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ARKANSAS COURT OF APPEALS

DIVISION I

No. CA 10-282

BETTY COLLINS and DEVIN SIMMONS APPELLANTS V. ARKANSAS DEPARTMENT OF HUMAN SERVICES, MINOR CHILD APPELLEES	Opinion Delivered SEPTEMBER 1, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION, [NO. JV2008-1614] HONORABLE WILEY A. BRANTON, JR., JUDGE AFFIRMED; MOTIONS GRANTED

JOHN B. ROBBINS, Judge

Appellants Betty Collins and Devin Simmons appeal from the termination of their parental rights to their one-year-old son, DS, as decided by the Pulaski County Circuit Court, in an order filed on December 17, 2009. After more than a year's provision of services, appellants were found not to have corrected the causes for removal of the child, primarily based upon the collective mental-health issues and home-life instability. Each of their attorneys have filed a no-merit brief and a motion to be relieved, stating that there is no issue of arguable merit and that each one should be relieved as counsel.

In compliance with *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004) and Arkansas Supreme Court Rule 6-9, their attorneys ordered the entire record and examined it for adverse rulings, explaining why each would not support a meritorious argument for reversal. Appellants were provided a copy of their respective

attorney's brief and motion, but neither filed any pro se points for reversal. The Department of Human Services (DHS) did not file a brief. After review of this appeal under the proper standards for no-merit termination-of-parental-rights cases, we affirm the order terminating their parental rights and grant both motions to be relieved as counsel.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). 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. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). The appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

As to Betty, the single adverse ruling in this case was the decision to terminate her parental rights. DHS alleged that Betty had not had custody of her child in over a year and, despite the provision of services to her, she had not remedied the causes for removal. DHS also contended that Betty had her parental rights terminated to two siblings of DS, providing another basis upon which to terminate her rights. There was no question that one-year-old

DS was adoptable, and there was potential harm to DS if returned to her because Betty was mentally retarded and suffered severe mental instability.

Betty was so impaired that she was appointed her own guardian ad litem in these proceedings. She was found not to be able to care for her own needs, much less a child's. Her present mental condition had not changed from the psychological profile conducted by the same psychological examiner ten years before this case was opened. By way of example, in the midst of her testimony at the termination hearing, Betty "zoned out," refused to answer any more questions, and refused to physically step down from the witness stand. This behavior was typical when Betty encountered any frustration or stress. The judge found that DHS had proved both bases to terminate her parental rights, noting that Betty "has an irremediable inability to parent any child" and that no amount of services would change that fact. We agree with Betty's counsel that there is no issue of arguable merit to advance on appeal, challenging the trial judge's finding that her parental rights should be terminated.

Moving to Devin, one adverse ruling was the termination of his parental rights to DS. The sole basis alleged and proved regarding Devin was that DS was out of his custody for more than a year, and despite the provision of services, Devin did not remedy the causes for removal. Devin and Betty were not married, but they lived together in an efficiency apartment for the duration of this DHS case.

Devin did manage to complete part of the case plan requirements, but he did not benefit from those services. He had taken parenting classes but he did not exhibit proper

parenting skills during visitations, bringing DS snacks that were sugary candy and a choking hazard for a child his age. He had attended some therapy sessions but quit months prior to the termination hearing. He did not hold a job but rather depended on Betty's disability check. A psychological profile showed that Devin had cocaine dependence, a schizotypal personality disorder, and borderline intellectual functioning. His overall IQ was 80.

Devin's relationship with Betty was described as "chaotic." Devin had a criminal past, including crimes against Betty. The judge recounted Dr. Deyoub's opinion that Devin was "unfit, bizarre and off the wall" with "no prospect of stability." The judge concluded that although Devin held more promise than Betty, he was nonetheless unfit to parent, with or without Betty. We agree with counsel that there is no viable argument to present in opposition to the decision to terminate Devin's parental rights to DS.

There was another potentially adverse ruling to Devin during the termination hearing, which his attorney points out and explains why it holds no merit. Devin's attorney objected to the case worker repeating what Devin's counselor told her about Devin's compliance, as being hearsay. The judge sustained the objection and limited the case worker's testimony to be admitted only to explain the basis of her recommendation to terminate parental rights. This was not an abuse of discretion where the trial court limited the purpose for which this testimony could be considered. Furthermore, the statements attributed to the therapist were harmless in light of the overwhelming evidence to support termination of Devin's parental rights.

We affirm the termination of their parental rights to DS, and we relieve both attorneys from representation.

GLADWIN and BAKER, JJ., agree.