

Cite as 2010 Ark. App. 526

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-173

KIMBRA HUGHES

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered JUNE 23, 2010APPEAL FROM THE POINSETT
COUNTY CIRCUIT COURT
[JV-08-112]HONORABLE RALPH WILSON, JR.,
JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**RITA W. GRUBER, Judge**

This is an appeal from an order terminating appellant's parental rights to her children J.H., born November 29, 2006, and A.M., born March 10, 2008.¹ Appellant's counsel has filed 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), asserting that there are no issues that would support a meritorious appeal and requesting to be relieved as counsel. The clerk of this court mailed a certified copy of counsel's motion and brief to appellant's last known address informing her of her right to file pro se points for reversal. She has not done so. We grant counsel's motion to withdraw and affirm the order terminating

¹The court's order also terminated the parental rights of legal/putative father Joseph Hueitt, legal/putative father Edward Moore, and all other putative fathers of the children. Neither Mr. Hueitt nor Mr. Moore attended the termination hearing or filed an appeal.

Cite as 2010 Ark. App. 526

appellant's parental rights.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 331, 255 S.W.3d 505, 507 (2007). Grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* 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. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

We first address the issue presented in the no-merit brief regarding whether there is clear and convincing evidence to support the circuit court's decision to terminate appellant's parental rights. *See Linker-Flores v. Ark. Dep't of Human Servs.(II)*, 364 Ark. 224, 217 S.W.3d 107 (2005). The trial court in this case determined that it was in the children's best interest to terminate appellant's parental rights and found that DHS had proven four grounds for termination: Ark. Code Ann. § 9-27-341(b)(3)(B)(i), (ii)(a), (iv), and (ix)(a)(3)(B)(I) (Repl. 2009). First, the trial court determined that termination was in the children's best interest

Cite as 2010 Ark. App. 526

considering the likelihood that they would be adopted and the potential harm caused by returning them to the custody of appellant. The temporary custodian in this case testified that he wanted to adopt both children as quickly as the court would allow. Further, the DHS caseworker testified to appellant's inability to maintain stable or adequate housing. During the twelve-month period the children were in DHS custody, appellant lived in a relative's home without electricity, a Travel Air Motel, several addresses in Wynne, somewhere in Mulberry, a car in a West Memphis parking lot, a hotel in West Virginia, and an apartment without electricity in West Virginia. There was no evidence that any of these places were adequate for the children to live. This is sufficient evidence to support the trial court's finding that termination was in the children's best interest.

We also believe that sufficient evidence supports the trial court's findings of statutory grounds. The court first found that the children had been adjudicated by the court to be dependent-neglected and had continued to be out of appellant's custody for twelve months and, despite a meaningful effort by DHS to rehabilitate appellant and correct the conditions that caused removal, the conditions had not been remedied. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i). The children came into DHS custody on August 25, 2008, due to the parents' lack of stable housing. The children were living with their grandfather at some friends' home because his electricity had been turned off. The DHS caseworker noted that J.H. was dirty and had a diaper rash. The children were adjudicated dependent-neglected on October 29, 2008, based on inadequate supervision. Although appellant did not attend the

Cite as 2010 Ark. App. 526

termination hearing, the evidence indicated that she still had no stable home adequate to house her children. Nor was there any evidence that she was employed.

Proof of only one statutory ground is sufficient to terminate parental rights. *Gossett v. Arkansas Dep't of Human Servs.*, 2010 Ark. App. 240, ___ S.W.3d ___. We agree with the circuit court's ruling that there was clear and convincing evidence to support its decision to terminate appellant's parental rights upon this ground. Therefore the court's findings on the other three grounds for termination need not be discussed.

Appellant's counsel also included in her brief three rulings adverse to appellant and explained why they would not support a meritorious appeal. First, appellant's counsel objected to DHS's admission of the emergency custody order on the basis of relevance and the fact that it was issued before appellant had notice and a chance to defend herself. The court admitted the order because it was a certified copy of the order in the case. Counsel contends that appellant's case was not harmed because she was afforded the opportunity to defend herself, which she did with counsel present, at the probable cause hearing five days after the order was entered. We agree.

The second adverse ruling in counsel's brief is an objection by appellant's counsel to a caseworker's testimony regarding certain dates. The court did not rule on the objection, but the caseworker continued to testify without using dates. When the caseworker again began testifying about particular dates, appellant's counsel objected and requested DHS to lay a proper foundation as to whether the dates were given to the caseworker by appellant. The

Cite as 2010 Ark. App. 526

court sustained the objection. The caseworker then testified that the dates came from information on receipts of residency provided to the caseworker by appellant or from direct conversations between the caseworker and appellant. Because the proper foundation was laid, no further objection or ruling was made. Thus, there was no ruling adverse to appellant.

Finally, appellant's counsel attempted to object to alleged hearsay. DHS's counsel responded, stating that she was seeking to submit a statement of appellant and thus it was not hearsay because it was an admission of a party opponent. Appellant's counsel said that she was not objecting to statements made by a party. Appellant's counsel made no further objection. Appellant essentially withdrew her objection.

We note that there was one additional adverse ruling that counsel's brief failed to address. At the beginning of the termination hearing on November 9, 2009, appellant's counsel requested a continuance because she had been unable to reach appellant and appellant was not present at the hearing. Counsel agreed, however, that appellant had been served with notice of the termination hearing at the permanency planning hearing on August 24, 2009. Appellant was also personally served after the hearing with an order to appear at the termination hearing. In spite of this notice and counsel's repeated attempts to contact appellant, appellant failed to contact her counsel after the permanency planning hearing or attend the termination hearing. The court denied the motion for continuance. We may affirm a termination-of-parental-rights case where an adverse ruling was not included in a no-merit brief if the omitted adverse ruling would clearly not be a meritorious ground for appeal.

Cite as 2010 Ark. App. 526

Sartin v. State, 2010 Ark. 16, ___ S.W.3d ___. In our view, the court's denial of counsel's motion for a continuance would clearly not be a meritorious ground for appeal.

Based on our review of the record and the brief submitted to us, we conclude that counsel has complied with Rule 6-9(i) and that the appeal is without merit. Accordingly, we affirm the termination order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

VAUGHT, C.J., and BROWN, J., agree.