

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-882

JOHN SPANGLER

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD

APPELLEES

Opinion Delivered June 27, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[No. JV-09-539]

HONORABLE MARK HEWETT,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

LARRY D. VAUGHT, Chief Judge

Appellant John Spangler appeals from the order of the Sebastian County Circuit Court terminating his parental rights to his daughter, L.S. In compliance with *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i) (2011), Spangler's counsel ordered the entire record and examined it for adverse rulings, and she filed a brief stating that none would support a meritorious argument for reversal. Counsel also filed an accompanying motion to be relieved as counsel on the basis that there is no issue of arguable merit for reversal. The clerk of our court provided Spangler a copy of his attorney's brief and motion at his last known address. We received no pro se response from Spangler. DHS and L.S.'s attorney chose not to file a brief. After a review of this appeal under the proper standards for no-merit termination-of-parental-rights cases, we



Cite as 2012 Ark. App. 404

affirm the order terminating Spangler's parental rights and grant his attorney's motion to be relieved as counsel.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341 (Repl. 2009); *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). The appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

L.S. was taken into DHS custody on the day of her birth, July 17, 2007, after her mother tested positive for illegal drugs. Spangler was incarcerated at a county facility at the time. At the adjudication hearing in September 2009, the trial court found L.S. dependent neglected and set the goal of the case as reunification with her mother. According to the adjudication order, Spangler remained confined at the county detention center. In a review-hearing order dated July 16, 2010, the trial court noted that Spangler had been transported to the Arkansas Department of Correction in February 2010 to begin serving a three-year sentence for felony domestic battery.

A permanency planning hearing was held July 20, 2010, wherein the trial court



Cite as 2012 Ark. App. 404

changed the goal of the case to termination and adoption. The court also noted that Spangler had been released from prison and that he was to undergo genetic testing to confirm paternity. At the fifteen-month review hearing in October 2010, the trial court found that genetic testing indicated a 99.9% probability that Spangler was the biological father of L.S. He was ordered to pay child support on behalf of L.S. Also at this hearing, the trial court found that Spangler had been released from prison, but that he had new felony charges pending. By his own testimony, Spangler admitted that he had had his parental rights involuntarily terminated to his children born prior to L.S.'s birth. The trial court ordered that Spangler be permitted a weekly visit with L.S.

DHS sought to terminate the parental rights of both Spangler and L.S.'s mother in a petition filed in February 2011. In the petition, DHS alleged three grounds against Spangler (1) Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(a)(4) (Supp. 2011) because Spangler had previously had his parental rights to other children involuntarily terminated by the court; (2) Arkansas Code Annotated section 9-27-341(b)(3)(B)(viii) (Supp. 2011) because Spangler had engaged in new criminal behavior since L.S. came into the care and custody of DHS and the behavior resulted in Spangler again being sentenced to the Arkansas Department of Correction for twelve years; and (3) Arkansas Code Annotated section 9-27-341(b)(3)(B)(ii)(a) (Supp. 2011) because Spangler failed to provide support to L.S.

The termination hearing was conducted in March 2011. Children and Family Services caseworker Robbie McKay testified that she was involved with Spangler's prior involuntary



Cite as 2012 Ark. App. 404

parental-rights termination. She said that Spangler had a long history of being in and out of prison and jail. She added that he had a history of violence with family members and mental-health issues. McKay testified that when Spangler was not in prison, he only attended two visits with L.S. McKay supervised the two visits, and she said that there was no bond between L.S. and her father. McKay also said that Spangler's parenting skills were not appropriate and that he scared L.S. Finally, McKay testified that L.S. was adoptable and that her foster parents expressed an interest in adopting her. In sum, she recommended that Spangler's parental rights to L.S. be terminated. Likewise, the attorney ad litem for L.S. recommended termination of parental rights.

From the bench, the trial court found that Spangler only attended two visits during the pendency of the case, that he failed to pay child support as ordered, that he was currently serving a sentence in the Department of Correction, and that he had had his parental rights to other children previously terminated. The trial court also found that termination was in the best interest of L.S., that L.S. was adoptable, and that L.S. would be at great risk if placed with Spangler. The trial court entered an order terminating Spangler's parental rights on June 7, 2011.¹ Spangler filed a timely appeal.

On appeal, counsel for Spangler states that there are no issues of arguable merit to support an appeal of this case. After a careful review of the record, we agree. The only adverse ruling is the termination decision. DHS alleged three grounds for termination, presented clear

¹The parental rights of Krystal Spangler, the mother of L.S., were also terminated by the trial court in its order. However, Krystal is not a party to this appeal.



Cite as 2012 Ark. App. 404

and convincing evidence supporting all three grounds, and the trial court made findings supporting each of the three grounds in its order. Further, the trial court considered and made findings on whether termination of Spangler’s parental rights was in L.S.’s best interest. The trial court found, based on evidence presented, that L.S. was “readily adoptable,” and that there would be a risk of harm, both physically and psychologically, if L.S. were placed with Spangler based on his long history of criminal behavior, unstable lifestyle that included drugs, domestic violence, homelessness, and child endangerment. Because we agree with counsel that there is no issue of arguable merit on the sufficiency of the evidence to terminate parental rights, we affirm the trial court’s termination order and grant counsel’s motion to withdraw.

Affirmed; motion granted.

ROBBINS and ABRAMSON, JJ., agree.

Deborah R. Salings, Ark. Pub. Defender Comm’n, for appellant.

No response.