Cite as 2013 Ark. App. 295

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 13-45

	Opinion Delivered MAY 1, 2013
GREG ARMSTRONG APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. JV-10-788]
V.	
ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILD APPELLEES	HONORABLE MARK HEWETT, JUDGE
	AFFIRMED; MOTION GRANTED

KENNETH S. HIXSON, Judge

Appellant Greg Armstrong appeals from the termination of his parental rights to his nine-year-old daughter, A.A.[1] Mr. Armstrong's counsel has filed a no-merit brief and a motion to withdraw, stating that there is no issue of arguable merit to advance on appeal and that she should be relieved of counsel. We affirm and grant appellant's counsel's motion to withdraw.

In compliance with *Linker-Flores v. Arkansas Department Human Services.*, 359 Ark. 131, 194 S.W.3d 739 (2004), appellant's counsel has ordered the relevant portions of the record, Ark. Sup. Ct. R. 6-9(c), and has examined it for adverse rulings, explaining why each adverse ruling would not support a meritorious ground for reversal, Ark. Sup. Ct. R. 6-9(i). Mr. Armstrong's counsel has accurately asserted that the only adverse ruling was the

[1]The child's mother died in December 2009.

termination itself. Mr. Armstrong was provided a copy of his counsel's brief and motion and was informed of his right to file pro se points, which he did.

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). At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341 (Supp. 2011); *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). 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).

The involvement of the Arkansas Department of Human Services (DHS) in this case began in April 2010 when it opened a protective-services case after a true finding of physical abuse against Mr. Armstrong for excessive corporal punishment of his daughter, resulting in cuts, bruising, and welts. At that time, DHS provided Mr. Armstrong with parenting classes and counseling, and Mr. Armstrong signed an agreement not to use corporal punishment on his daughter as a provision of the protection plan.

On November 19, 2010, DHS filed a petition for emergency custody of A.A. Attached to the petition was an affidavit alleging that Mr. Armstrong had spanked A.A. with a coat hanger, leaving severe bruising. Upon being confronted with the allegations,

Mr. Armstrong acknowledged that he had used a coat hanger to spank the child, was aware that the child had bruises, and said that he got "carried away." On the same day the petition was filed, the trial court entered an ex parte order for emergency DHS custody.

On January 24, 2011, the trial court entered an adjudication order finding A.A. to be dependent-neglected as a result of physical abuse perpetrated by Mr. Armstrong. Mr. Armstrong was ordered to complete parenting-without-violence classes and to demonstrate improved parenting skills; maintain suitable housing, income, and transportation; submit to a psychological evaluation and counseling; and visit the child once per week. In a permanency-planning order entered on December 14, 2011, custody of A.A. was placed with relatives in a safe and appropriate home, and A.A. has remained in their custody.

DHS filed a petition to terminate Mr. Armstrong's parental rights on July 23, 2012. The termination hearing was held on September 21, 2012.

On October 16, 2012, the trial court entered an order terminating Mr. Armstrong's parental rights. The trial court found by clear and convincing evidence that termination of parental rights was in the child's best interest, and the court specifically considered the likelihood that the child would be adopted, as well as the potential harm of returning her to the custody of her father as required by Ark. Code Ann. § 9-27-341(b)(3)(A) (Supp. 2011). The trial court also found clear and convincing evidence of these two statutory grounds under subsection (b)(3)(B):

> (i)*(a)* 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 (12) 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.
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> . . . .
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> (ix)*(a)* The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:
> *(3)(A)* Have subjected any juvenile to aggravated circumstances.
> *(B)* "Aggravated circumstances" means:
> *(i)* . . . [A] determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification[.]

In appellant's counsel's no-merit brief, she correctly asserts that there can be no meritorious challenge to the sufficiency of the evidence supporting termination of parental rights. With regard to the best interest of the child, there was testimony presented showing that, although Mr. Armstrong had completed parenting classes, his parenting skills had not improved. In particular, Mr. Armstrong told his DHS caseworker, even after he had completed these classes and gone to counseling, that he would continue to punish A.A. in the same way as he did before, stating that he did not see a problem with it and that A.A. needed to be taught a lesson. The DHS worker testified that Mr. Armstrong had an inability to control his temper and exhibited intimidating and aggressive behavior that negatively impacted his daughter, that A.A. was very fearful of her father's unpredictable behavior, and that A.A. would "absolutely be in danger" if she were returned to Mr. Armstrong's custody. As a result of Mr. Armstrong's progression of hostility and anger displayed during therapy sessions with his daughter, as well as his paranoid and delusional behavior, the counselor decided for safety reasons that Mr. Armstrong could no longer be included in family therapy.

During the pendency of the case, Mr. Armstrong tested positive for marijuana and opiates, and at the time of the termination hearing he lived in a one-bedroom apartment and was unemployed with no transportation. There was also testimony that A.A.'s relatives were interested in adopting her. Based on these circumstances, the trial court's finding that termination of parental rights was in A.A.'s best interest was not clearly erroneous.

Nor could there be a meritorious challenge to the statutory grounds supporting termination. Both of the statutory grounds relied on by the trial court were applicable where, after almost two years had elapsed from the time of emergency DHS custody, Mr. Armstrong continued to lack appropriate parenting skills as demonstrated by his uncontrolled anger issues and the risk of physical harm to A.A. if she were returned to his custody. Despite exhaustive DHS services, Mr. Armstrong is no closer to being able to provide a suitable home for A.A. than when the case began. Considering the evidence presented, the trial court's decision terminating appellant's parental rights was not clearly erroneous, and any appeal challenging the sufficiency of the evidence would be wholly without merit.

In Mr. Armstrong's pro se points, he asks for a second chance to cooperate with DHS. He acknowledges that he spanked his child with a coat hanger and that he made a mistake, but he maintains that he has completed anger-management classes. Mr. Armstrong asserts that he never plans on using that type of punishment again. Mr. Armstrong acknowledges that his behavior has been interpreted by professionals as hostile, angry, and paranoid, but he submits that his behavior was due to him being terrified of losing his daughter. Mr. Armstrong

maintains that he can provide a home for A.A. in his one-bedroom apartment and that he has transportation.

As we have previously stated, the trial court's decision to terminate Mr. Armstrong's parental rights was not clearly erroneous based on the evidence that was before the court. Moreover, we have held that a child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. *Dozier v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 17, 372 S.W.3d 849. We conclude that Mr. Armstrong's pro se points have provided no grounds for reversal, and that appellant's counsel has adequately addressed the sufficiency of the evidence in her no-merit brief.

After examining the record, the brief, and the pro se points, we have determined that appellant's counsel has complied with our requirements for no-merit cases and that the appeal is wholly without merit. Accordingly, we affirm the order terminating appellant's parental rights and grant his attorney's motion to be relieved from representation.

Affirmed; motion granted.

WYNNE and WOOD, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha Baertels McNulty, County Legal Operations, for appellee.

Chrestman Group, PLLC, by: *Keith Chrestman*, attorney ad litem for minor child.