newborn child. Since [Rose's] removal from the home [Anne] has continued to struggle with drug use but also has not been at any point in a position to provide any sort of day-to-day care for [Rose].

We agree that there is sufficient evidence to support the failure to assume ground for termination. "[A] fact-finder must look to the totality-of-the-circumstances to determine if a parent has assumed parental responsibility." ***Tammy W.-G. v. Jacob T.***, 2011 WI 30, ¶22, 333 Wis. 2d 273, 797 N.W.2d 854. "[T]he fact-finder should consider the circumstances that have occurred over the entirety of the child's life," including whether a parent has exposed the child to a hazardous living environment. ***Id.*** We review the decision in the light most favorable to the verdict, searching the record if necessary for credible evidence to sustain it. ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Given Anne's ongoing substance use issues, it is reasonable to infer that Anne had not exercised significant responsibility for Rose's daily protection and care. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶32, 259 Wis. 2d 429, 655 N.W.2d 752. Similarly, the fact that Anne was unable to progress to overnight visitation with Rose also gives rise to a reasonable inference that she has not yet established a "substantial parental relationship" with Rose. Accordingly, there is no

arguable merit to a challenge to the sufficiency of the evidence to support the termination petition, nor are there arguable grounds on which to challenge the circuit court's acceptance of Anne's plea.

IV. Disposition

The final issue discussed in the no-merit report is whether the circuit court erroneously exercised its discretion when it terminated Anne's parental rights. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the child's best interests are the primary concern, the circuit court must also consider factors including but not limited to those identified in the statute. WIS. STAT. § 48.426(2)-(3). Here, the record shows that the circuit court expressly considered the relevant factors in light of the evidence presented, made a number of factual findings based on that evidence, and reached a reasonable decision. Any challenge to the circuit court's decision to terminate Anne's parental rights to Rose lacks arguable merit.

Our independent review of the records reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Will Straube is relieved from further representation of A.U. ("Anne") in this matter. *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