

# ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-714

MEGAN GARCIA

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and MINOR CHILD  
APPELLEES

**Opinion Delivered** November 17, 2010

APPEAL FROM THE CONWAY  
COUNTY CIRCUIT COURT  
[No. JV-08-17]

HONORABLE TERRY SULLIVAN,  
JUDGE

AFFIRMED; MOTION GRANTED

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## LARRY D. VAUGHT, Chief Judge

Appellant Megan Garcia appeals the order entered by the Conway County Circuit Court terminating her parental rights in her child, V.W. On appeal, Garcia's attorney has filed a motion to be relieved as counsel pursuant to *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 6-9(i) of the Arkansas Rules of the Supreme Court and Court of Appeals, asserting that there are no issues of arguable merit to support an appeal. Counsel's motion is accompanied by a brief listing the adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal. The clerk of this court sent a copy of counsel's motion and brief to Garcia, informing her of the right to file pro se points for reversal. Garcia filed pro se points (in the form of a letter to our court), but none of her points

demonstrate error.<sup>1</sup>

Garcia is the mother of three children. Only her daughter, V.W., who was born on October 24, 2006, is at issue in this appeal. The Arkansas Department of Human Services (DHS) obtained emergency custody of V.W. on April 5, 2008, while she was in the custody of Jason Williams, the father of Garcia's other two minor children.<sup>2</sup> An employee with the Division of Children and Family Services received information that Garcia had left V.W. (who was eighteen months old at the time) in the care of Williams the previous night and that Williams thought that Garcia was out using drugs. When the police arrived at Garcia's home, they found that the house had no water or food and that clothes and trash were all over the home. The police also learned that Williams had charges pending for driving while under the influence of alcohol and fleeing from police while his children were in the car.<sup>3</sup> Based on this information, V.W. was taken into police custody. At the police station, Garcia tested positive for methamphetamine and THC. Garcia, who was twenty-six years old, started using drugs when she was fourteen.

The trial court declared V.W. to be dependent-neglected on May 22, 2008, based upon

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<sup>1</sup>Garcia writes, "The reasons I believe that this order should be overturned are more heart felt than that of a legal nature." She goes on to admit that she was in the midst of a severe drug addiction when V.W. was born but that she never stopped loving her daughter. She writes that she has been actively involved in drug rehabilitation since March 2010 and is "now sober and learning to live my life positively, making amends where possible, and learning more daily about my skills as a parent."

<sup>2</sup>Jason Williams is not V.W.'s biological father.

<sup>3</sup>At the time of V.W.'s removal, DHS had an open case against Williams based on the pending charges, which resulted in the removal of his two sons from his custody on December 22, 2007.

Garcia's continued drug use, the environmental condition of her home, and her arrest for endangering the welfare of a minor. The goal of the case plan was reunification with Garcia. On April 8, 2008 and November 17, 2009, DHS petitioned for the termination of Garcia's parental rights. At the termination hearing held on March 25, 2010, the testimony revealed that Garcia, who was incarcerated at the time for a period of nine to twenty-four months, had not been compliant with the case plan. She tested positive for drugs, failed to keep in contact with DHS, failed to maintain a stable and safe home, failed to obtain a job, failed to complete parenting classes and attend counseling, failed to be available for random drug screens, failed to visit V.W. for nearly a year, and failed to support V.W. Following the hearing, the trial court found that termination was in V.W.'s best interest and that DHS had proven three grounds supporting the termination of Garcia's parental rights pursuant to Arkansas Code Annotated section 9-27-341 (Repl. 2009).

After reviewing the record and counsel's brief, we hold that counsel has complied with the requirements regarding no-merit appeals and that the appeal is wholly without merit. Counsel listed and discussed eleven objections made at the hearing, identified whether those objections were adverse to Garcia, and discussed why those that were adverse to Garcia were not meritorious. Furthermore, counsel more than adequately discussed why the trial court's termination decision was supported by sufficient evidence.

We point out, however, one ruling that was adverse to Garcia that was abstracted but not discussed in the argument section of counsel's no-merit brief. During the hearing, counsel for

DHS objected when Garcia's counsel questioned Garcia about why her sons were not having visitation with V.W., their half-sister. Counsel for DHS argued that the line of questioning was irrelevant and that Garcia had not been in attendance at other hearings to know what had been going on with her sons. The trial court sustained the objection.

We hold that this minor omission does not require rebriefing. In *Sartin v. State*, our supreme court held that in no-merit termination cases, the failure to include one or more adverse rulings will not automatically require remand for rebriefing if the omitted adverse ruling(s) would not be grounds for reversal had any such ruling been properly included. 2010 Ark. 16, at 4, 362 S.W.3d 877, 880 (citing *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, 232, 217 S.W.3d 107, 114 (2005) (declining to order rebriefing in no-merit termination case where three rulings adverse to the appellant were not abstracted or included in the argument section of the brief because they did not raise a meritorious ground for reversal on appeal); *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005) (holding that rebriefing was not required, despite the omission of four adverse rulings that were not abstracted or included in the argument section of the no-merit brief, because they failed to present a meritorious ground for reversal on appeal)).

Likewise, in the case at bar, the omitted adverse ruling is not a meritorious ground for reversal on appeal. The line of questioning sought by Garcia (why Garcia's sons were not having visitation with V.W.) was irrelevant to the termination of Garcia's parental rights in V.W. Therefore, rebriefing is not required. Accordingly, we grant counsel's motion to be relieved as counsel and affirm the termination order.

Cite as 2010 Ark. App. 769

Affirmed; motion to be relieved as counsel granted.

GLOVER and BAKER, JJ., agree.