

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-757

CLAUDETTE DELOACH

APPELLANT

V.

ARKANSAS DEPT. OF HUMAN
SERVICES and J.D. and M.A., MINOR
CHILDREN

APPELLEES

Opinion Delivered October 29, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
JUVENILE DIVISION
[NO. JN2006-1651]

HONORABLE JOYCE WILLIAMS
WARREN, JUDGE

AFFIRMED; MOTION GRANTED

LARRY D. VAUGHT, Judge

This appeal is brought by Claudette DeLoach, whose parental rights as the mother of M.A., born on August 10, 2007, and J.D., born on July 18, 2006, were terminated. Counsel for Ms. DeLoach 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. 4-3(j)(1). The clerk of this court sent a certified copy of Ms. DeLoach's attorney's brief and the motion to be relieved to Ms. DeLoach, informing her that she had the right to file pro se points for reversal. Ms. DeLoach filed a letter containing her pro se points on August 18, 2008. The Department of Human Services did not file a response.

Counsel's motion was accompanied by a brief stating that only one adverse ruling was made at the termination hearing and explaining why there is no meritorious ground for reversal. It included a discussion of the sufficiency of the evidence to support the termination

order. Ms. DeLoach's counsel has abstracted the testimony and included in the addendum all of the exhibits from the termination hearing. We agree with her attorney that this appeal lacks any merit.

J.D. was taken into emergency custody on August 11, 2006, when Ms. DeLoach's mental illness rendered her unable to care for her newborn or herself. The court ordered her to have a psychological evaluation; to participate in individual counseling; to refrain from using illegal drugs or alcohol; and to obtain stable housing and employment. Ms. DeLoach followed through with her mental-health assessment and tested negative on some drug screens. However, after she gave birth to M.A. in August 2007, her emotional state deteriorated. She asked DHS to take the child because she could not cope and had no help from M.A.'s father; on September 20, 2007, DHS took emergency custody of M.A. The court suspended Ms. DeLoach's visitation after she had violent outbursts and made threats during subsequent hearings.

DHS filed petitions for termination of Ms. DeLoach's parental rights to M.A. and J.D. At the termination hearing, the caseworker recommended that Ms. DeLoach's parental rights be terminated because her mental illness had not been resolved and she could not protect the children if they were returned, even though she had tried to follow the court's orders to the best of her ability. An adoption specialist testified that the chances for the children to be adopted together were high and that there were interested families. Jimmy Wilson, who provided therapy and intensive family services to Ms. DeLoach, testified that, although she had done her the best, he did not see reunification as a possibility and recommended termination.

Dr. Paul Deyoub, who gave Ms. DeLoach a psychological evaluation, also recommended that her parental rights be terminated. He diagnosed her as having a major depressive disorder, severe with psychotic features; a personality disorder with borderline, inadequate, and antisocial traits; and borderline intellectual functioning. He said that she was too disturbed to rear any child; that no reunification services could change this; that any child in her care would be at risk; that she had been mentally ill since early childhood; that she was in denial about her mental illness; that she lacked insight; and that reunification was not a realistic possibility.

The only adverse ruling was made when Ms. DeLoach's guardian ad litem objected (on the basis of leading the witness) to DHS's counsel's question to the caseworker about why the seventy-two-hour hold was taken on J.D. on August 11, 2006. The court agreed, but let the testimony in anyway, because those facts had already been admitted into evidence within the previous court orders. We see no prejudice in this ruling.

On April 9, 2008, the circuit court terminated Ms. DeLoach's parental rights, stating:

The mother has mental health issues that are still so significant and severe that she cannot care for the juveniles. She is in jail today. The juveniles' health and safety would be continually at risk of harm if the juveniles were returned to the mother's custody. The mother, Claudette DeLoach, is not mentally capable of caring for the juveniles. The mother has been diagnosed as having major depressive disorder with severe psychotic features. At the conclusion of the hearing held on November 16, 2007, the mother became very emotional and angry and had to be restrained. The mother is not mentally capable of caring for either juvenile. The mother has a history of psychiatric issues, including psychosis, coupled with a personality disorder leading to extreme anger outbursts, lack of insight, an IQ of 74, no family support, and problems with impulse control and judgment.

In her pro se points on appeal, Ms. DeLoach states:

I am writing to ask the court to overturn the termination of my parental rights

to my children, M.A. and J.D. I am receiving services through Center for Women in Transition where sister Leann McNally is providing me with services. At Safe Places, I am receiving counseling to deal with issues that occurred in my past. I am also receiving services through Open Hands clinic. I am taking Celexa for my depression. I am working 8 hour shifts at Our House family shelter as a gatekeeper. I am putting 75% of earning in savings toward the goal of finding financial stability in my life. I have also taken money management classes and received a money management certificate. Through classes offered through Safe Places, I am learning better parenting methods and anger management. Yes I have had a bad childhood. But this experience has changed my life. I will not give up on fighting to gain my parental rights to get my two children back. I am also finding resources to better assist me in finding help I need in regards to self improvements. I am also working toward obtaining a high school diploma. Getting my kids back means a lot to me because I will be able to be a parent and they can get a chance to know me and I can be able to show them a better way of life. I am not only doing this for my kids I want to become a better parent and to be a positive role model for my two kids.

Certainly, termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. However, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Pursuant to Ark. Code Ann. section 9-27-341(b)(3) (Repl. 2008), an order forever terminating parental rights shall be based upon a finding by clear and convincing evidence that termination is in the best interest of the child. Specifically, section 9-27-341 requires that the best interest analysis include the likelihood that the juvenile would be adopted if the termination petition were granted and the potential harm caused by returning the child to the custody of the parent. *Id.* Further, there must be a showing of statutory grounds in support of the termination. *Id.*

Here, DHS's petition alleged that the child had been out of the home for a period in excess of twelve months, that the parent had abandoned the juvenile, that the child's parent could not be rehabilitated due to "mental illness, emotional illness, or mental deficiencies,"

and that the child had been subjected to aggravated circumstances. And while there is no question that Ms. DeLoach has tried her best to overcome these problems, it is clear that DHS carried its burden on most, if not all, of the alleged grounds. Further, it is axiomatic that a parent's rights may be terminated regardless of their compliance (or lack thereof) with a case plan. *Wright, supra*. What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id.* Unfortunately, in this case, it did not. We do not doubt her love for her children or her desire to improve her situation, and we commend her efforts to achieve better mental health and stability. At the time of the termination hearing, however, she was not yet able to be an adequate parent and the experts could not predict when she might achieve that goal, if ever.

After carefully examining the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit motions in termination cases, and we hold that the appeal is wholly without merit. Consequently, we grant counsel's motion to withdraw and affirm the order terminating Ms. DeLoach's parental rights.

Affirmed; motion granted.

ROBBINS and MARSHALL, JJ., agree.