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DISTRICT I

August 19, 2025

To:

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Circuit Court Judge
Electronic Notice

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Juvenile Clerk
Milwaukee County Courthouse
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Division of Milwaukee Child Protective Services
Charmian Klyve
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Milwaukee, WI 53233-1803

S. J.

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

2025AP1324-NM In re the termination of parental rights to T.M.W. Jr., a person under the age of 18: State of Wisconsin v. S.J. (L.C. # 2024TP169)

Before White, C.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).

Sarah, by counsel, appeals the circuit court order terminating her parental rights to her child, Travis.[2] Attorney Olivia Garman, appointed counsel for Sarah, has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Sarah was informed of her right to

[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.

[2] We use pseudonyms in this matter pursuant to WIS. STAT. RULE 809.81(8).

respond to the report, but she has not done so. Upon consideration of the report, and an independent review of the record as required by ***Anders v. California***, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the circuit court's order. *See* WIS. STAT. RULE 809.21.

In March 2023, when Travis was just over two months old, a petition was filed by the Division of Milwaukee Child Protective Services (DMCPS) asserting that he was a child in need of protection or services (CHIPS). Travis had been admitted to the hospital after being injured during a domestic violence altercation between Sarah and Travis's alleged father.[3] Travis was not breathing when he was taken to the hospital, but was revived. He suffered a fractured skull behind his left eye. Travis was placed in foster care.

In August 2024, the State filed the underlying petition to terminate Sarah's parental rights to Travis. In the petition, the State alleged the continuing need of protection or services for Travis, pursuant to WIS. STAT. § 48.415(2), and Sarah's failure to assume parental responsibility, pursuant to § 48.415(6). The State also initially alleged abandonment, pursuant to § 48.415(1)(a)2, citing Sarah's failure to visit or have any contact with Travis for over three months between April 2024 and August 2024. This ground for termination was later withdrawn by the State.

Sarah waived her right to a jury trial, and the matter proceeded to a bench trial for the grounds phase of the proceedings. The circuit court heard testimony from Sarah regarding the

[3] Travis's alleged father was later excluded as his biological father. Travis's biological father remains unknown; those rights were also terminated during these proceedings. They are not at issue in this no-merit appeal and will not be addressed.

history of domestic violence between her and Travis's alleged father, including that there were at least four incidents that were reported to law enforcement; her mental health and substance abuse issues; and pending criminal charges that were not yet resolved. Sarah also testified that she did not have stable housing, and admitted to staying with Travis's alleged father.

Sarah's case manager also testified. She explained the programs that DMCPS had offered to Sarah to assist her in meeting the conditions of the CHIPS order, and Sarah's lack of participation in most of them. The case manager noted that Sarah had mental health issues but had never completed a psychological evaluation, as required under the CHIPS order. With regard to the visitation requirement under the CHIPS order, the case manager discussed the "large gaps of time" where Sarah had no contact with Travis. The case manager also testified that Sarah had moved to a residential treatment facility for a time but had several positive drug screens while she was there, and that she was ultimately released from that facility due to a rule violation involving a physical altercation.

The pediatrician who evaluated Travis at the hospital also testified regarding his injuries. The doctor also spoke of the "concerning" nature of those injuries, since they were the result of a domestic violence incident.

The circuit court determined that the State had met its burden in establishing that grounds existed to terminate Sarah's parental rights, and deemed Sarah unfit to parent Travis. The matter then proceeded to the disposition phase.

At the beginning of the dispositional hearing, Sarah requested that she be allowed to make a statement to the court and then be excused for the remainder of the proceedings, due to

the "emotionally charged situation." There was no objection from the State or the guardian ad litem.[4]

After hearing additional testimony from the case manager and from Travis's foster parent, the circuit court found that it was in Travis's best interests that Sarah's parental rights be terminated. This no-merit appeal follows.

In the no-merit report, appellate counsel first addresses whether there would be arguable merit to challenges relating to the sufficiency of the evidence presented by the State. The State must prove by clear and convincing evidence that grounds exist to terminate parental rights. WIS. STAT. § 48.31(1); ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768. Claims regarding the sufficiency of the evidence are reviewed as to "whether there is any credible evidence to sustain the verdict." ***St. Croix Cnty. DHHS v. Michael D.***, 2016 WI 35, ¶29, 368 Wis. 2d 170, 880 N.W.2d 107.

