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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-625

	Opinion Delivered: December 13, 2017
AVA MOUSE APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILD APPELLEES	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04JV-15-499] HONORABLE THOMAS E. SMITH, JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

The Benton County Circuit Court terminated the parental rights of appellant Ava Mouse to her daughter, A.G. (DOB: 1-14-15). Counsel has filed a brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*,[1] and Arkansas Supreme Court Rule 6-9(i), along with a motion to withdraw on the basis that there is no merit to this appeal. Appellant was notified of her right to file pro se points for reversal, and she has filed such points. We affirm the termination and grant counsel's motion to withdraw.

[1]359 Ark. 131, 194 S.W.3d 739 (2004).

Arkansas Supreme Court Rule 6-9(i)(1) allows counsel for an appellant in a termination-of-parental-rights case to file a no-merit petition and motion to withdraw if, after studying the record and researching the law, counsel determines that the appellant has no meritorious basis for an appeal. The petition must include an argument section that lists all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.[2] The abstract and addendum shall contain all rulings adverse to the appellant made by the circuit court at the hearing from which the order on appeal arose.[3]

This case began after Arkansas Department of Human Services (DHS) was contacted by the Bentonville Sheriff's Office on August 17, 2015, and notified that A.G.'s parents were in the process of being arrested for possession of methamphetamine and drug paraphernalia. A warrant was executed on appellant's home after she sold methamphetamine to an informant with A.G. present. DHS exercised a seventy-two-hour hold on A.G. and filed a petition for emergency custody and dependency-neglect on August 19, 2015. The court entered an ex parte order for emergency custody the same day. A.G. was adjudicated dependent-neglected in an order filed on October 13, 2015, due to inadequate supervision because of drug abuse. The court set the goal of the case as reunification and ordered DHS to provide certain services.

[2]Ark. Sup. Ct. R. 6-9(i)(1)(A).

[3]Ark. Sup. Ct. R. 6-9(i)(1)(B).

The court conducted a permanency-planning hearing on May 10, 2016. In the order entered the same day, the court found that appellant was in compliance with the case plan and that a trial home placement with appellant may start. In the permanency-planning order entered on July 5, 2016, the court found that appellant was partially compliant, but it nonetheless returned custody of A.G. to appellant. In the permanency-planning order entered on October 25, 2016, the court found that appellant was not in compliance with the case plan; however, it allowed appellant to maintain custody of A.G. The court ordered appellant to participate in a drug-and-alcohol assessment, to promptly respond to CASA and DHS when contacted, to call DHS weekly, and to attend every H.E.L.P. meeting in Siloam Springs. The court also ordered appellant to complete a hair-follicle test that day.

DHS field a petition for emergency custody and dependency-neglect on November 17, 2016, stating that on November 15, 2016, DHS had received confirmation that a hair-follicle test performed on A.G. was positive for methamphetamine. Appellant had a positive hair-follicle test for methamphetamine the previous week. The court entered an ex parte order for emergency custody on November 18, 2016. In the probable-cause order of November 22, 2016, the court noted that the circumstances of this removal were the same as the original removal and that no adjudication was necessary. The court held a disposition hearing on December 6, 2016. In the order filed the same day, the court set a concurrent goal of adoption and reunification. Appellant was ordered to appear at DHS every Monday. DHS filed a petition for the termination of parental rights on February 24,

2017, alleging several grounds to support the termination of appellant's parental rights. The court scheduled a termination-of-parental-rights hearing for March 14, 2017.

The termination hearing took place on March 14, 2017. At the beginning of the hearing, appellant read a statement to the court in which she admitted that she had not had any contact with A.G. since the child was removed the second time and that she had not had any contact with anyone in the case. She said that she had "remained high" since A.G. was removed because she "didn't want to face reality" or her "sober thoughts." She said that prior to a month and a half ago, she was willing to sign away her parental rights but that she has since changed her mind and wanted another chance. Her attorney informed the court that appellant was currently serving one year in RPF. Sarah Harper, a DHS worker, testified that appellant failed to follow the case plan and that she continued to use drugs even after she had completed services offered by DHS. She stated that A.G. faced potential harm if returned to appellant due to the drug issues. She also testified that appellant's jail sentence was a substantial period in A.G.'s life. She stated that she was not aware of any services that DHS could offer appellant to change the outcome of this case. She opined that A.G. was adoptable. Harper was the only person to testify at the hearing.

The trial court entered an order terminating appellant's parental rights on April 25, 2017. The court found that there was a likelihood that A.G. would be adopted and that returning A.G. to appellant would result in potential harm. As to the statutory grounds, the order stated in pertinent part:

a. That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

b. The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile. The parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

c. That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

d. The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to have subjected any juvenile to aggravated circumstances, including when there is little likelihood that services to the family will result in successful reunification.

Appellant filed a timely notice of appeal on May 16, 2017. This appeal followed.

Our standard of review in termination-of-parental-rights cases is well settled; we review these cases de novo.[4] We will not reverse the trial court's rulings unless its findings are clearly erroneous.[5] In determining whether a finding is clearly erroneous, we give due deference to the opportunity of the trial court to judge the credibility of witnesses.[6] In

[4]*Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

[5]*J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

[6]*Dinkins*, *supra*.

order to terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground for termination exists and that termination is in the child's best interest.[7] Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established.[8]

The rights of natural parents are not to be passed over lightly. The termination of parental rights is an extreme remedy and in derogation of the natural rights of parents.[9] As a result, there is a heavy burden placed on the party seeking to terminate the relationship.[10] However, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child.[11]

We agree with counsel that, under these circumstances, no meritorious argument for reversal can be made. Although appellant filed pro se points for reversal in the form of a letter to this court, it is simply a plea for this court to return A.G. to her custody. The letter describes how appellant turned to drugs after the death of her mother and how she has benefited from being in "a treatment based facility." However, this court does not

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[7]Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2017).

[8]*Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992).

[9]*Fox v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 666, 448 S.W.3d 735.

[10]*Id.*

[11]*Smithee v. Ark. Dep't of Human Servs.*, 2015 Ark. 506, 471 S.W.3d 227.

weigh the evidence and cannot second-guess the trial court's credibility determinations.[12] A review of the record convinces us that counsel has complied with the requirements for no-merit briefs in termination-of-parental-rights cases. Therefore, we affirm the termination of appellant's parental rights and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ABRAMSON and MURPHY, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Mary Goff, Office of Chief Counsel, for appellee.

Chrestman Group, PLLC, by: *Keith L. Chrestman*, attorney ad litem for minor child.

[12]*Posey v. Ark. Dep't of Human Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007).