

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-13-178

MATTHEW GREGORY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered June 19, 2013

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[JV-11-384]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

Appellant appeals the circuit court's termination of his parental rights as to C.G.2, born March 18, 2009, S.G., born May 15, 2005, and N.G., born December 13, 2003.¹ 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 him of his right to file pro se points for

¹ The parental rights of the mother, Deserae Gregory, were terminated in the same order but are not a part of this appeal.

² 359 Ark. 131, 194 S.W.3d 739 (2004).

³ (2011).



reversal. Appellant failed to file pro se points for reversal. We affirm the circuit court's order terminating appellant's parental rights and grant counsel's motion to withdraw.

After receiving a report of a suspicious death of the youngest child, C.G.1, the Department of Human Services (DHS) took an emergency hold on the children on May 19, 2011. There were also allegations of environmental neglect. The court granted emergency custody of the children to DHS on May 23, 2011, and found probable cause to believe that they were dependent -neglected on May 25, 2011. The court ordered appellant to obtain and maintain adequate housing and employment, complete parenting classes, submit to individual counseling, and submit to a psychological evaluation.

At the July 13, 2011 adjudication hearing, appellant waived the hearing. The court then found the children dependent-neglected as a result of inadequate supervision that placed the children at risk of harm. The court set the goal of the case as reunification and continued the orders imposed at the probable cause hearing. The children were placed in the temporary custody of their paternal grandparents, Jimmy and Karen Gregory.

As the case progressed, allegations of sexual abuse of S.G. by appellant arose. In September 2011, S.G. was seen by a physician, who observed evidence of penetration of the child's vagina. Additionally, both N.G. and S.G. were reportedly acting out sexually, which suggested that they had been exposed to sexual activity. An investigation by the Crimes Against Children Division substantiated sexual abuse of S.G.

At the October 12, 2011 review hearing, the court found the existence of aggravated circumstances, in particular, sexual abuse, exploitation, and chronic neglect. The court also



found that there was little likelihood that services would result in a successful reunification. The court authorized DHS to seek termination of parental rights (TPR) but ordered services to the family to continue.⁴

A second review hearing was held on February 22, 2012. Appellant had previously been arrested on a warrant for rape; the alleged victim was S.G. The court found him to be in partial compliance with the case plan stating that he had made some progress toward alleviating the cause of the children's removal.

DHS filed a termination of parental rights (TPR) petition on June 15, 2012. The petition alleged that TPR of the appellant's rights was called for under Ark. Code Ann. § 9-27-341 for:

1. failure to remedy the cause of removal within twelve months despite a meaningful effort by the Department to rehabilitate the parents and correct the conditions that caused removal,⁵
2. willful failure to provide significant support in accordance with the parent's means or to maintain meaningful contact with the children,⁶
3. having subjected the children to aggravated circumstances - at least one child was sexually abused, that the juveniles have been sexually exploited and

⁴ The parents obtained a certification under Ark. R. Civ. P. 54(b) and appealed this order. See *Gregory v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 364. This court dismissed the appeal, however, finding that the review was not a final, appealable order.

⁵ Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (2012) (Supp. 2011).

⁶ Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a).



chronically neglected and a finding of little likelihood of reunification had been made,¹ and

4. other factors or issues that arose subsequent to the filing of the original petition for dependency-neglect demonstrating that a return to the parent is contrary to the juvenile's health, safety, or welfare, despite the offer of appropriate family services because the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances.²

DHS also alleged that TPR was in the children's best interest.

The court terminated appellant's parental rights at a TPR hearing on December 12, 2012. After hearing the evidence at the hearing, the court found that all the grounds alleged against appellant had been proved by clear and convincing evidence. The court also found that TPR was in the children's best interest, that the children were likely to be adopted, and that they faced harm if returned to appellant.

Appellant filed a timely notice of appeal from the order on December 20, 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. Though abstracted, counsel did not include as an adverse ruling the court's

¹ Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A)&(B)(i).

² Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a).



response to an objection made by appellant during the direct examination of Jennifer Solleder. Appellant argued that the testimony to be received was not in evidence. This objection could arguably be construed as adverse. However, appellant went on to argue that “she hasn’t stated the basis of her opinion at all,” to which the court responded that the DHS attorney could lay a foundation. This was permitted without further objection.

Normally, such an omission would require rebriefing. However, our supreme court has held that the failure to abstract or discuss every adverse ruling does not prohibit us from granting counsel’s motion to withdraw and affirming a termination order when the rulings clearly did not constitute reversible error.⁹ The adverse ruling that appellant’s counsel fails to discuss clearly does not constitute reversible error. Accordingly, after carefully examining the record and the brief presented to us, which included all other adverse rulings, we 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.

GLOVER and WOOD, JJ., agree.

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

No response.

⁹*Cheney v. Ark. Dep’t. of Human Servs.*, 2012 Ark. App. 209, at 11, 396 S.W.3d 272, 278 (citing *Lewis v. Ark. Dep’t of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005); *contra Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877 (holding that any such omissions in a criminal no-merit brief require rebriefing by the appellant’s counsel)).