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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA12-525

LEROY GIPSON APPELLANT V. ARKANSAS DEPARTMENT of HUMAN SERVICES APPELLEE	**Opinion Delivered** OCTOBER 3, 2012 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION [NO. JJN-10-792] HONORABLE WILEY A. BRANTON, JR., JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

CLIFF HOOFMAN, Judge

Appellant Leroy Gipson appeals from the termination of his parental rights to his daughter, M.G. Appellant's counsel has filed 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), asserting that there are no issues that would support a meritorious appeal and requesting to be relieved as counsel. Appellant has not filed any pro se points for reversal. We grant counsel's motion to withdraw and affirm the termination of parental rights.

This case began in June 2010 with an allegation of sexual abuse perpetrated by Gipson against his girlfriend's daughter, K.K. Gipson lived in a home with his girlfriend, Cassyophis Williams, and her three children, K.K., M.T., and M.G. Gipson was the father of only M.G., at the time a one-year-old. At the adjudication hearing, held on July 22, 2010, the court

heard testimony from ten-year-old K.K. that Gipson had put his hand down her pants and touched her vagina while they were watching television. The court acknowledged appellant's denial of the abuse and claim that the allegations stemmed from a dispute with Williams. The court, however, found K.K.'s testimony to be credible and adjudicated the juveniles dependent-neglected. The court ordered appellant to submit to a psychological evaluation and attend sexual-offender treatment, noting that if he refused to acknowledge the abuse and attend treatment, the court was unlikely to consider him for placement. The court of appeals affirmed the order adjudicating M.G. dependent-neglected in *Gipson v. Arkansas Department of Human Services*, 2011 Ark. App. 137.

The goal of the case continued as reunification through a review hearing on October 19, 2010, and a permanency-planning hearing on March 8, 2011, although there had been little progress because appellant had not entered treatment. At a permanency-planning hearing on May 31, 2011, the court changed the goal to adoption, but ordered DHS to attempt to find a treatment program that did not require the offender to initially admit the abuse. DHS filed a petition for termination of parental rights on July 12, 2011, alleging the "twelve-months ground" for termination. A hearing was held on August 23, 2011, but the trial court denied the petition "in an abundance of caution" because DHS had just recently found a treatment program that did not require an admission of abuse before being admitted into the program.

At a third permanency-planning hearing on November 8, 2011, the court authorized the filing of a second petition for termination of parental rights because there was no

compelling reason to continue with reunification as the goal. The court found that appellant remained entrenched as ever that he did not sexually abuse K.K., and his therapist testified that under the circumstances, it was unlikely that he would make progress. DHS filed a second petition for termination of parental rights on December 8, 2011.

The termination hearing was held on February 28, 2012. The DHS supervisor for the case testified that appellant's unfitness had not been remedied despite his completion of treatment that did not require an admission of wrongdoing. Dr. Paul Deyoub, who conducted a psychological evaluation on appellant, testified that appellant was dismissive about the sexual abuse and alleged that the mother, Williams, was the one who made the allegations so that she could get custody and the social security check for M.G. Dr. Deyoub reported, however, that Williams did not believe the allegations to be true when her own psychological evaluation was conducted. Dr. Deyoub testified that K.K.'s allegations were specific and that in his experience, children in her age range are old enough to be credible and tend not to manufacture allegations. For Dr. Deyoub to recommend that appellant be allowed to work toward regaining custody, appellant would have had to acknowledge the abuse and enter sex-offender treatment. Dr. Deyoub testified that appellant had an IQ of 68, was mentally retarded, and had a first-grade academic ability.

The adoption specialist testified that from speaking with other adoption specialists across the state, the children, including M.G., were adoptable based on their age and sex, and there were available families that would be willing to accept them. Appellant testified that he did not sexually abuse K.K. The trial court terminated appellant's parental rights, and

appellant filed a timely notice of appeal.

The trial court in this case determined that it was in the child's best interest to terminate appellant's parental rights and found that DHS had proved by clear and convincing evidence that the juvenile had been adjudicated by the court to be dependent-neglected and had continued to be out of the custody of appellant for twelve months and, despite a meaningful effort by the department to rehabilitate appellant and correct the conditions that caused removal, those conditions had not been remedied by appellant. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*) (Supp. 2011). We agree with counsel that there would be no merit to an appeal based on the sufficiency of the evidence to support termination.

In determining that termination was in the child's best interest considering the likelihood that she would be adopted, the court heard evidence from the adoption specialist that M.G. was adoptable. In considering the potential harm caused by returning her to the custody of appellant, the trial court is not required to find that actual harm would result or to affirmatively identify a potential harm; instead, the harm analysis should be conducted in broad terms. *Blanchard v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 215, ___ S.W.3d ___. Here, the court's finding that appellant had sexually abused his girlfriend's daughter and Dr. Deyoub's testimony that appellant was not a fit parent are sufficient evidence of potential harm.

We also agree that there was clear and convincing evidence of the statutory ground for termination. The alleged sexual abuse was the reason for removal more than twelve months before, the trial court found that appellant had committed the abuse, and appellant

failed to remedy this issue in treatment. Counsel notes that appellant's denial and K.K.'s testimony regarding the abuse were issues of credibility, which are to be resolved by the finder of fact. We give due regard to the opportunity of the trial court to judge witnesses' credibility, and in matters involving the welfare of young children, we give great weight to the trial judge's personal observations. *Blanchard*, *supra*.

In accordance with Rule 6-9(i), counsel was required to list all adverse rulings made by the trial court on all objections, motions, and requests made by the party at the termination hearing and explain why each adverse ruling is not a meritorious ground for reversal. Other than termination, the only adverse ruling was a sustained objection during appellant's cross-examination of the DHS caseworker. Appellant's counsel questioned the caseworker about appellant's psychological evaluation, and the attorney ad litem objected, stating that it was a more appropriate question for Dr. Deyoub. The trial court sustained the objection, stating that counsel could ask the question to Dr. Deyoub. Counsel now asserts that the trial court's ruling was correct as the caseworker was not shown to have a background in psychological evaluation and did not perform the evaluation. We agree with counsel's assertion that the ruling does not present a meritorious issue for appeal.

Affirmed; motion to withdraw granted.

ABRAMSON and BROWN, JJ., agree.

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

No response.