

ARKANSAS COURT OF APPEALSDIVISION I
No. CA12-637

FREDRICK D. SMART

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and J.S., MINOR
CHILD

APPELLEES

Opinion Delivered April 17, 2013

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[No. JV-2009-136]

HONORABLE KEVIN KING, JUDGE

AFFIRMED; MOTION GRANTED

LARRY D. VAUGHT, Judge

On May 8, 2012, the Jackson County Circuit Court entered an order terminating the parental rights of appellant Fredrick Smart to his son, J.S., born December 1, 2005.¹ Smart's attorney has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Dep't of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 6-9(i) (2012), contending that there is no merit to an appeal in this matter. The clerk of this court mailed a certified copy of counsel's motion and brief to Smart's last known address informing him of his right to file pro se points for reversal. Smart did not file any points. Appellee Arkansas Department of Human Services (DHS) has not filed a brief. We grant counsel's motion to withdraw and affirm the order terminating Smart's parental rights.

¹The order also terminated the parental rights of J.S.'s mother, Shafiqua Rayder, based on her consent to termination. Rayder's rights are not subject to this appeal.

The record reveals that in December 2009, DHS moved for emergency custody of J.S. based on allegations that he was physically abused by Smart. An adjudication order was entered April 13, 2010, finding J.S. dependent/neglected. Smart complied with the case plan ordered by the trial court, and on August 24, 2010, J.S. was returned to Smart's custody. However, on February 25, 2011, DHS again moved for emergency custody after Smart tested positive for methamphetamine. J.S. was adjudicated dependent/neglected a second time in May 2011, and on November 7, 2011, DHS filed a petition to terminate Smart's parental rights.

At the termination hearing,² DHS caseworker Ross Granberry summarized the procedural history of this case. He testified that when J.S. was placed in the custody of DHS the second time, Smart made little effort to comply with the case plan. He failed to keep DHS informed of his residence and employment status. In fact, according to Granberry, Smart had not been in contact with DHS for over four months, and he had not visited J.S. in two months. Granberry also said that J.S. was adoptable because he was a loving child who was very active, playful, friendly, and outgoing. Granberry added that J.S. had been with his current foster family for over a year, and they had expressed an interest in adopting him.

²Smart did not appear at the termination hearing; however, the record reflects that notice of the filing of the petition to terminate his parental rights and notice of the hearing on the petition were sent to Smart at his last known address and were returned marked "no such street, unable to forward, return to sender." Also, the record reflects that the same notices were published in the local newspaper.

From the bench, the trial court terminated Smart’s parental rights to J.S. based on section 9-27-341(b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) (Supp. 2011).³ The trial court further found that it was in the best interest of J.S. that Smart’s parental rights be terminated and that J.S. was adoptable. The trial court entered an order terminating Smart’s parental rights on May 8, 2012, finding among other things that J.S. had been in DHS custody for twelve months; that since February 2011, Smart “dropped out of the picture,” visiting infrequently; that Smart did not correct the conditions that caused removal; and that other factors arose subsequent to the original removal that demonstrate return of J.S. to Smart was contrary to J.S.’s health, safety, or welfare. This appeal followed.⁴

Counsel listed the only adverse ruling in this case—the trial court’s decision to terminate Smart’s parental rights—and has adequately discussed why an appeal of this decision lacks merit. In this case, clear and convincing evidence supported the trial court’s findings of best interests and statutory grounds for termination. Caseworker Granberry testified that J.S.

³The ground set forth in Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) is that a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. The ground set forth in subsection Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) is that other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile’s health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent’s circumstances that prevent return of the juvenile to the custody of the parent.

⁴This is the second appeal of this case. In the first appeal, *Smart v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 682, we denied counsel’s motion to withdraw, remanded to supplement the record, and ordered rebriefing due to counsel’s failure to comply with *Linker-Flores* and Ark. Sup. Ct. R. 6-9(i) and due to addendum deficiencies.

had been twice adjudicated dependent/neglected and had been out of Smart's custody for over twelve months. Granberry's testimony also established that after J.S. had been returned to Smart in August 2010, Smart was found by DHS in February 2011, associating with known drug users and testing positive for drugs. When J.S. was removed from Smart's custody at that time, he discontinued all efforts to maintain required contact with DHS, and he infrequently maintained contact with J.S. We hold that under these facts the trial court's findings of best interest and grounds, pursuant to section 9-27-341(b)(3)(B)(vii)(a), are supported by clear and convincing evidence.

Therefore, after carefully examining the record and the brief, we hold that Smart's counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit termination cases and that an appeal is wholly without merit. Accordingly, we affirm the termination of Smart's parental rights to J.S. and grant his attorney's motion to be relieved from representation.

Affirmed; motion granted.

GLADWIN, C.J., and PITTMAN, J., agree.

Terry Goodwin Jones, for appellant.

No response.