Cite as 2013 Ark. App. 294

# ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-1120

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| | **Opinion Delivered** May 1, 2013 |
| JASON HAYES<br>NATASHA HAYES<br>APPELLANTS | APPEAL FROM THE CARROLL COUNTY CIRCUIT COURT, EASTERN DISTRICT |
| V. | [No. JV 2001-40] |
| ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILDREN<br>APPELLEES | HONORABLE JAY T. FINCH, JUDGE<br><br>AFFIRMED; MOTIONS GRANTED |

**LARRY D. VAUGHT, Judge**

Natasha Hayes and Jason Hayes appeal from the order of the Carroll County Circuit Court entered October 11, 2012, terminating their parental rights to their children NH (3-10-05), GH (7-12-06), RH (3-18-08), and JH (2-28-09). The Hayeses are represented by separate counsel—each filing a motion to withdraw and a brief pursuant to *Linker-Flores v. Arkansas Department of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i) (2012), contending that an appeal would be wholly without merit. We affirm the termination of the Hayeses' parental rights to their children and grant each counsel's motion to withdraw.

The Department of Human Services (DHS) exercised a seventy-two-hour hold on the children after the Carroll County Sheriff's Department called to report that Jason was being arrested for violation of the terms of the sex-offender registry. At the time the children were taken into care by DHS, Natasha and Jason were divorced, and despite having joint

custody of the children, Jason had physical custody of them. The children were removed from their home on July 19, 2011, when Jason was arrested for twenty charges of being a registered sex offender on school property. He was later charged with possession of child pornography.

DHS also found that the Hayeses' home conditions were deplorable and that the children were suffering from dental and medical neglect. Because Natasha was unable to assume immediate custody of the children, the children were placed in DHS custody on July 19, 2011, and adjudicated dependent-neglected on August 25, 2011.

At the November 3, 2011 review hearing, the goal in relation to Natasha and the children was reunification. The court authorized overnight visits with Natasha "if appropriate" and ordered that she pay child support of $10 per week. The court reviewed her case again on April 27, 2012, and the goal remained reunification. In both of the hearings, the court found that DHS had provided Natasha with reasonable services.

Jason was ordered to obtain and maintain stable housing and to participate in individual counseling after submitting to a psychological examination. Although he completed twelve individual therapy sessions, he was discharged from therapy due to a lack of identified treatment goals. According to the DHS caseworker, Jason showed a lack of seriousness in understanding his past sexual offenses and his ongoing sexual interest in minors. This is evidenced by a statement Jason made, noting, "I was unaware that I was required to learn from therapy."

During the case, Jason was arrested and charged with possession of child pornography. The detective in charge of the investigation testified that Jason admitted that the photographs

were of girls between the ages of nine and twelve. Jason further admitted to masturbating to the image of a twelve-year-old nude girl playing the piano. Jason is a level-three sex offender who was convicted of sexual assault on his brother (eleven at the time) in 1999.[1]

At the permanency-planning hearing on June 28, 2012, the court found that the parents had failed to comply with its orders. Specifically, the court noted that the parents had failed to participate in counseling or to obtain employment or housing. The court went on to change the goal to termination of parental rights, noting that the deficiencies could not be remedied in three months.

Following the termination hearing on September 7, 2012, the trial court found that Natasha and Jason failed to remedy the condition which necessitated removal (incarceration, housing and employment instability, and failure to meet case-plan goals); termination was in the children's best interest because they had been out of their home for more than twelve months; they were likely to be adopted, and aggravated circumstances existed as the children's health and safety were at risk if returned to Jason or Natasha's custody.[2]

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). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Reed*

[1]Further, three other juveniles have accused Jason of molesting them, including his son, NH. The "true finding" of assault against his son was overruled, but NH has not recanted his accusation.

[2]At the time of the termination hearing, Jason was incarcerated for his sex-offender violations and awaiting a hearing on the child-pornography charges.

*v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 369, 417 S.W.3d 736. At least one ground for termination of parental rights, and that it is in the child's best interest to terminate those rights, must be proved by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). A "best interest" finding must include a consideration by the trial court of the adoptability of the child and the potential for harm if the child were returned to the parent. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). 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 proved 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). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* at 248, 947 S.W.2d at 763. Where there are inconsistencies in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Lovell v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 547. 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.* at 2.

We first address the portion of the case concerning Natasha. Her counsel ordered the entire record and examined it for adverse rulings, explaining why none would support a meritorious argument for reversal. *Linker-Flores*, 359 Ark. at 141, 194 S.W.3d at 747–48. The clerk of our court provided Natasha with a copy of her counsel's brief and motion, along

with a letter informing Natasha of her right to file pro se points for reversal; however, Natasha did not file pro se points for reversal. Neither the DHS nor the children's attorney filed a brief with respect to Natasha.

The record shows that Natasha was afforded reasonable assistance in meeting the goals of her case plan for almost a year. However, she moved away without incorporating the move into the plan and without informing DHS of her decision. She also failed to attend therapy, counseling, and parenting classes. She stated that she had "lost hope" and ceased to comply with the plan, basically abandoning the plan and the children. She also failed to achieve stable housing and employment. Based on this extreme failure to comply with the case plan, there is more than sufficient evidence to support the termination.[3] Further, counsel has addressed all other adverse rulings in the record (denial-of-continuance motion, relative-placement questions, and five other objections relating to testimony), none of which could possibly support reversal.

After carefully examining the record and counsel's brief for Natasha, we hold that her counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals from terminations of parental rights and that the appeal is wholly without merit. Accordingly, we affirm the termination of Natasha's parental rights to NH, GH, RH, and JH. We also grant her counsel's motion to be relieved from representation.

As to Jason, the fact that he was a convicted child molester and relapsed during the pendency of the case is singularly sufficient evidence to support the finding that grounds

[3]The children's likelihood of adoption was undisputed by the parties.

existed for the termination of Jason's parental rights, that termination was in the children's best interest, and to establish the potential harm that could befall them if they were returned to his care. *Reed*, 2012 Ark. App. 369, at 3 (stating that the potential-harm prong of the best-interest inquiry must be viewed in a forward-looking manner and in broad terms).

In addition to the sufficiency to support termination, all other adverse rulings were fully briefed and discussed by Jason's counsel (denial-of-continuance motion, hearsay objection, relevance objection, motion to dismiss, and two evidentiary questions) none of which are potentially meritorious. We have also reviewed the pro se points filed by Jason, which detailed his desire to improve as a person and a parent. While certainly a positive aspiration, the statement is not something that would support a potentially meritorious appeal. Accordingly, we affirm the trial court's termination of Jason's parental rights to all four children and grant counsel's motion to be relieved.

Affirmed; motions granted.

GLADWIN, C.J., and PITTMAN, J., agree.

*Deborah R. Sallings*, Arkansas Public Defender Commission, for appellant Natasha Hayes.

*Janet Lawrence*, for appellant Jason Hayes.

No response.