

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-17-383

TIFFANY WINGATE		Opinion Delivered December 6, 2017
	APPELLANT	APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, CHICKASAWBA DISTRICT [NO. 47JV-15-21]
V.		
ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILD		HONORABLE RALPH WILSON, JR., JUDGE
	APPELLEES	AFFIRMED; MOTION TO WITHDRAW GRANTED

BRANDON J. HARRISON, Judge

The Mississippi County Circuit Court terminated the parental rights of Tiffany Wingate to her daughter, B.M. Wingate’s counsel has filed a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 6-9(i) (2017), asserting that there are no meritorious issues that could arguably support an appeal and seeking permission to withdraw as counsel. The clerk of this court sent a copy of counsel’s brief and motion to withdraw to Wingate, advising her of her right to file pro se points for reversal pursuant to Ark. Sup. Ct. R. 6-9(i)(3), but she has not done so. We grant counsel’s motion to withdraw and affirm the order terminating Wingate’s parental rights.

On 2 March 2015, the Arkansas Department of Human Services (DHS) petitioned for emergency custody of three-day-old B.M. The accompanying affidavit explained that

both Wingate and B.M. tested positive for amphetamines when B.M. was born and that Wingate admitted using methamphetamine while she was pregnant. The circuit court issued an order for emergency custody and later found probable cause to continue custody with DHS.

On 13 April 2015, the court adjudicated B.M. dependent-neglected and set the goal of the case as reunification. The adjudication order noted that Wingate had completed a drug-and-alcohol assessment, submitted to random drug screens, completed parenting classes, and watched “The Clock is Ticking” video. Wingate was ordered to complete outpatient treatment and to resolve her criminal charges.

The court reviewed the case in July 2015 and found that Wingate had partially complied with the case plan and court orders. It recited Wingate’s compliance as noted above but found that three out of five drug screens had been positive for amphetamines, methamphetamine, and THC. It also found that Wingate had not obtained stable housing or maintained stable employment or income. In addition, Wingate had not complied with the recommendation of outpatient substance-abuse treatment. She was ordered to complete a second drug-and-alcohol assessment and follow the recommendations, obtain stable housing and employment, and submit to random drug screens. Another review in October 2015 revealed that Wingate had once again not followed the recommendation from her drug-and-alcohol assessment and had not obtained stable housing or employment. The order also noted three positive drug screens in September 2015.

In February 2016, the court entered a permanency-planning order changing the goal of the case to either a permanent custodian or termination of parental rights and adoption.

The court found that Wingate had not maintained stable housing or employment, had not complied with the recommended drug treatment, and had two positive drug tests in November and December 2015. The order noted that Wingate had begun an inpatient drug rehabilitation but left after one day. A June 2016 review order noted continued noncompliance as described above and that Wingate had again entered a rehabilitation program but left after a few days. In August 2016, DHS petitioned to terminate Wingate's parental rights alleging several grounds: twelve month/failure to remedy, failure to provide significant material support or maintain meaningful contact, subsequent factors/incapacity or indifference to remedy, and aggravated circumstances. *See* Ark Code Ann. § 9-27-341(b)(3)(B)(i)(a), (ii)(a), (vii)(a), & (ix)(a) (Repl. 2015).

At the termination hearing in December 2016, Wingate testified that she was currently housed in the county jail but expected to be released by December 30. She explained that she had been jailed after police had found a glass pipe used to smoke methamphetamine and a needle used to inject methamphetamine in the car with her and her "old man." She testified that she had attended a drug-and-alcohol assessment, which recommended twelve weeks of treatment, but that she had undergone "probably like five" weeks of treatment. She admitted that she had tested positive for methamphetamine since April 2015 but insisted that she was "a hundred percent" clean now. She conceded that she did not have a stable home and was not employed. She admitted that she had been a "messed up mama" and asked that DHS "give [her] another chance."

Greg Watson, the DHS caseworker, testified that Wingate had complied with some requirements of the case plan and that she had attended three drug-and-alcohol assessments.

Watson explained that Wingate had not followed the recommendations from those assessments and had not been able to obtain sobriety on a steady basis. He also stated that Wingate had not visited B.M. since September 2015. He agreed that there were no additional services that DHS could offer that would likely result in reunification. As to B.M., Watson testified that she had been in the same foster home since her initial placement and that she was doing well. He said that B.M. is adoptable and agreed that it would be harmful to place B.M. in Wingate's custody.

After DHS rested, Wingate moved for a directed verdict, asserting that DHS had not proved that termination was in B.M.'s best interest and that DHS had not proved the statutory grounds for termination.¹ The court granted the motion as to failure to provide significant material support but otherwise denied the motion.

Wingate was recalled to the stand and again asked the court to give her another chance. She admitted she had "failed in the beginning" because of her drug use but said that she had been clean for four months. Wingate then renewed her motion to dismiss, which was denied.

From the bench, the circuit court granted the petition to terminate Wingate's parental rights. The court entered a written order in February 2017 terminating Wingate's parental rights on statutory grounds of twelve month/failure to remedy, subsequent factors/incapacity or indifference to remedy, and aggravated circumstances. The court also found that termination was in B.M.'s best interest. Wingate timely appealed to this court.

¹Although Wingate moved for a directed verdict, the motion at a bench trial is a motion for dismissal. *Thornton v. State*, 2014 Ark. 157, 433 S.W.3d 216.

A circuit court's order that terminates parental rights must be based on findings proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3); *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Clear and convincing evidence is proof that will produce in the fact-finder a firm conviction on the allegation sought to be established. *Dinkins, supra*. On appeal, we will not reverse the circuit court's ruling unless its findings are clearly erroneous. *Id.* 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.* In determining whether a finding is clearly erroneous, an appellate court gives due deference to the opportunity of the circuit court to assess the witnesses' credibility. *Id.* Only one ground is necessary to terminate parental rights. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

In her no-merit brief, counsel first explains that there were no objections decided adversely to Wingate, and while she did make a motion to dismiss that was partially denied, the basis of the motion was the sufficiency of the evidence presented by DHS, which is the same basis for the appeal. Counsel contends that the motion was properly denied for the same reasons that the termination order was proper, thus a separate discussion is not necessary.

Next, counsel notes that only one statutory ground for termination is required and argues that, in this case, there was clear and convincing evidence to support the twelve-month/failure-to-remedy ground, which provides that parental rights may be terminated if the 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. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). Counsel explains that B.M. had been removed because of Wingate's drug use and had been in DHS's custody for twenty months at the time of the hearing, and while DHS offered Wingate multiple services, including three attempts at drug rehabilitation, Wingate failed to complete any rehabilitation program and continued to test positive for drugs. Counsel contends that no meritorious argument can be made that Wingate had remedied the conditions that caused B.M.'s removal.

Regarding best interest, counsel notes that Watson's testimony provided sufficient evidence that B.M. is likely to be adopted. Counsel also argues that the circuit court had sufficient evidence to find potential harm, noting Wingate's continuing drug abuse, her lack of employment or a home, and her incarceration at the time of the termination hearing, which demonstrated an overall lack of stability.

We agree that the circuit court had ample evidence on which to find that it was in B.M.'s best interest for Wingate's rights to be terminated and that statutory grounds for termination existed. So we grant counsel's motion to withdraw and affirm the termination of Wingate's parental rights.

Affirmed; motion to withdraw granted.

GRUBER, C.J., and VIRDEN, J., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

One brief only.