ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 12-868

	Opinion Delivered February 13, 2013
CARRINTHIA TATUM APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILDREN APPELLEES	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, ELEVENTH DIVISION [NO. 60JV-11-1671] HONORABLE ELIZABETH BURGESS, JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

Appellant appeals from a circuit court order terminating her parental rights to C.B., M.T., Y.T., T.T., and M.D. The court also terminated the parental rights of, Michael Davis, the father of T.T. and M.D., but he does not appeal.[1] Appellant's counsel has filed a motion to withdraw and a no-merit brief, pursuant to *Linker-Flores v. Arkansas Department of Human Services*,[2] and Arkansas Supreme Court Rule 6-9(i),[3] stating that there are no meritorious grounds to support an appeal. The clerk mailed a certified copy of counsel's motion and brief to appellant, informing her of her right to file pro se points for reversal. The packet was

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[1] The father of C.B. and the father of M.T. and Y.T. are both deceased.

[2] 359 Ark. 131, 194 S.W.3d 739 (2003).

[3] (2011).

returned on November 28, 2012, marked "insufficient address/unable to forward." Appellant's attorney had no additional contact information for Appellant. We affirm the order terminating parental rights and grant counsel's motion to withdraw.

On August 12, 2011, the Department of Human Services (DHS) received a maltreatment report alleging that appellant and Michael Davis were using and selling drugs out of their home and in front of the children. The initial investigation revealed inadequate food in the home, but was otherwise satisfactory. Appellant denied using drugs, but initially refused a drug screen. Protective services were offered, though the children were not removed from the home at that time.

An investigator returned to the home on August 18, 2011, and appellant tested positive for cocaine. Hair follicle testing done on M.D., M.T., and Y.T.[4] on August 28, 2011, came back positive for cocaine on September 12, 2011. DHS exercised a seventy-two hour hold on C.B., M.T., and Y.T., who were picked up from their school, on September 14, 2011. Appellant disappeared with the other two children, so they were not placed in DHS custody until she brought them to the DHS office on September 21, 2011. In the interim, DHS filed a Petition for Emergency Custody and Dependency-Neglect[5] for C.B., M.T., and Y.T. on September 16, 2011. The petition was granted in an order on September 19, 2011. On September 26, 2011, an order was entered in which the court found probable cause that the

[4]The hair of the other two children was too short for testing.

[5] The petition did not include T.T. and M.D. because DHS did not know of their whereabouts.

children were dependent-neglected and that custody should remain with DHS following a probable cause hearing that appellant did not attend.

Two days later, on September 28, 2011, DHS filed a motion to terminate reunification services. In the motion, DHS asserted that there was little likelihood that services would result in successful reunification because DHS had provided services to the family for the previous year, and appellant had relapsed within six weeks of closing the case, continuing to use drugs. This assertion referenced a June 2010 maltreatment report that was substantiated for inadequate supervision due to appellant's drug use. DHS opened a protective services case rather than remove the children. Services provided included residential drug treatment, daycare, counseling, housing assistance and home visits. Though the case was successfully closed on June 24, 2011, appellant was in relapse by the time of the August 2011 maltreatment report that gave rise to this case. DHS also filed an Amended Petition for Emergency Custody and Dependency-Neglect, including T.T. and M.D., on October 20, 2011, and an amended order granting DHS emergency custody of all five children was filed on October 26, 2011.

At the conclusion of an adjudication hearing held on October 31, 2011, the court adjudicated all five children dependent-neglected due to being subjected to inadequate supervision, threat of harm, and parental unfitness. It also granted DHS's goal of adoption. Appellant was allowed continued visitation and she consistently visited with her children every Friday from 3:00 pm to 4:00 pm until her last visit on January 27, 2012. She missed all of her scheduled visits for February of 2012. She also missed a staffing meeting that was

scheduled during February although she had agreed to attend. She called in March requesting visitation with her children. She was informed that DHS intended to ask that her visits be stopped because her missed visits were becoming traumatic to the children. DHS filed a motion to stop visitation on March 8, 2012, and the motion was granted by order on March 21, 2012. When appellant was informed that she could not visit the children, she told the caseworker, "that's how people end up dead."

After a review hearing, the goal of the case was changed to termination of parental rights and adoption in a March 26, 2012 order. The court found that appellant was still using drugs as recently as March 2012. It specifically stated that "the Court allows for second chances, but we are far beyond that at this point." DHS moved for termination of parental rights (TPR) in an amended petition filed May 23, 2012. DHS's petition was supported by the following grounds: (1) appellant had been found by a court of competent jurisdiction, including the juvenile division of the circuit court to have subjected any juvenile to aggravated circumstances[6] where aggravated circumstances means a juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification;[7] (2) appellant abandoned the children; [8] and (3) the juveniles have lived outside the home of the parent for a period of twelve (12) months and appellant willfully failed to provide significant material support in accordance with the parent's

[6] Ark. Code. Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A)(Supp. 2011).

[7] Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(I).

[8] Ark. Code Ann. § 9-27-341(b)(3)(B)(iv).

means or to maintain meaningful contact with the juveniles.[10] In support of the grounds for its petition, DHS asserted that TPR was in the children's best interests and that a TPR was supported by both the court's October 31, 2011 determination that there is little likelihood that services to the family will result in successful reunification and appellant's inconsistent visitation with her children.

At some point after the TPR petition was filed, but prior to the hearing on the same, appellant requested that her visitation resume. She was informed that she would have to submit to drug screening due to the lapse of time since her last visitation. Though the caseworker agreed to go to appellant's home to conduct appellant's screening, DHS's attorney informed her that the address she was given was incorrect.[11] The caseworker was also frequently unable to contact appellant because her provided phone numbers were often out of minutes or out of service.

A TPR hearing was held on June 25, 2012, following which the court granted DHS's petition and terminated appellant's parental rights to her children. The court found by clear and convincing evidence that the children were adoptable and faced potential harm if they were returned to appellant. Furthermore, it found that even if services were offered, there appeared to be an incapability of the children being returned to appellant within a reasonable period of time from the children's perspective. Finally, the court found that DHS had proven by clear and convincing evidence the ground alleged under § 9-27-

[10] Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a).

[11]Because of this information, the caseworker never attempted to go to the address. However, service of the TPR petition was successfully completed at the given address. Furthermore, appellant had provided three different addresses since the case was opened.

341(b)(3)(B)(ix)(a)(3)(B)(i), namely that the court had previously made a determination on October 31, 2011, that there was little likelihood of reunification with the mother even if the services were granted. An order reflecting the same was entered on July 12, 2012. Appellant timely filed a notice of appeal on August 2, 2012. This appeal followed.

In compliance with *Linker-Flores* and Rule 6-9(i), counsel ordered the entire record and found that after a conscientious review of the record there are no issues of arguable merit for appeal. Counsel's brief adequately covered each action that was adverse to appellant below. After carefully examining the record and the brief presented to us, we believe 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 affirm the termination of appellant's parental rights and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HIXSON and WOOD, JJ., agree.

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

No response.