

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA11-530

CHAD BIVENS and ISLA BIVENS
APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered October 5, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
EIGHTH DIVISION
[NO. JJN-09-1891]

HONORABLE WILEY A. BRANTON,
JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

The Pulaski County Circuit Court terminated the parental rights of appellants Chad Bivens and Isla Bivens to their daughter L.B., born August 14, 2009, and to their son, A.B., born February 6, 2008. Appellants' counsel has filed a motion to withdraw and a no-merit brief, pursuant to *Linker-Flores v. Arkansas Department of Human Services*,¹ and Arkansas Supreme Court Rule 6-9(i),² stating that there are no meritorious grounds to support an appeal. The clerk of our court mailed a certified copy of counsel's motion and brief to appellants, informing them of their right to file pro se points for reversal. Appellant Isla has

¹359 Ark. 131, 194 S.W.3d 739 (2003).

²(2011).



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elected to file pro se points for reversal. We affirm the termination order and grant counsel's motion to withdraw.

The Arkansas Department of Human Services (DHS) petitioned the court on October 19, 2009, for emergency custody of L.B. and A.B. after receiving two separate reports of inadequate supervision in less than a month. The court granted the emergency petition that same day. A probable cause order was entered on November 16, 2009, in which the court found that the children should remain in the custody of DHS. The children were adjudicated dependent-neglected in an order filed on January 19, 2010. The adjudication order noted that this was a "case of aggravated circumstances as defined by the Juvenile Code." The adjudication order established a goal of reunification.³ In the review order filed on April 2, 2010, the court found that the case plan was moving toward an appropriate permanency plan and continued the goal of reunification. In the permanency planning order filed on September 22, 2010, the court found that reunification did not "appear to be likely to occur in the near foreseeable future." The goal was changed to termination of parental rights.

DHS filed a petition for the termination of parental rights on November 4, 2010. The petition listed three possible grounds for termination: (1) that the children had been adjudicated dependent-neglected by the court and had continued out of the parents' custody for twelve months and, despite a meaningful effort by the department to rehabilitate the parents and correct the conditions that caused removal, those conditions had not been

³An amended adjudication order was filed on March 9, 2010.



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remedied;⁴ (2) that subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose which demonstrate that return of the children to the family home is contrary to their health, safety, or welfare and that, despite the offer of appropriate family services, the parents have manifested the incapacity or indifference to remedy those subsequent issues or factors or rehabilitate the circumstances which prevent return of the children to the family home;⁵ and (3) that the parents were found by a court of competent jurisdiction to have subjected the children to aggravated circumstances.⁶

The termination hearing took place on February 1, 2011. At the conclusion of the hearing, the court granted DHS's petition. The order terminating appellants' parental rights was entered on March 3, 2011. It stated in pertinent part:

The court finds that the children have been out of the home more than twelve months. The court made an aggravated circumstances finding at the [a]djudication because of the extreme risk of harm that the mother caused to [L.B.]. Today, as the court considers the evidence and defendants, the court recognizes that these parents are in no better position to care for these children than they were at the beginning of the case.

The mother has been incarcerated the majority of this case. She was released in September 2010, and was arrested and placed back in Arkansas Department of Corrections [sic] in January 2011 due to parole revocation. The father was arrested in January 2011 and is currently in the White County Jail with pending charges. It is disappointing that the neither [sic] mother nor father ever completed the psychological evaluation. Based on the mother's demeanor today, it is likely that a psychological evaluation would have lead to some interesting insight into the mother's personality and mental state. The court notes that the mother, while sitting in a prison jumpsuit,

⁴Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

⁵Ark. Code Ann. § 9-27-341(b)(3)(B)(vii).

⁶Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3).



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lectured the court about prior decisions. The court hardly believes that the mother is in a position to be lecturing the court.

At this point, it is unknown when either parent will even be released from prison or jail. Even if they were released tomorrow, they have not demonstrated any period of stability or sobriety. Both parents have a long history of drug abuse, housing instability, and criminal issues.

Adoption is the most permanent and appropriate option for these children. These children are young, and permanent custody to a relative can lead to instability if the parents file motions with the court every few years to regain custody of the children. Before the court will determine whether to place these children with relatives, the court must determine that the relatives are fit. Many times when the court places children with relatives and the court and DHS intervention ceases, the children are returned to the biological parents. These parents are bad parents and are not good for these children, and these children need a fresh start. They are better off without their biological parents. They need a healthy loving family to provide long term permanency. The paternal sister, Amy Heflin, and her husband may be appropriate, but there is a lot of family dysfunction. Ms. Heflin was in foster care for a period of time as a juvenile, two of her brothers are in jail, and her mother continues to have drug and alcohol problems. Even if the relatives are a viable option, termination of parental rights is still in the best interest of the children.

This timely appeal followed.

Counsel contends that this appeal is without merit. Isla brings forth at least six reasons why the termination of her parental rights should be reversed; however, the points are either adequately covered by counsel's brief, raised for the first time on appeal, or contain no citation to legal authority. After carefully examining the record and the brief presented to us, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases and conclude that the appeal is wholly without merit. Accordingly, we grant counsel's motion to withdraw and affirm the order terminating the Bivenses' parental rights.



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Affirmed; motion granted.

VAUGHT, C.J., and HOOFFMAN, J., agree.

Janet Lawrence, for appellants.

No response.