

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION II

CA05-947

May 3, 2006

RICKEY JOE WILLIAMS
APPELLANT

AN APPEAL FROM GARLAND
COUNTY CIRCUIT COURT
[JV04-186]

V.

HON. VICKI S. COOK, JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and
R.W. and R.W., Minor Children
APPELLEES

REBRIEFING ORDERED

This is a no-merit appeal from an order terminating the parental rights of appellant Rickey Williams with regard to his two sons, R.V.R., d.o.b. 08/22/98, and R.L.R., d.o.b. 4/30/00. Appellant's counsel has filed a request to be relieved, asserting that there is no meritorious basis for an appeal from the termination of appellant's parental rights. We order rebriefing because counsel fails to address two adverse rulings.

Appellee Arkansas Department of Human Services (ADHS) first took emergency custody of appellant's sons on March 14, 2003, when they were removed from the custody of their mother, Shawn Williams.¹ The children were subsequently determined to be dependent-neglected and were placed into foster care with their aunt. Custody was thereafter returned to their mother on September 23, 2003.

However, the mother then left the children in appellant's care for approximately nine

¹Shawn Williams's parental rights were also terminated but that determination is not the subject of this appeal.

weeks in early 2004. A FINS petition was filed on R.V.R. due to his excessive absences from school and excessive tardiness. R.V.R. was described as being “behind academically,” but his attendance improved while he was in his father’s care. Even though appellant tested positive for marijuana usage at the April 13, 2004 hearing, the court allowed him to retain custody of his sons at that time. However, the juveniles were again placed in appellee’s custody on April 26, 2004, and were again determined to be dependent-neglected. Appellant was allowed personal visitation and telephone visitation. The goal of the case plan was reunification. Appellant was ordered to comply with the case plan, to obtain stable employment, to complete parenting classes, to regularly attend Narcotics Anonymous (NA) meetings and obtain a sponsor, and to remain drug-free.

Review hearings were conducted on August 25, 2004, and November 17, 2004; the permanency planning hearing was held on January 26, 2005, during which the trial court changed the goal of the case to termination. ADHS filed a petition to terminate appellant’s parental rights on February 7, 2005. The termination hearing was held on March 9, 2005.

Appellant was incarcerated in July 2004 for possession with intent to deliver a controlled substance, and by his own admission, had an outstanding arrest warrant in Alabama on a similar charge when termination hearing was held. He remained incarcerated during the pendency of the proceedings in this case and testified at the termination hearing that he would be released in approximately eleven months. Prior to appellant’s incarceration, he completed parenting classes and attended eighty NA meetings but never obtained a sponsor. After hearing the testimony of appellant, various ADHS employees, the boys’ counselors, the foster mother, and the CASA volunteer, the trial court determined that appellant’s parental rights should be terminated. His counsel subsequently filed this no-merit appeal.

Because appellant's counsel seeks to withdraw, his brief must include an argument section that lists all rulings adverse to his client that were made on any objection, motion, or request made by any party and provides an explanation as to why each ruling is not a meritorious ground for reversal. *Causer v. Arkansas Dep't of Human Servs.*, ___ Ark. App. ___, ___ S.W.3d ___ (Dec. 14, 2005). If a no-merit brief fails to address all adverse rulings, this court is to remand the case for rebriefing. *Id.*

There are two adverse rulings not addressed by counsel that warrant rebriefing. First, during the cross-examination of Gail Hovell, ADHS's adoption specialist, appellant's counsel questioned whether Hovell concluded that 99.9% of the children were adoptable. The agency's counsel objected on relevance grounds; the trial court sustained the objection, finding that the witness was credible. Second, appellant's counsel asked Hovell how many children were awaiting adoption for whom she had concluded were adoptable and whose parents' rights had been terminated. ADHS's counsel again objected on relevance grounds. The court did not rule that the question was irrelevant but stated its belief that Hovell could not answer the question.

We note that the likelihood that a juvenile is adoptable is a factor that the trial court is to consider under § 9-27-341(b)(3)(A)(I) (Supp. 2005) before terminating a parent's rights and that the primary evidence of the adoptability of the children in this case was based on Hovell's opinion. Thus, we remand for appellant's counsel to address the adverse rulings regarding the relevancy of Hovell's testimony concerning the adoptability of appellant's children.

Rebriefing ordered.

PITTMAN, C.J., and ROAF, J., agree.