

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-573

ANNA MCKELLAR

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** November 18, 2009

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT,  
[JV-07-368]

HONORABLE CINDY THYER,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

---

## DAVID M. GLOVER, Judge

The Craighead County Circuit Court terminated Anna McKellar’s parental rights to A.G. (born April 25, 2003); T.F. (born April 9, 2006); and S.M. (born June 26, 2007). McKellar’s attorney 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 Ark. Sup. Ct. R. 6-9(i), explaining why there are no issues of arguable merit for appeal. Our clerk’s office mailed a copy of the brief and motion to McKellar at her last known address, informing her of her right to submit points for reversal. The packet was returned “Moved, Left No Address, Unable To Forward.” Our clerk’s office contacted the Public Defender, who had no updated address. Consequently, McKellar has filed no pro se points for reversal. For the following reasons, we affirm the termination order and grant counsel’s motion to

withdraw.

On April 9, 2007, the Arkansas Department of Human Services (DHS) opened a protective-services case on McKellar's family after one-year-old T.F. received a second-degree burn on his face and neck from an unknown offender. On December 22, 2007, DHS received a hotline report that A.G. had scratches on her face, which the child attributed to a dog or an older sibling. A DHS caseworker visited the home and observed abrasions and bruises on T.F.'s face as well. McKellar and her husband stated that T.F. had a history of temper tantrums, head banging, and throwing himself on the floor, and that A.G. had struck him in the face with a toy. The caseworker instructed McKellar to take T.F. to the emergency room, where it was determined that the child's injuries were more consistent with abuse than with the explanations provided by McKellar. On December 28, 2007, the circuit court granted emergency custody of McKellar's three children to DHS.

On January 10, 2008, the court found probable cause for the children's removal and for maintaining them in DHS custody. The court ordered McKellar to comply with court orders; to cooperate with DHS and all service providers; to complete parenting classes; to watch "The Clock Is Ticking" video; to obtain and maintain stable housing and employment; to submit to a psychological evaluation and follow recommendations; to submit to an expedited drug-and-alcohol assessment and follow recommendations; to submit to random drug screens; and to maintain weekly contact with the DHS caseworker.

On February 1, 2008, the court adjudicated the children dependent-neglected due to

physical abuse in the home, injuries at variance with the history given, and parental unfitness due to drug use. The court established a goal of reunification and ordered that McKellar, in addition to the above listed tasks, complete inpatient drug treatment, maintain medication compliance, remain drug free, and comply with the DHS case plan. A review order dated June 13, 2008, maintained the goal of reunification and recited that DHS had made reasonable efforts to provide services. The court also found that McKellar had watched “The Clock Is Ticking” video; completed parenting classes; completed inpatient drug treatment; attended a twelve-week outpatient program; maintained contact with DHS; remained drug-free; and visited the children. However, on December 23, 2008, DHS filed a petition to terminate McKellar’s parental rights based on McKellar’s failure to, among other things, maintain appropriate housing and employment, follow the recommendations of her psychological evaluation, and remain drug free.

On January 13, 2009, the court terminated reunification services and changed the goal of the case to termination of parental rights. The court found that McKellar had failed to maintain appropriate housing or stable employment; failed to attend counseling as recommended; was not medication compliant; canceled or was late for several visits with the children; and tested or self-reported positive for opiates, amphetamines, and methamphetamine in October 2008. The court also observed that A.G. had reported sexual abuse by McKellar’s husband and that McKellar had “no appreciation of the seriousness of the abuse.” Additionally, the court found that McKellar had threatened suicide and had

demonstrated inappropriate behavior during visits. On January 30, 2009, McKellar consented to termination of her parental rights, then withdrew the consent approximately one week later. The court scheduled a termination hearing for February 10, 2009.

At the termination hearing, DHS family-service worker Heather Clark testified that McKellar had been diagnosed with bipolar disorder, polysubstance dependence, and borderline personality disorder. However, Clark stated that McKellar did not follow recommendations for counseling and medication management and that McKellar had been discharged from therapy just a week earlier for failing to attend appointments. Clark also testified that McKellar relapsed into drug use in October 2008 despite having completed drug treatment and that McKellar began missing or being late for visitation with the children during the same period. According to Clark, McKellar also minimized her husband's abuse of the children, even after viewing a photograph of T.F. in which the child had two black eyes, a split lip, and finger marks on his jaws and cheeks, and after being informed that her husband had sexually abused A.G. Clark additionally testified that McKellar never had stable employment or stable housing, having recently been evicted from one home and having lived in another in which drugs were being used. Clark also recounted that McKellar had previously lost custody of two other children and had lost custody of A.G. to the child's maternal grandmother, though she regained custody of A.G. at some point. Clark testified further that McKellar's relationship with her husband was volatile and that McKellar had come into the DHS offices with strangulation marks, black eyes, and bruises. According to

Clark, McKellar had recently been charged with third-degree domestic battery in a case in which McKellar's husband was the victim. Finally, Clark testified that the children were adoptable.

Social Worker Mandy Smith testified that A.G. had disclosed inappropriate sexual behavior by McKellar's husband but that McKellar was adamant that the abuse did not occur. During Smith's testimony, McKellar left the courtroom and refused to return.

Following the hearing, the court terminated McKellar's parental rights to A.G., T.F., and S.M. The court found that termination was in the children's best interest, citing the great likelihood of adoption and the great risk of potential harm in returning the children to McKellar's custody. The court also found numerous grounds for termination, including that, subsequent to the filing of the original dependency-neglect petition, other factors or issues arose which demonstrated that returning the children to McKellar was contrary to their health, safety, and welfare and that, despite the offer of appropriate family services, McKellar manifested an incapacity or indifference to remedying the subsequent factors or rehabilitating her circumstances. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Supp. 2009). McKellar appealed from the termination order.

Upon reviewing the record on this case, we agree with counsel that there are no issues of arguable merit for appeal. DHS produced clear and convincing evidence of McKellar's continued drug use many months into the case; her failure to attend counseling or manage her medication despite serious psychological disorders; her failure to acquire appropriate

Cite as 2009 Ark. App. 781

housing and employment; her inability to appreciate the seriousness of her husband's abuse of the children; her prior loss of custody of other children; and her violent relationship with her husband. Given this proof, we cannot say that the circuit court clearly erred in finding that termination was in the children's best interest and that at least one statutory ground for termination existed. We therefore conclude that an appeal on the merits would be wholly frivolous. See *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, 217 S.W.3d 107 (2005). Accordingly, we affirm the termination order and grant the motion to withdraw.

Affirmed; motion to withdraw granted.

GLADWIN and BROWN, JJ., agree.