

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CA06-137

MISTY RHINE

September 5, 2007

APPELLANT

V.

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. JV-2005-327-3]

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

HON. STACEY A. ZIMMERMAN,
JUDGE

APPELLEE

MOTION DENIED, REBRIEFING
ORDERED

Misty Rhine's parental rights to A.I. were terminated by a Washington County Circuit Court order entered on October 27, 2005. The termination followed a joint hearing in which the parental rights of the father, Anthony Ivers, Sr., were also terminated. Attorney Glenn Hoggard replaced Gail Segers as counsel of record on appeal, and on November 13, 2006, he tendered a belated brief and motion to withdraw, purportedly drafted in accordance with our supreme court's decision in *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 4-3(j)(1).

We consolidated Rhine's no-merit appeal with Ivers's appeals of the dependency-neglect adjudication and order relieving the Arkansas Department of Human Services of providing reunification services and the termination of his parental rights. In our February

21, 2007, opinion, we denied Mr. Hoggard's motion to withdraw, holding that counsel had failed to strictly comply with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases. *Ivers v. Arkansas Dep't of Human Servs.*, 98 Ark. App. 57, ___S.W.3d ___ (2007). We specifically noted that Rhine's appellate counsel failed to identify and discuss why it was not error for the trial court to deny Rhine's motion for a continuance that was made for the express purpose of effecting a relative placement of A.I. In ordering rebriefing, we clearly did not foreclose the possibility of having this issue addressed as a merit point.

Rhine's appellate counsel has once again filed a motion to withdraw along with a no-merit brief. In this brief, the continuance issue is discussed at length. We are not convinced, however, that arguing this issue on the merits would be "wholly frivolous." We hold that Rhine's appellate counsel has failed to comport with the requirements of *Linker-Flores*, *supra* and Arkansas Supreme Court Rule 4-3(j)(1). We therefore deny appellate counsel's motion to be relieved and order that this case be submitted in merit format.

Motion to be relieved denied; rebriefing ordered.

PITTMAN, C.J., and MILLER, J., agree.