

Cite as 2012 Ark. App. 427

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA12-3

CARRIE HARRIS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered June 27, 2012

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. JV2010-20]HONORABLE LARRY W.
CHANDLER, JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**CLIFF HOOFFMAN, Judge**

Appellant Carrie Harris appeals from the order of the Ouachita County Circuit Court awarding permanent custody of her daughter, C.H., to the child's father, Lee Gulley. Harris's attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Rule 6-9(i) of the Rules of the Arkansas Supreme Court and Court of Appeals and *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004). The clerk of this court mailed a certified copy of counsel's motion and brief to Harris's last known address informing her of her right to file pro se points for reversal, but the packet was returned marked "Vacant." We grant counsel's motion to withdraw and affirm the award of permanent custody.

This case began in April 2010, when the Arkansas Department of Human Services

(DHS) took C.H. and her brother, T.R.,¹ into emergency custody, later placing C.H. in the custody of her maternal grandparents. C.H. was adjudicated dependent-neglected on June 2, 2010, based upon Harris's admission that she had violated an order of protection allowing T.R.'s father to have contact with C.H. The case goal was set as reunification, and Harris was ordered to attend counseling. In July 2010, C.H. disrupted her placement with her grandparents and was returned to DHS custody and placed at a residential psychiatric facility.

Review hearings were held in September and November 2010, and the trial court found that Harris had been complying with the case plan by attending counseling. Custody of C.H. and T.R. was returned to Harris following another review hearing in February 2011. However, on May 18, 2011, the children were again removed from Harris, and C.H. was placed with her father, Lee Gulley. The court found that Harris had failed to ensure that C.H. had been taking her medications as prescribed, that the children had not been attending school regularly, and that Harris's behavior was unstable. The court also noted Harris's report that she had met a man through the internet who was currently incarcerated in Alabama and that she was considering moving to Alabama with the children upon his release so that she could marry him.

On May 31, 2011, DHS filed a petition to terminate reunification services to Harris based upon the evidence presented at the previous hearing. In addition, the petition alleged

¹Permanent custody of T.R. was awarded to his father, Tony Radford, Sr., at the permanency-planning hearing. Harris did not appeal from that order, however, and this appeal involves only C.H.

that Harris had left C.H. at home unsupervised on at least two occasions when C.H. had a male visitor present and that C.H. and Harris had a recent altercation where C.H. attempted to stab her mother with a knife. In an order entered on June 15, 2011, the trial court granted the petition to terminate reunification services, finding that there was little likelihood that continued services would result in successful reunification of the children with Harris. The trial court noted that Harris had provided condoms and an inappropriate romance novel to C.H., who was fourteen years old at the time, and that Harris had encouraged C.H. to assault her father and run away to Alabama with her. The trial court further found that the children's behavior had improved since they had been removed from Harris's custody.

The permanency-planning hearing was held on July 6, 2011, and the goal of the case was changed to permanent custody with each child's father. Because Gulley was not present at that hearing, however, the trial court stated that "the plan" is that he would be named as permanent custodian at a later date. Evidence introduced at the hearing showed that C.H. had been placed at a youth residential facility by the trial judge in her delinquency case due to her recent behavior.

At the next review hearing in September 2011, Gulley was present and testified that he wished to be named as C.H.'s permanent custodian. Although Harris was not currently allowed to visit with C.H. due to the no-contact order issued by the trial court in the delinquency case, Gulley agreed that he would allow Harris visitation with C.H. if that order were to be lifted and that he would be willing to supervise the visits. In her testimony, Harris

Cite as 2012 Ark. App. 427

requested that she share custody of C.H. with Gulley. Harris testified that she did not want Gulley to be granted permanent custody because C.H. was a girl and Gulley had not been a significant part of her life during the past thirteen years. Harris also stated that, while others saw Gulley as a good and upstanding person, she had seen the other side of his personality and the animosity that he had for her. She testified that she had recently been diagnosed with cervical cancer and that Gulley told her that she deserved it and that he hoped that she died. Harris was concerned about the effect that Gulley's feelings toward her would have on her daughter and stated that he would "never let me see that child as much as he hates my guts." According to Harris, it had not been easy to raise two children that have disabilities and that are often in trouble, and she admitted her fault in allowing C.H. to have contact with T.R.'s father in violation of a prior court order. She denied the allegations contained in several DHS court reports that she acted more like a peer to her children than a parent. She further stated that she no longer had plans to go to Alabama because the man she had met was probably not going to be paroled any time soon.

At the conclusion of the hearing, the trial court noted that C.H. was scheduled to be released from the juvenile facility the following month and stated that it was "abundantly clear" that she "needs to know what her future looks like." The trial court found that it was contrary to C.H.'s welfare to return her to the custody of her mother and that it was in C.H.'s best interest to be placed in the permanent custody of her father, Gulley, whom the court found to be an appropriate permanent placement. Due to the presence of the no-contact

order, the trial court deferred the issue of Harris's visitation with C.H. to the trial judge in the separate delinquency case. The permanent-custody order was entered on October 13, 2011, and Harris filed a timely notice of appeal from this order on October 24, 2011.

As counsel asserts in her no-merit brief, the only adverse ruling at issue in this appeal is the trial court's decision to award permanent custody to Gulley. The burden of proof in deciding permanent custody in a dependency-neglect proceeding is by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009). We do not reverse the trial court's findings on appeal unless they are clearly erroneous. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Id.* We also give due deference to the superior position of the trial court to view and judge the credibility of the witnesses, and this deference is even greater in cases involving child custody, where a heavier burden is placed upon the trial judge to utilize his or her powers of perception in evaluating the witnesses, their testimony, and the best interest of the children. *Id.*

The trial court in this case found that an award of permanent custody to Gulley was in C.H.'s best interest, as it was contrary to her health and safety to be returned to the custody of Harris. As counsel discusses in her brief, the evidence showed that Harris's behavior was unstable and that she acted as a peer to C.H. rather than as a parent by leaving her at home unsupervised with a boyfriend and by giving her condoms and inappropriate reading material.

Cite as 2012 Ark. App. 427

Although C.H. had severe behavioral issues throughout much of the case, the trial court found that her behavior had improved after being removed from her mother's custody. In fact, the trial judge in C.H.'s delinquency case had instituted a no-contact order because of his belief that Harris negatively impacted C.H.'s behavior. In addition, completion of the case plan itself is not determinative; the primary issue is whether completion of the plan achieved the desired result of making the parent capable of caring for his or her child. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Counsel asserts that, although Harris had fully complied at times with the case plan and had C.H. returned to her custody, she was still not capable of caring for her and acting in her best interest, according to the evidence presented. The trial court found that C.H. needed permanency and that permanent placement with her father was in her best interest. As this decision was not clearly erroneous, we agree with Harris's counsel that there would be no merit to an appeal on this issue.

Based on our review of the record and the brief submitted, we conclude that counsel has complied with Rule 6-9(i) and agree that an appeal would be without merit. Therefore, we affirm the permanent-custody award and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

PITTMAN and GRUBER, JJ, agree.