

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1073

ERIKA JORDAN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered October 5, 2011

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. JV-2009-26]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

The Conway County Circuit Court terminated appellant Erika Jordan's parental rights in her minor child, J.J. Jordan's attorney originally filed a no-merit brief and motion to withdraw, asserting that no meritorious grounds for appeal existed. We denied the motion and ordered counsel to brief the issue of whether the circuit court erred in rejecting Jordan's request for additional time to consider voluntarily terminating her parental rights. *Jordan v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 266. Counsel has now filed a brief seeking reversal on that issue. We affirm the circuit court's ruling.

On April 17, 2009, at 1:00 a.m., a Conway County Sheriff's deputy arrested Jordan after finding components of a methamphetamine lab in the car she occupied with her boyfriend. A search of Jordan's home revealed three-year-old J.J. wandering alone near other components of the lab. DHS obtained emergency custody of J.J., and the circuit court adjudicated her dependent-neglected. A goal of reunification was established, but the goal was

changed to termination of parental rights when Jordan failed to remain drug free or comply with court orders. While awaiting her June 24, 2010 termination hearing, Jordan was arrested on new drug charges and was pregnant with another child.

At the start of the termination hearing, Jordan's attorney informed the court that she and Jordan had discussed "the possibility" of consenting to termination. Counsel asked the court to "withhold its judgment for long enough that if I meet with my client tomorrow and she signs a consent, that her ten days would run and then the Court could enter an order if it was so inclined to accept her voluntary termination and let the order reflect that it was voluntary."¹ The court took the request under advisement.

On direct examination by DHS, Jordan testified that she was in no position to reunite with J.J. and that she was "not here fighting for my child" but rather "trying to consensually make this easier on everybody." The court asked if Jordan wished to consent to termination of her parental rights. Jordan's attorney replied that she understood Jordan to be "considering consenting to termination," but that Jordan "has not absolutely told me that she will do that," and that there were "some details that we were trying to work out with regard to that." The court allowed the proceedings to continue. On cross-examination by her attorney, Jordan testified that she and the attorney had discussed the difference between voluntary and involuntary termination; that she was "considering" voluntary termination; that she wanted the judge to consider accepting her consent if he were inclined to terminate her parental

¹ A parent may withdraw consent within ten calendar days after it was signed by filing an affidavit with the circuit clerk. Ark. Code Ann. § 9-27-341(g)(1)(A) (Supp. 2011).

rights; and that she had time to meet with counsel the following day. Counsel then asked the court to take the case under advisement in order to give Jordan time to voluntarily consent. The court refused on the grounds that the fourteen-month-old case had already been continued once, that the hearing had been set for a month, and that Jordan had been afforded ample time in which to consent to termination but appeared ambivalent about doing so.

At the close of the hearing, the court ruled from the bench that it would terminate Jordan's parental rights in J.J. On July 22, 2010, the court entered its termination order on grounds other than voluntary consent.

In this appeal, Jordan argues that the circuit court abused its discretion when it refused to allow her additional time to execute a consent to termination. Consent operates as a ground for termination under our Juvenile Code. Ark. Code Ann. § 9-27-341(b)(3)(v)(a) (Supp. 2011). A parent may consent to termination of parental rights, subject to the court's approval. *Id.* Consent does not, however, carry the same onus as involuntary termination where a parent still has other children in his or her custody. Only a prior *involuntary* termination of parental rights in one child serves as a ground to terminate a parent's rights in another child. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(4) (Supp. 2011) (Emphasis added.). For that reason, the involuntary termination of Jordan's parental rights in this case has future implications that voluntary termination may not.

Having recognized that fact, we cannot say that the circuit court in this case abused its discretion by refusing to hold its proceedings in abeyance to allow Jordan to contemplate voluntary termination. An abuse of discretion occurs when a court acts improvidently and

without due consideration. *Henderson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 481. The court here gave Jordan ample opportunity to declare her intention to consent to termination. Yet Jordan offered only the possibility that she might do so. She was, in effect, still thinking it over. Further, Jordan's attorney remarked that there were still details to be worked out, presumably if and when Jordan met with the attorney on the day after the hearing. *Cf. Rhine v. Ark. Dep't of Human Servs.*, 101 Ark. App. 370, 278 S.W.3d 118 (2008) (involving a parent who stated that she was willing to sign a consent to permit her child to be adopted by the maternal grandmother). Jordan also appeared to condition her consent on the outcome of the hearing, asking the court to consider her consent if it were "inclined to terminate [her] rights." Under these circumstances, there was no abuse of discretion as the court did not act improvidently in going forward with a decision based on the evidence at the termination hearing.

Affirmed.

GLOVER and MARTIN, JJ., agree.