

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 11-1039

JENNIFER FETTERS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered February 15, 2012

APPEAL FROM THE PRAIRIE
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT,
[NOS. JV-2009-1 AND JV-2010-1]

HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

DOUG MARTIN, Judge

Appellant Jennifer Fetters appeals from the termination of her parental rights to her children, B.F., C.F., and W.F.¹ Fetters's counsel has filed 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 of arguable merit to support the appeal and requesting to be relieved as counsel. The motion is accompanied by an abstract and addendum of the proceedings below and a brief explaining why none of the trial court's rulings present a meritorious ground for appeal. The clerk of this court sent by certified mail copies of the motion and the abstract, brief, and addendum to Fetters's last known address, informing her that she had the right to file pro se points for reversal under

¹The parental rights of Jennifer Fetters's husband, William Fetters, were also terminated; however, William Fetters is not a party to this appeal.



Arkansas Supreme Court Rule 6-9(i)(3). In response, Fetters filed a letter with this court asking that we reconsider the decision of the trial court.

Fetters and her two oldest children came to the attention of the Arkansas Department of Human Services (DHS) in late December 2008, when police raided the Fetterses' home and found drugs and stolen items. The Fetterses were arrested at that time, and the children were taken into emergency hold by DHS. The circuit court held a probable-cause hearing on January 8, 2009, and an adjudication hearing on January 26, 2009. At the latter hearing, the Fetterses stipulated as to a finding of dependency-neglect.

The circuit court held numerous hearings and issued review orders throughout 2009; each time, the parents were found to be in varying degrees of compliance with the court's orders, and the goal of the case remained continued placement with the parents. On January 6, 2010, however, the circuit court entered an emergency order placing custody of the children with DHS after Fetters gave birth to W.F. on January 1, 2010, and both Fetters and the baby had methamphetamine in their blood. In a review order signed on February 24, 2010, the court found that the case plan was moving toward an appropriate permanency plan for the juveniles, and the goal of the case would be reunification. The court found, however, that Fetters was not in compliance with the case plan and orders of the court, and the court thus directed DHS to maintain foster care for the children. An order entered that same day granted custody of the children to their maternal aunt and uncle.

The goal of the case remained reunification throughout most of 2010. In a permanency-planning and custody order entered on February 15, 2011, however, the circuit



court found that return of the children to their parents' custody was contrary to the children's welfare and that it was in the children's best interest to return them to the custody of DHS. On March 28, 2011, the court held a fifteen-month permanency-planning hearing and entered an order therefrom on April 7, 2011. The court determined once more that the goal of the case should remain reunification but noted that DHS had filed a petition to terminate parental rights on the day of the hearing. In that petition, DHS sought termination pursuant to Arkansas Code Annotated sections 9-27-341(b)(3)(B)(i)(a) and 9-27-341(b)(3)(B)(vii)(a) (Repl. 2009), which provide DHS with authority to seek termination when

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 (12) 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; and

. . . .

. . . 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 which prevent return of the juvenile to the custody of the parent.

At the termination hearing in June 2011, the circuit court heard testimony that Fetters had been unable to adequately deal with her methamphetamine addiction and that, despite the services offered by DHS, she had tested positive for methamphetamine as late as March 2011. Other evidence showed that Fetters had refused to provide samples for several drug tests, had falsified her urine on other drug tests, and had been held in contempt numerous



times for failing drug tests. In addition, an adoption specialist for DHS testified that all three children were adoptable, that specific families had expressed an interest in adopting the children, and that it was DHS's intention to place all three children with an adoptive family as a sibling group.

At the conclusion of the hearing, the court granted the petition to terminate Fetters's parental rights, noting that Fetters had "demonstrated for the last two and a half years an inability to resist the temptation" of methamphetamine. The court concluded that DHS had met its burden of proof in showing that, despite meaningful efforts to address the issues that caused removal, those efforts had been unsuccessful and it would be in the children's best interest to terminate Fetters's parental rights.

An order reflecting the trial court's findings was entered on July 21, 2011. As stated in its ruling from the bench, the court found that DHS had proven that the juveniles had been adjudicated by the court to be dependent-neglected and had continued out of the home for twelve months and, despite a meaningful effort by DHS to rehabilitate the home and correct the conditions that caused removal, those conditions had not been remedied by the parents. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i). The court further found by clear and convincing evidence that it was in the best interest of the juveniles to terminate parental rights and noted that it specifically considered the likelihood that the juveniles would be adopted if the termination petition was granted and the potential harm on the health and safety of the juveniles caused by returning them to the custody of their parents. Fetters filed a timely notice of appeal on August 11, 2011.



Cite as 2012 Ark. App. 152

As mentioned above, Fetters's counsel has now filed 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 of arguable merit to support the appeal and requesting to be relieved as counsel.

After carefully examining the record, the brief, and Fetters's pro se point, we hold that her attorney has complied with the requirements established by the Arkansas Supreme Court for no-merit termination cases and that the appeal is wholly without merit. Accordingly, by memorandum opinion, we affirm the termination of Fetters's parental rights to B.F., C.F., and W.F. *In re Memorandum Opinions*, 16 Ark. App. 301, 700 S.W.2d 63 (1985); Ark. Sup. Ct. R. 5-2(e). We also grant her attorney's motion to be relieved from representation.

Affirmed; motion to be relieved granted.

PITTMAN and GLADWIN, JJ., agree.

Deborah R. Sallings, Arkansas Public Defender Commission, for appellant.

No response.