

# ARKANSAS COURT OF APPEALS

EN BANC  
No. CA09-606

TONYA RODGERS

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** FEBRUARY 17, 2010

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT  
[NO. JV 2008-199]

HONORABLE CINDY THYER,  
JUDGE

REBRIEFING ORDERED

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## PER CURIAM

On March 3, 2009, the Craighead County Circuit Court terminated the parental rights of appellant Tonya Rodgers to her son, C.R., born January 6, 2004. Rodgers's attorney has filed a motion to withdraw 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 Ark. Sup. Ct. R. 6-9(i). The clerk of this court sent copies of counsel's brief and motion to Rodgers, informing her that she had the right to file pro se points for reversal. *See* Ark. Sup. Ct. R. 6-9(i)(3). The letter was returned to our clerk and Rodgers has not filed any pro se points. Neither the Arkansas Department of Human Services (DHS) nor the attorney ad litem has filed a brief; however, both have filed letters pursuant to Ark. Sup. Ct. R. 6-9(i)(2) stating that they concur that the appeal has no merit. We deny the motion to withdraw and order rebriefing.

In this case the circuit court found that DHS had proven the two grounds for termination stated in its petition. The first ground was the “other factors” ground found in Ark. Code Ann. § 9-27-341(b)(3)(B)(vii). That ground requires, *inter alia*, proof that the department offered to provide appropriate services to the parent. In the present case, the DHS caseworker testified that there was a case plan that outlined the services that DHS would provide. However, she did not specify what those services were, other than mention that Rodgers went into two inpatient treatment programs and that she was not able to schedule a psychological evaluation for Rodgers. Moreover, the department filed a motion seeking to be relieved of providing reunification services to Rodgers. There is nothing in the record to indicate that the motion was, in fact, granted. Counsel for Rodgers raised this issue at trial in his motion for a directed verdict. However, appellate counsel does not discuss this ground at all.

The second ground is the “aggravated circumstances” ground. Arkansas Code Annotated sections 9-27-341(b)(3)(B)(ix)(a)(3)(A) and (B)(i) (Repl. 2008) state that a parent subjects the child to aggravated circumstances where there was little likelihood that services to the family would result in successful reunification.

On November 18, 2009, we remanded this case to settle the record concerning whether the circuit court had, in fact, entered an order relieving DHS from providing further services to Rodgers and finding that there was little likelihood that further services would result in successful reunification. *See Rodgers v. Arkansas Dep’t of Human Servs.*, 2009 Ark.

App. 778. The circuit clerk responded with an affidavit stating that there was no such order. In addressing this ground, counsel asserts that there was sufficient evidence to support the ground because the court had granted DHS's motion to be relieved from providing all services to Rodgers. However, as mentioned above, there is no such order. There is an order of record that allows DHS to be relieved from providing transportation services to Rodgers. That order was filed some three weeks prior to DHS's motion to be relieved from providing all services to Rodgers. A motion to be relieved from providing transportation services to Rodgers is a far cry from an order relieving the department from providing all services.

In addition to the sufficiency of the evidence, *Linker-Flores* and its progeny also require a discussion of any other rulings made at trial that were adverse to Rodgers. There is another decision adverse to Rodgers that is not discussed by counsel—the denial of a motion for a continuance.

In the recent per curiam of *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877, the supreme court held that the failure to list and discuss all adverse rulings in a no-merit termination-of-parental-rights case does not automatically require rebriefing, if the ruling would clearly not present a meritorious ground for reversal. We decline, however, to overlook the omissions in this case. Therefore, we order rebriefing and direct counsel either to explain why the above adverse rulings do not present meritorious grounds for reversal or to file a brief in a merit format, if warranted.

Rebriefing ordered.