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DISTRICT I

August 27, 2025

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Steven Zaleski
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Juvenile Clerk
Milwaukee County Courthouse
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Division of Milwaukee Child Protective
Services
Charmian Klyve
635 North 26th Street
Milwaukee, WI 53233-1803

Danielle E. Chojnacki
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Clarice Rosa Ruehl
Electronic Notice

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

2024AP69	In re the termination of parental rights to Z.S., a person under the age of 18: State of Wisconsin v. T.H. (L.C. # 2022TP163)
2024AP70	In re the termination of parental rights to Z.S., a person under the age of 18: State of Wisconsin v. T.H. (L.C. # 2022TP164)

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).

In these consolidated appeals, Tiffany appeals from orders terminating her parental rights to her children Zeke and Zelda.² Based upon our review of the parties' submissions³ and record,

¹ These appeals are 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.

² For ease of reading, we refer to the family in this confidential matter using pseudonyms. *See* WIS. STAT. RULE 809.19(1)(g).

we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). For the following reasons, we summarily affirm.

On September 12, 2022, the State filed petitions to terminate Tiffany’s parental rights to Zeke and Zelda.⁴ As grounds for the termination of parental rights (TPR), the State alleged that Zeke and Zelda remained children in need of protection or services pursuant to WIS. STAT. § 48.415(2) (continuing CHIPS) and that Tiffany failed to assume parental responsibility pursuant to § 48.415(6). Tiffany pled no-contest to the failure to assume parental responsibility ground, and the court accepted her plea after conducting a colloquy. After considering the evidence submitted by the State to prove the ground, the court found that Tiffany failed to assume parental responsibility over both children, and found her unfit.⁵ The continuing CHIPS ground was subsequently dismissed without prejudice upon the State’s motion.

These cases then proceeded to the dispositional phase of the TPR proceedings. After the parties presented evidence, the circuit court explained that its role at the dispositional phase is to determine what is in the best interests of the children and that “[n]o party has any burden of

³ We note that the guardian *ad litem* for both children did not file a brief or statement of nonparticipation on appeal as required by WIS. STAT. RULE 809.107(6)(d).

⁴ The State also sought to terminate the rights of the children’s father. The father’s rights are not at issue on this appeal.

⁵ TPR cases consist of two phases: a grounds phase to determine whether there are grounds to terminate a parent’s rights, and a dispositional phase, which determines whether termination is in the child’s best interest. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶24-28, 255 Wis. 2d 170, 648 N.W.2d 402. If grounds are found by the circuit court, the parent is found “unfit,” WIS. STAT. § 48.424(4), and the case moves to the dispositional phase. *Steven V. v. Kelley H.*, 2004 WI 47, ¶26, 271 Wis. 2d 1, 678 N.W.2d 856. In the dispositional phase, the court decides if it is in the child’s best interest that “the parent’s rights be permanently extinguished.” *Id.*, ¶27; *see* WIS. STAT. § 48.426.

proof.” Ultimately the court considered the required statutory factors⁶ and found that the termination of Tiffany’s parental rights was in the best interests of Zeke and Zelda. Tiffany appeals.⁷

On appeal, Tiffany’s sole argument is that WIS. STAT. § 48.426, the statutory scheme controlling the best interests determination in a TPR proceeding, is facially unconstitutional because it violates procedural due process by not requiring the State to prove by clear and convincing evidence that termination of parental rights is in the best interests of the child. Three days after the parties filed their briefs on the issue, Tiffany filed a petition to bypass to pursue these appeals with our supreme court which then held the petition in abeyance pending its review of *State v. H.C.*, No. 2023AP1950, unpublished slip op. (WI App Mar. 5, 2024). See WIS. STAT. RULE 809.60. Our supreme court recently issued *State v. H.C.*, 2025 WI 20, 416 Wis. 2d 233, 21 N.W.3d 330, and subsequently denied Tiffany’s petition to bypass.

In an August 14, 2025 order, this court directed Tiffany to inform us whether she intended to file replacement briefs or take other action in light of *H.C.* and our supreme court’s denial of her petition to bypass. Tiffany, via her attorney, responded that she would “not seek to supplement or replace the briefs or take any other action” in these appeals.

⁶ To determine what disposition is in the best interests of the child, the circuit court must consider the following statutory factors: (a) “[t]he likelihood of the child’s adoption after termination”; (b) the child’s age and health; (c) whether the child has any substantial relationships with their family members and “whether it would be harmful to the child to sever these relationships”; (d) the child’s wishes; (e) “[t]he duration of the separation of the parent from the child”; and (f) “[w]hether the child will be able to enter into a more stable and permanent family relationship as a result of the termination[.]” WIS. STAT. § 48.426(3).

In *H.C.*, our supreme court held that “the best interests of the child governing the dispositional phase of a TPR proceeding constitutes a discretionary determination by the circuit court,” and that “[n]either the Due Process Clause nor applicable statutory law impose a burden of proof during the dispositional phase of a TPR proceeding.” *Id.*, ¶3. Therefore, we reject Tiffany’s argument that due process requires the State to prove the best interests of the child by clear and convincing evidence. Accordingly, we summarily affirm.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

⁷ Tiffany’s attorney initially commenced these appeals as no-merit appeals, *see* WIS. STAT. RULES 809.107(5m), 809.32, before moving to convert them to merits appeals. We granted the motion and converted them to appeals on the merits.