

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-17-396

KIMBERLY BENTLEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered February 14, 2018

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. 66F]V-14-513]

HONORABLE LEIGH ZUERKER,
JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

LARRY D. VAUGHT, Judge

This is an appeal from the order of the Sebastian County Circuit Court that terminated appellant Kimberly Bentley’s parental rights in her daughter, C.J. (born July 3, 2014). Bentley’s counsel has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i), stating that there are no issues of arguable merit for appeal. Counsel lists the termination decision and fifteen evidentiary rulings as the circuit court’s adverse rulings and offers an explanation as to why those rulings are not meritorious grounds for reversal. Bentley was provided a copy of her counsel’s brief and motion, and she was afforded an opportunity to file pro se points for reversal. She filed pro se points, and the Arkansas Department of Human Services (DHS) filed a response to the pro se points.

Having reviewed this appeal under the proper standards, we hold the record reveals extensive adverse rulings that counsel abstracted but did not list and explain why each adverse ruling was not a meritorious ground for reversal as required by Arkansas Supreme Court Rule 6-9(i)(1)(A). Therefore, we deny the motion to withdraw as counsel and order rebriefing.

In dependency-neglect cases, if, after studying the record and researching the law, appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. Ark. Sup. Ct. R. 6-9(i)(1) (2017). The petition must include an argument section that lists all adverse rulings that the parent received at the circuit court level and explain why each adverse ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 6-9(i)(1)(A). The petition must also include an abstract and addendum containing all rulings adverse to the appealing parent that were made during the hearing from which the order on appeal arose. Ark. Sup. Ct. R. 6-9(i)(1)(B).

Our de novo review of this case reveals that the termination hearing encompassed six days: November 18, 21, 22, December 2, 8, and 13, 2016. The record contains eleven volumes. Six of the volumes contain hearing transcripts. In two of the transcript volumes (564 pages), there are thirty-six evidentiary rulings that were adverse to Bentley.¹ Counsel has abstracted these thirty-six adverse rulings but has failed to list and explain, in the no-merit brief, why each adverse ruling is not a meritorious ground for reversal—a violation of Arkansas Supreme Court Rule 6-9(i)(1)(A).

¹These thirty-six adverse evidentiary rulings are in addition to the fifteen adverse evidentiary rulings abstracted and listed and discussed in counsel's brief.

In *Sartin v. State*, 2010 Ark. 16, at 1, 362 S.W.3d 877, 878, the supreme court held that the failure to list and discuss all adverse rulings in a no-merit termination-of-parental-rights case does not automatically require rebriefing, if the ruling would clearly not present a meritorious ground for reversal. We decline, however, to overlook the omissions in the instant case due to the sheer volume of them. Therefore, we deny counsel's motion to withdraw and order rebriefing. We direct counsel to list and explain why the thirty-six adverse rulings in two of the transcript volumes of the record, omitted from counsel's brief, do not present meritorious grounds for reversal. We do not limit counsel to these thirty-six adverse rulings. There are four other volumes of the record (an additional 604 pages) that contain hearing transcripts and that likely contain additional evidentiary rulings that were adverse to Bentley. Therefore, we order counsel to review these additional volumes and list and explain all other adverse rulings contained therein.

We do not direct that counsel's substituted brief be on a merit or no-merit basis; rather, we leave that to counsel's professional judgment. In either case, we order counsel to submit a substituted brief within thirty days of this opinion. Ark. Sup. Ct. R. 4-2(b)(3). If counsel chooses to again file an *Anders* brief, the clerk of this court will forward the brief to Bentley so that, within thirty days, she will have the opportunity to raise any points she so chooses in accordance with Ark. Sup. Ct. R. 4-3(k)(2), and DHS shall be afforded the opportunity to file a responsive brief.

Motion to withdraw denied; rebriefing ordered.

ABRAMSON and HIXSON, JJ., agree.

Lightle, Raney, Streit & Streit, LLP, by: *Jonathan R. Streit*, for appellant.

Mary Goff, Office of Chief Counsel, for appellee.

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