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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-637

	Opinion Delivered December 5, 2012
FREDRICK D. SMART APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and J.S., MINOR CHILD APPELLEES	APPEAL FROM THE JACKSON COUNTY CIRCUIT COURT [No. JV-2009-136] HONORABLE KEVIN KING, JUDGE REMANDED TO SUPPLEMENT RECORD; REBRIEFING ORDERED; MOTION TO WITHDRAW DENIED

LARRY D. VAUGHT, Chief Judge

On May 8, 2012, the Jackson County Circuit Court terminated the parental rights of appellant Fredrick Smart to his son, J.S., who was born December 1, 2005. Smart's attorney 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 Ark. Sup. Ct. R. 6-9(i), contending that there is no merit to an appeal in this matter. The Arkansas Department of Human Services (DHS) has not filed a brief. We cannot reach the merits of this appeal because the record is deficient.

Rule 6-9(c)(1) of the Arkansas Rules of the Supreme Court provides: "The record on appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing from which the order on appeal arose, all exhibits entered into evidence at that hearing, and all orders entered in the

case prior to the order on appeal." Ark. Sup. Ct. R. 6-9(c)(1) (2012). In *Busbee v. Arkansas Department of Health & Human Services*, 369 Ark. 416, 255 S.W.3d 463 (2007), the Arkansas Supreme Court was presented with our court's certification of the issue of what orders are relevant to a termination hearing under Arkansas Supreme Court Rule 6-9(c)(1). There, DHS contended that the record filed by Busbee in his termination-of-parental-rights appeal was deficient because he failed to include all relevant orders in the record as required under Rule 6-9(c)(1). Our supreme court's interpretation of the rule was that all orders relied on by the trial court in making its final decision to terminate parental rights are relevant and should be included in the record on appeal. *Busbee*, 369 Ark. at 419, 255 S.W.3d at 465.

Our review of the record on appeal in the case at bar reveals that several documents relevant to the trial court's final decision to terminate parental rights are not included in it, including the petition to terminate parental rights, the emergency order, and the probable-cause order. Because the petition to terminate parental rights is not in the record, we do not know what grounds supporting termination were alleged by DHS. Furthermore, we cannot confirm whether the grounds the trial court found had been proved by clear and convincing evidence were even alleged. Also, because the trial court discussed the emergency and probable-cause orders in its adjudication order, and it relied on the adjudication order in reaching its termination decision, Smart's counsel failed to comply with these no-merit proceedings by failing to have these orders included in the record on appeal as well. Therefore, we hold that Smart's counsel failed to comply with the no-merit requirements to bring up a record on appeal such that our court can review all pleadings and orders relevant to the trial court's final decision to terminate.

If anything material to either party is omitted from the record, by error or accident, we may direct that the omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (2012); *Jenkins v. APS Ins., LLC*, 2012 Ark. App. 368, at 6. Therefore, we deny Smart's counsel's motion to withdraw and remand to settle the record, affording counsel thirty days from the day of this opinion to do so.

We also take the opportunity to point out some deficiencies in Smart's counsel's addendum. Arkansas Supreme Court Rule 6-9(e)(2)(E) provides that an addendum shall include, among other things,

> relevant pleadings, documents, or exhibits essential to an understanding of the case, which may include . . . petitions, case plan, court reports, court orders, or other exhibits entered into the record during the hearing from which the appeal arose, and all orders entered in the case prior to the order on appeal.

Ark. Sup. Ct. R. 6-9(e)(2)(E) (2012). This rule is clear that any relevant pleadings, documents, or exhibits that are essential to an understanding of the case shall be included in the addendum. This includes the relevant court orders that are essential to an understanding of the case. *Posey v. Ark. Dep't of Health & Human Servs.*, 370 Ark. 1, 2, 256 S.W.3d 504, 506 (2007).

The items previously discussed (the petition to terminate and the emergency and probable-cause orders) that were not included in the record were obviously not included in the addendum. After Smart's counsel supplements the record, he is directed to attach these supplemental documents to the addendum. Moreover, there are some documents that are included in the record that Smart's counsel failed to attach to the addendum. This includes

three exhibits introduced at the termination hearing—a court report, proof of publication of the hearing date, and an affidavit of service. The latter two documents are significant in light of the fact that Smart failed to attend the termination hearing.

In sum, we deny Smart's counsel's motion to withdraw, and we remand the case and order counsel to supplement the record within thirty days of the date of our opinion. We further order counsel to submit a substituted brief that contains an addendum that complies with our rules. Counsel has fifteen days from the date he files the supplemented record in which to file a substituted brief, abstract, and addendum to cure the deficiencies, at his own expense. Ark. Sup. Ct. R. 4-2(b)(3) (2012).

Remanded to supplement record; rebriefing ordered; motion to withdraw denied.

GLADWIN and MARTIN, JJ., agree.

Terry Goodwin Jones, for appellant.

No response.