

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-504

MARK and KRISTIN LITCHFORD
APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN
APPELLEES

Opinion Delivered September 28, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. JV-2009-552]

HONORABLE JIM D. SPEARS,
JUDGE

AFFIRMED; MOTION GRANTED

RITA W. GRUBER, Judge

The Sebastian County Circuit Court terminated the parental rights of Kristin and Mark Litchford in their children, Z.L., J.L., X.L., and A.L. The Litchfords' appellate counsel 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 Arkansas Supreme Court Rule 6-9(i), asserting that there are no issues that would support a meritorious appeal. The clerk of this court mailed a certified copy of counsel's motion and brief to appellants' last known address informing them of their right to file pro se points for reversal. The certified packets were returned to the clerk with a note that the parties had moved. Neither appellant has filed any points. We grant counsel's motion to withdraw and affirm the order terminating appellants' parental rights.

We first address the issue presented in the no-merit brief regarding whether there is



clear and convincing evidence to support the circuit court's decision to terminate appellants' parental rights. See *Linker-Flores v. Ark. Dep't of Human Servs. (II)*, 364 Ark. 224, 217 S.W.3d 107 (2005). DHS filed a petition for emergency custody in this case in August 2009 after A.L. was born and tested positive for amphetamines and Kristin tested positive for amphetamines, Benzodiazepine, and marijuana. The court granted the petition, and on October 6, 2009, the children were adjudicated dependent-neglected based on Kristin's "current incarceration, . . . drug use and abuse, as well as the youngest juvenile being born with an illegal substance in his system." The court also noted that DHS had previously been involved with the family through a protective-services case. The court set the goal as reunification.

Neither parent appeared for the review hearing in March 2010. While the court continued the goal of reunification and found that DHS had made reasonable efforts to provide services, it did not find any meaningful progress on the part of either parent. Specifically, the court found that Kristin continued to live in Tulsa, Oklahoma; had no income; was not attending counseling or taking medications as ordered; had not completed parenting classes or drug treatment as ordered; and was not then capable of meeting the needs of the children. The court found that Mark was living in Oklahoma with his girlfriend in a house that was not appropriate for the children; lacked stable employment and adequate transportation; and had not completed parenting classes, a psychological evaluation, or a drug/alcohol assessment. Kristin appeared at the permanency planning hearing in August 2010, but Mark did not. The court found that Kristin had completed parenting classes and



had taken a psychological evaluation and a drug and alcohol assessment but that she had no stable housing, no income, and no transportation. The court also found that she had not been taking her prescribed medication as directed. The court found that Mark had no stable housing, income, or transportation; had failed to pay court-ordered child support; had failed to exercise regular visitation; and had a positive hair-follicle test for methamphetamine and THC. The court changed the goal of the case to termination.

At the termination hearing in December 2010, testimony revealed that Kristin tested positive for amphetamines and methamphetamine on October 16, 2010; that she had no job or other source of income and that her grandmother paid for her utilities and personal items; and that she was not attending NA meetings as ordered. The DHS caseworker, Robbie McKay, testified that, although Kristin had completed parenting classes, there was no improvement in her parenting skills. She opined that the parents would not be able to care for the children and that there was a risk of harm to the children if there were continued contact. Ms. McKay also testified that the children were adoptable. Mark's testimony was inconsistent regarding his drug use, but he did admit that he tested positive for opiates at the staffing on September 23, 2010. He also had positive tests for amphetamines and methamphetamine on both July 28, 2010, and October 26, 2010. Finally, he admitted that he had been given a referral for inpatient drug treatment but had not followed through. Although he appeared to have recently obtained transportation, employment, and appropriate housing, he admitted that he had made only one child-support payment—the DHS caseworker testified that Mark was over \$7000 behind in child-support payments—while the



children were in foster care, that he had moved into his home only one month before the hearing, and that his life was not stable.

The court determined that the case had been going on for over a year and that no progress had been made on the part of either parent in spite of numerous services being offered. The court found neither parent credible and neither able to take care of their children at the time of the hearing. The court found that DHS had proved by clear and convincing evidence that it was in the children's best interest to grant the petition for termination, considering the children's adoptibility and the risk of harm if there were continued contact with the parents. The court also found that the children had been declared dependent-neglected, had been out of the home for over twelve months, and, despite a meaningful effort on the part of DHS to rehabilitate the parents and correct the conditions that caused removal, the conditions had not been remedied. Finally, the court found that Mark had willfully failed to provide significant material support for the children in accordance with his means. After carefully reviewing the record, we conclude that an appeal from the court's termination decision would be wholly without merit.

In addition to the termination decision, there were two rulings adverse to Mark. The first, not briefed by counsel, was an objection by appellants' counsel to a drug and alcohol assessment dated April 5, 2010, indicating that Mark admitted smoking marijuana until around 2006 or 2007 and recommending no substance-abuse treatment at the time of the report. Although the evaluation contained the correct name and social security number, the birth date listed was incorrect. Mark's attorney objected to the evaluation on the basis of the



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incorrect birth date. The court overruled the objection and admitted the evidence. The second adverse ruling, which counsel did brief, was the court's exclusion of a certificate for parenting classes taken by Mark in a previous case several years before the hearing. Courts have broad discretion in evidentiary rulings. *Ivy v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 645, 378 S.W.3d 234. Neither ruling is a meritorious ground for appeal. Accordingly, we affirm the termination order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GLADWIN and WYNNE, JJ., agree.

Thomas Wilson, for appellants.

No response.