

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 10-783

TIFFANY VANCE and ALEX SHANE
BORYSCHTSCK, III

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered NOVEMBER 17, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
ELEVENTH DIVISION
[NO. JJN-09-346]

HONORABLE MELINDA GILBERT,
JUDGE

AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellants Tiffany Vance and Alex Boryschtsck appeal from the termination of their parental rights to their children, a son AB and a daughter PB. The children were out of their parents' custody for approximately fifteen months leading up to the entry of the May 5, 2010 order on appeal. At that time, the son was nine years old and the daughter was five years old. Both parents appeal, and they share an appellate attorney, Thomas Wilson.

In compliance with *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i) (2010), Wilson ordered the entire record and examined it for adverse rulings, and he filed a brief stating that none would support a meritorious argument for reversal. Wilson filed an accompanying motion to be relieved as counsel on the basis that there is no issue of arguable merit for reversal. Although

the clerk of our court attempted to provide appellants a copy of their attorney's brief and motion at their last known address, the packet was returned to the clerk's office with a postal notation of "not deliverable as addressed." We received no pro se response by either parent. DHS and the children's attorney chose not to file a brief.

After review of this appeal under the proper standards for no-merit termination-of-parental-rights cases, we affirm the order terminating their parental rights and grant the motion to be relieved as counsel. We explain the basis of our decision as follows.

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 the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341 (Repl. 2009); *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 proven 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 primary adverse ruling in this case was the decision to terminate parental rights. DHS alleged two grounds: (1) that the children had been adjudicated dependent/neglected and had continued out of their parents' custody for at least twelve months, and despite a

meaningful effort by DHS to rehabilitate the parents and correct the conditions that caused removal, those conditions had not been remedied by the parents; and (2) that other factors or issues had arisen since the filing of the original petition for dependency/neglect demonstrating that a return of the children to their parents would be contrary to the children's health, safety or welfare, and that despite the offer of appropriate services, the parents had manifested the incapacity or indifference to remedy the subsequent issues.

After a hearing on the petition, the trial judge entered an order terminating their parental rights, finding that both bases applied to each parent and that termination of their rights was in the children's best interest. As explained by appellate counsel, we could not hold that the trial court clearly erred in finding as it did.

The children came into DHS custody in February 2009, when both parents were jailed, and there was no legal care giver for the children. The family had been living with Vance's mother, and there was unchallenged evidence of environmental neglect in the home, including a lack of utility services and a lack of food. In April 2009, the mother stipulated to an adjudication that the children were dependent/neglected.

The parents were given case plans, requiring in part that they obtain stable housing/employment/transportation, remain drug and alcohol free, attend parenting classes and counseling sessions, and abide by any psychological assessment recommendations. Over the next several months, review and permanency planning hearings were conducted.

DHS sought to terminate their parental rights in petitions filed in January and February 2010. The hearing was conducted in April 2010. The foster mother attested to how bright and loving the children were. An adoption specialist had identified twenty-four potential adoptive parents for the children as a sibling pair. A DHS case worker explained the extent of efforts made to assist each parent to achieve reunification. According to the parents, they had continued over the previous several months to live with a friend in a house in Little Rock. The parents had been together for approximately eleven years and were by their terms “engaged.”

The evidence overall demonstrated that the mother was unable or unwilling to discontinue drug use (having failed to complete drug treatment on three different occasions), she failed to attend counseling until the petition to terminate was filed, she never held a steady job, she failed to pay court-ordered child support, and she failed to establish proper housing. The mother’s psychological evaluation demonstrated that she was a multi-drug abuser and that she had a borderline personality disorder, characterized by unstable and drama-seeking behavior. The psychologist noted that this out-of-control behavior started in her teen years and was unlikely to change.

The progression regarding the father showed that he was paroled for a criminal offense in the fall of 2009, that he had lost employment but was seeking another job, that he thought he would have stable housing in the future, and that although he did not need drug treatment

he failed to submit to an overall psychological assessment. Both parents professed love for their children and wanted to reunite as a family. In essence, they requested more time.

After taking the matter under advisement, the judge rendered an eighteen-page order describing the chronology, the testimony of witnesses, and the exhibits. The judge found that both parents had failed to remedy the causes for removal and had demonstrated an incapacity or indifference to remedying the problems that prevented return of their children. The trial judge found the mother's credibility lacking, noting her implausible explanations and inconsistent statements, and found that she wholly lacked stability. The judge found the father to have failed to comply with the case plan, to have demonstrated poor judgment in remaining with the mother, and to have failed to establish any stable housing or employment. As asserted by appellate counsel, we could not conclude that the trial court clearly erred in finding clear and convincing evidence of grounds.

We further hold that no issue of arguable merit is presented as to whether termination of parental rights was in the children's best interest. This is a two-part inquiry that requires consideration of the potential harm to the children if returned to the parents, and the likelihood of adoption. The trial judge clearly considered both parts in deciding termination was in the children's best interest. There was potential harm, a query conducted in broad terms and forward looking. This was so because the parents had no employment or home, and at least one parent had significant drug and psychological problems. The children were

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deemed adoptable, even as a sibling pair. Therefore, we agree with counsel that there is no issue of arguable merit on the sufficiency of the evidence to terminate parental rights.

Their attorney next states that there were no other adverse rulings upon which to assert any argument for reversible error. We agree.

We affirm the order terminating these parental rights, and we also grant their attorney's motion to be relieved from representation.

KINARD and ABRAMSON, JJ., agree.