

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-1050

STACY ROBERTSON
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN
APPELLEES

Opinion Delivered April 3, 2013

APPEAL FROM THE POINSETT
COUNTY CIRCUIT COURT
[No. JV2009-045]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED; MOTION GRANTED

LARRY D. VAUGHT, Judge

This appeal arises from an order of the Poinsett County Circuit Court terminating appellant Stacy Robertson's parental rights to her minor sons, J.B. (born May 21, 2001) and T.B. (born August 21, 2003). Robertson's attorney has filed a no-merit brief and a motion to be relieved as counsel in accordance with Ark. Sup. Ct. R. 6-9(i) (2012) and *Linker-Flores v. Arkansas Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), stating that there are no issues of arguable merit for reversal. Robertson was provided a copy of her counsel's brief, and she submitted a list of pro se points for reversal. The Department of Human Services (DHS) and the children's attorney chose not to file briefs.

The record reveals that this case began in May 2009, when DHS took emergency custody of J.B. and T.B.,¹ based on allegations of medical and educational neglect. The

¹DHS also sought emergency custody of another child of Robertson, A.O., born April 3, 1995. While Robertson's parental rights to A.O. were at issue throughout this case, Robertson's parental rights to A.O. have not been terminated, and A.O. is not a party to this



children remained in DHS custody until October 5, 2009, when a trial visit with Robertson was allowed. DHS again removed the children from Robertson's trial custody on November 18, 2009, based on allegations of failure to protect and inadequate supervision after Robertson was incarcerated. The children remained in DHS custody until December 15, 2010. Later, on February 11, 2011, the children were removed a third time from Robertson's custody based on new allegations of inadequate supervision and Robertson's positive drug screens. The children have remained in DHS custody since that time.

On May 25, 2012, DHS filed a petition to terminate Robertson's parental rights based on the grounds set forth in Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) (Supp. 2011).² At the August 29, 2012 termination hearing, Mildred Hill (Poinsett County Department of Children and Family Supervisor) summarized the procedural history of this case, which she said has resulted in J.B. and T.B. being in DHS custody for thirty-six of the past thirty-nine months. Hill testified that while Robertson had visited the children, she had not provided DHS with her contact, employment, or residential information as required.

appeal.

²The ground set forth in Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) is that 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 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. The ground set forth in subsection (b)(3)(B)(vii)(a) is that 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 that prevent return of the juvenile to the custody of the parent.



Further, it was Hill's belief that Robertson was living in Jonesboro with a sex offender, which prevented her children from being released to her custody. Hill also testified that Robertson had not disposed of outstanding fines in Craighead and Poinsett counties, which resulted in her incarceration in November 2009, February 2012, and May 2012.

Margaret Miller, DHS adoption specialist, testified that J.B. and T.B. were adoptable based on their young age and lack of medical problems.

Robertson testified that she applied her \$3000 tax refund to pay her fines in Craighead County but that she still had a \$900-fine balance in Poinsett County. She admitted that she was currently living with a sex offender in Jonesboro, Arkansas, and that it was not acceptable for her children to live there. She said that prior to that she lived in Trumann, Arkansas, for five months. But she also testified that "in [her] eyes" she was homeless and had been since 2009. On this point, she conceded that she was not ready for custody of her children. But she added that she could secure housing in six to eighteen months after she turned in the appropriate housing form. At the conclusion of Robertson's testimony, the trial court asked Hill to drug test Robertson. Hill testified thereafter that the test was positive for methamphetamine and benzodiazepine.

From the bench, the trial court terminated Robertson's parental rights to J.B. and T.B. based on section 9-27-341(b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a). Specifically, the trial court found that J.B. and T.B. had been in DHS custody for thirty-six of thirty-nine months, that termination was in the children's best interest, and that there was potential harm in returning the children to Robertson. The trial court also found that Robertson failed to substantially comply with the case plan, as she had tested positive for drugs (and was positive at the



termination hearing), lacked stable housing, was living with a sex offender, and had periods of incarceration. Finally, the trial court found that the children were adoptable. The order terminating Robertson's parental rights was entered on September 12, 2010, and this timely no-merit appeal followed.

After carefully examining the record, the brief, and Robertson's pro se points, we hold that her attorney has complied with the requirements established by the Arkansas Supreme Court for no-merit termination cases and that an appeal is wholly without merit. Counsel listed the only adverse ruling in this case—the trial court's decision to terminate Robertson's parental rights—and has adequately discussed why an appeal of this decision lacks merit. The trial court's termination order follows the governing statutes in all particulars, and we agree that an appeal on the merits would be frivolous. Thus, by memorandum opinion we affirm the termination of Robertson's parental rights to J.B. and T.B., *In re Memorandum Opinions*, 16 Ark. App. 301, 700 S.W.2d 63 (1985); Ark. Sup. Ct. R. 5-2(e) (2012), and we grant her attorney's motion to be relieved from representation.

Affirmed; motion granted.

GRUBER and HIXSON, JJ., agree.

Janet Lawrence, for appellant.

No response.