

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-30

KIMBERLY LOWERY FANT
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES
APPELLEE

Opinion Delivered June 27, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. JV-10-479-2]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

CLIFF HOOFFMAN, Judge

The Garland County Circuit Court terminated appellant Kimberly Fant’s parental rights to her son C.F., born June 18, 2011. Fant’s 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 and requesting to be relieved as counsel. The clerk of this court mailed a certified copy of counsel’s motion and brief to Fant’s last known address informing her of her right to file pro se points for reversal. Fant has not filed any pro se points. We affirm the order terminating Fant’s parental rights and grant the motion to withdraw.

Termination of parental rights is an extreme remedy and in derogation of the natural



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rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Hughes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 526. Grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* 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. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

The first adverse ruling we address is the trial court's termination order. The trial court determined that termination was in C.F.'s best interest considering the likelihood that he would be adopted and the potential harm caused by returning him to Fant's custody. The adoption specialist testified that C.F. was likely to be adopted and that his medical issues would not be a barrier to adoption. Furthermore, the caseworker testified that there was a family willing to adopt C.F., but the department was still attempting to find a family to adopt C.F. along with an older brother not involved in this case. Regarding the potential harm, the evidence at the termination hearing established that Fant abandoned C.F. while he was in the hospital following his premature birth. Subsequently, Fant expressed to a department supervisor her desire to consent to adoption, and she did not attend any hearings. Fant



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received referrals for drug and alcohol treatment, but she did not participate in the services. She had no further communication with her caseworker until the day prior to the termination hearing. The caseworker testified that Fant had drug, alcohol, and domestic-violence issues, and she lacked appropriate income, housing, and transportation. We hold that there is sufficient evidence to support the trial court’s finding that termination was in the child’s best interest.

The trial court also found that DHS had proved two statutory grounds for termination. The trial court found at the probable-cause hearing that Fant had abandoned the infant juvenile and had subjected him to aggravated circumstances. Grounds for termination under Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a) include that the parent is found by a court of competent jurisdiction to have (3)(A) subjected any juvenile to aggravated circumstances and to have (5) abandoned an infant. Aggravated circumstances means, in part, that a “juvenile has been abandoned.” Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B) (Repl. 2009). An abandoned infant is a “a juvenile less than nine (9) months of age whose parent . . . left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant.” Ark. Code Ann. § 9-27-303(1) (Repl. 2009). Fant expressed her intent to abandon C.F. when she left drug treatment without informing anyone of her whereabouts while C.F. remained hospitalized after his premature birth. Fant did not ask to visit C.F. in foster care, did not participate in the reunification services offered



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to her, did not attend the hearings regarding C.F., and signed a consent to termination of her rights. We agree with the trial court's ruling that there was clear and convincing evidence of these grounds for termination.

Fant's counsel notes one other adverse ruling in her brief. At the beginning of the termination hearing, the trial court refused to accept Fant's consent to termination after it was brought to the court's attention by the attorney ad litem. We agree with counsel that this issue is not preserved because neither Fant nor her attorney asked the trial court to accept her consent at the hearing.

We conclude that counsel has complied with Rule 6-9(i) and that the appeal is wholly without merit. Accordingly, we affirm the termination order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

PITTMAN and GRUBER, JJ., agree.

Deborah R. Sallings, Ark. Pub. Defender Comm'n, for appellant.

No response.