

ARKANSAS COURT OF APPEALSDIVISION IV
No. CA12-1119

TRANG (CINDY) DANG

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered April 17, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. JV-2011-610]HONORABLE MARK HEWETT,
JUDGEAFFIRMED; MOTION TO BE
RELIEVED GRANTED**PHILLIP T. WHITEAKER, Judge**

This is an appeal from an order terminating the parental rights of appellant Trang (Cindy) Dang to her children, DDW1, born on September 3, 2005, and DDW2, born on July 8, 2011.¹ Dang's counsel has filed a motion to be relieved as counsel 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 Arkansas Supreme Court Rule 6-9(i) (2012), asserting that there are no issues of arguable merit to support the appeal. Dang was notified of her right to file points on appeal, and she has submitted a letter to this court asking us to consider her request to place

¹ Although David Wong was listed on the pleadings as the putative father of the children, the circuit court found that no person had listed himself with the Putative Father Registry as being interested in the paternity of the children and that no one had sufficient contacts with the children for paternal parental rights to attach.

her children with her sister in Virginia. We affirm and grant counsel's motion to be relieved.

The Arkansas Department of Human Services (DHS) had a protective-services case open on Dang and her children as a result of DDW2's testing positive for controlled substances upon birth. DHS filed a petition for emergency custody and dependency-neglect on September 19, 2011, after the family's caseworker discovered that DDW1 and DDW2 had been left in the care of a man with a history of sexually abusing children. When the caseworker was able to contact Dang, Dang tested positive for methamphetamine. After the children were removed from her care but prior to adjudication, Dang entered a plea of guilty to multiple drug-related charges² and was sentenced to twelve years in the Arkansas Department of Correction, with an additional ten years' suspended imposition of sentence. The circuit court adjudicated DDW1 and DDW2 dependent-neglected, finding that Dang "has significant issues with methamphetamine addiction and that her addiction has caused her to neglect the juveniles."

DHS subsequently filed a petition for termination of parental rights. As grounds for termination, DHS alleged that Dang had been sentenced in a criminal proceeding to a period of incarceration that could constitute a substantial period of the juveniles' lives. Ark. Code Ann. § 9-27-341(b)(3)(B)(viii) (Repl. 2009). In addition, DHS alleged that Dang had subjected the children to aggravated circumstances in that there was little likelihood that services to the family would result in successful reunification, asserting that Dang was a "long

² The convictions were for delivery of methamphetamine and possession of methamphetamine with intent to deliver, both Class Y felonies, and possession of marijuana, a Class A felony.

term drug addict and a habitual criminal who is unlikely to respond favorably to additional services.” Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A), (B)(i) (Repl. 2009).

The circuit court entered an order terminating Dang’s parental rights on October 2, 2012. The court found that DHS had proven the two grounds listed in its petition. In addition, the court also found that the juveniles had been adjudicated dependent-neglected and had lived outside the home of the parent for a period in excess of twelve months, and, despite a meaningful effort on the part of DHS to rehabilitate the parent and correct the conditions that caused removal, the conditions had not been remedied by the parent. The court found that DHS had proven by clear and convincing evidence that it had an appropriate permanency plan for the children and that it was in the best interests of the children that the petition be granted. The court also specifically noted that it had considered the adoptability of the children and the risk of harm to the children if there was continued contact with the parent.

Dang filed a timely notice of appeal, and her attorney then filed a motion to withdraw and a no-merit brief. We agree with counsel that an appeal would be wholly without merit. Substantial evidence supported the circuit court’s conclusion that termination was in the children’s best interest. There was testimony from the caseworker that the children were adoptable. Based on Dang’s ongoing substance-abuse problems, there was evidence of potential harm to the children if they were reunited with Dang. *See Cheney v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 209, at 13, ___ S.W.3d ___, ___. Sufficient evidence also supported the circuit court’s finding that termination was warranted under section 9-27-

341(b)(3)(B)(viii). Dang was sentenced to twelve years in the Arkansas Department of Correction, and twelve years clearly “constitute[s] a substantial period of the juvenile’s life.” See *Bowman v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 477 (holding that it is the sentence, as opposed to a potential release date, that controls in determining whether this statutory ground has been satisfied).

We note that the circuit court also found that termination was warranted based on the fact that the children had been out of the home for more than one year and the conditions that caused removal had not been remedied. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). This ground was not alleged in DHS’s termination petition. Nonetheless, there was substantial evidence supporting the court’s finding under section 9-27-341(b)(3)(B)(viii). Only one ground is necessary for termination. See *Spencer v. Ark. Dep’t of Human Servs.*, 2013 Ark. App. 96, ___ S.W.3d ___. It is therefore immaterial that the circuit court made a finding that was not alleged in DHS’s petition. See *Reid v. Ark. Dep’t of Human Servs.*, 2011 Ark. 187, 380 S.W.3d 918 (holding that the circuit court’s error in finding that a particular ground existed was harmless based on sufficient evidence of alternate grounds to support the termination of parental rights).

During the termination hearing, Dang requested that the trial court consider placing her children with her sister in Virginia, and, on appeal, she has submitted a letter to this court asking us to consider the same request. As counsel correctly notes, the circuit court did not expressly rule on this request at the hearing or in its order terminating Dang’s parental rights, and trial counsel did not ask for such a ruling. The issue is therefore waived. See *Settles v.*

State, 2011 Ark. App. 241 (holding that it is appellant's burden to obtain a specific ruling on a request, and the failure to do so waives the argument for appeal). Moreover, even if not waived, there would have been no error in denying the request. In *Andrews v. State*, 2012 Ark. App. 22, 388 S.W.3d 63, this court held that alternative placement is irrelevant at a termination hearing. Accordingly, we do not further address the issue Dang raises.

Based on our examination of the record and the briefs, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases, and we hold that the appeal is wholly without merit. Consequently, we grant counsel's motion to be relieved and affirm the order terminating Dang's parental rights.

Affirmed; motion to be relieved granted.

WALMSLEY and GLOVER, JJ., agree.

Deborah R. Sallings, Arkansas Public Defender Commission, for appellant.

No response.