When a termination petition alleges as grounds that a child is in continuing need of protection or services, the State must prove that the child has been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice; the applicable county department has made a reasonable effort to provide services ordered by the court; and the parent has failed to meet the conditions established in the

[4] The record reflects that Sarah's trial counsel remained in the courtroom and participated in the dispositional hearing, satisfying Sarah's right to counsel under WIS. STAT. § 48.23(2). *See* ***State v. Shirley E.***, 2006 WI 129, ¶36, 298 Wis. 2d 1, 724 N.W.2d 623. This ensured that Sarah's "right to present evidence and be heard at the dispositional phase" was met. *See* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶23, 246 Wis. 2d 1, 629 N.W.2d 768.

order for the safe return of the child to the parent's home. WIS. STAT. § 48.415(2)(a).[5] The conditions for Travis to be returned to Sarah's care included regular visitation; controlling her mental health issues; resolving her pending criminal charges; and having a safe, stable home for Travis, recognizing the harm domestic violence has on children. As discussed above, the State elicited testimony about the programming DCMPS had offered to Sarah, and that she had failed to meet the conditions for Travis's return.

To support an allegation of failure to assume parental responsibility, the State must prove that the parent does not have a substantial parental relationship with the child. WIS. STAT. § 48.415(6). The term "'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). Again, the State elicited testimony that Sarah had not demonstrated such care for Travis.[6]

The no-merit report provides thorough details of the evidence presented as it relates to the elements the State had to prove, and our review of the record satisfies us that the circuit court appropriately concluded the State presented sufficient evidence to support termination.

[5] There is an additional burden of proof on the State if the child has been placed outside the home for *less* than 15 of the most recent 22 months; if that is the case, the State must also prove "that there is a substantial likelihood that the parent will not meet [the return] conditions as of the date on which the child will have been placed outside the home for 15 of the last 22 months." WIS. STAT. § 48.415(2)(a)3. Here, Travis had been placed outside the home for over 16 months at the time the petition for termination of parental rights was filed.

[6] When the State alleges multiple grounds on which a parent is unfit, the circuit court must find the parent unfit upon proof of one of those grounds. *See* ***Steven V. v. Kelley H.***, 2004 WI 47, ¶25, 271 Wis. 2d 1, 678 N.W.2d 856; *see also* WIS. STAT. § 48.415 ("Grounds for termination of parental rights shall be *one* of the following" (emphasis added)). As such, we need not review the sufficiency of the evidence for both grounds alleged by the State. However, the no-merit report concludes that the evidence was sufficient to establish both grounds, and we agree with that assessment.

Furthermore, the no-merit report notes that with regard to Sarah's waiver of a jury trial, the court engaged in a thorough colloquy to determine that Sarah understood the rights she was waiving. *See* ***Racine Cnty. HSD v. Latanya D.K.***, 2013 WI App 28, ¶21, 346 Wis. 2d 75, 828 N.W.2d 251 (stating that while not obligatory, a personal colloquy with the parent regarding waiver of the right to a jury trial is a "good idea"). Therefore, we agree with appellate counsel's assessment that there are no issues of arguable merit relating to the trial.

Appellate counsel also addresses whether there would be arguable merit to challenges relating to the disposition phase of these proceedings. "The ultimate decision whether to terminate parental rights is discretionary," giving "paramount consideration to the best interests of the child." ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). In making this determination, the circuit court must consider the factors set forth in WIS. STAT. § 48.426(3):

> **(a)** The likelihood of the child's adoption after termination.
>
> **(b)** The 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.
>
> **(c)** Whether 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.
>
> **(d)** The wishes of the child.
>
> **(e)** The duration of the separation of the parent from the child.
>
> **(f)** Whether 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.

Here, the record reflects that the circuit court expressly considered these factors. It made a number of factual findings based on the evidence presented, specifically noting that Travis had

been removed from Sarah's care for most of his life, noting the circumstances surrounding his removal and the injuries he sustained; that Sarah had not been able to "maintain the sort of consistent care and contact" with Travis to build a substantial relationship with him; and that Travis's foster parent is an adoptive resource and that he is "thriv[ing]" in her care.

The no-merit report concludes that the circuit court considered the proper factors and based its decision on the best interests of Travis. We agree with counsel's analysis that any challenge to the court's decision to terminate Sarah's parental rights would lack arguable merit.

Additionally, we have considered whether there would be any merit to assert that the circuit court failed to follow the statutory requirements regarding time limits resulting in a loss of competency. *See* ***Sheboygan Cnty. DSS v. Matthew S.***, 2005 WI 84, ¶18, 282 Wis. 2d 150, 698 N.W.2d 631 (stating that "[w]hile all time limits set forth in the Children's Code are intended to be mandatory, the legislature provided that noncompliance with the time limits may not always result in the loss of competency" if the time limits are "delayed, continued, or extended" pursuant to WIS. STAT. § 48.315). The record reflects that the court either acted within the statutory time periods for these proceedings as set forth in WIS. STAT. §§ 48.422(1)-(2), 48.424(4), and 48.427(1), or the time limits were extended for good cause and without objection pursuant to WIS. STAT. § 48.315(2)-(3). *See* ***Matthew S.***, 282 Wis. 2d 150, ¶18. Therefore, we conclude that there would be no merit to a claim alleging that the court lost competency during the pendency of the cases.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Garman is relieved of further representation of Sarah 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