

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-1088

PATRICE BAKER

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered February 2, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. JV-2008-23]

HONORABLE RALPH WILSON,
JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

Patrice Baker brings this appeal from the termination of her parental rights to her children, Z.B. (DOB 01/03/08), and D.B. (DOB 01/20/09).¹ Baker's children were born while she was herself a minor in the custody of the Arkansas Department of Human Services (DHS). Baker reached the age of eighteen in April 2009, and she was pregnant with a third child at the time of the termination hearing in June 2010.

Baker's attorney has filed a motion to withdraw and 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). DHS has not filed a brief; however, it has filed a letter pursuant

¹The court also terminated the parental rights of Robert Lee Phanamam, the putative father. Phanamam did not participate in any proceedings and is not a party to this appeal.

to Ark. Sup. Ct. R. 6-9(i)(2) stating that it concurs that the appeal has no merit. We deny the motion to withdraw and order rebriefing.

In this case, one of the requirements of the case plan and the court's orders was that Baker obtain her GED. However, she could not pass the test necessary to enter the GED program, despite taking it numerous times. Eventually, the circuit court ordered that this requirement could be waived if testing determined that Baker would be unable to complete her GED. There is no evidence that such testing was conducted. There was also evidence that Baker was receiving SSI disability benefits while a minor, but that those benefits ceased once Baker reached her majority. Despite this evidence, there is no indication that Baker's mental abilities were even evaluated professionally or that DHS provided Baker with services that were tailored to her mental abilities. In its petition seeking termination of Baker's parental rights, DHS averred that there were no issues that required accommodations under the Americans with Disabilities Act (ADA).

In her motion to be relieved, Baker's attorney concedes that Baker was "perhaps" entitled to such services pursuant to the requirement that DHS make reasonable accommodations to persons within the ADA, but argued that this argument was waived because it was made at the termination hearing rather than at the permanency-planning hearing. Counsel cites to *Jones-Lee v. Arkansas Department of Human Services*, 2009 Ark. App. 160, 316 S.W.3d 261 (2009), as support for this proposition. In that case, this court, speaking through Judge Brown, did say that the issue of adequate services was waived because the

Cite as 2011 Ark. App. 69

appellant did not appeal from prior adjudication orders. 2009 Ark. App. 160, at 19, 316 S.W.3d at 272. However, we do not agree that it would be frivolous to argue that, in light of Baker's mental condition, her failure to appeal from prior adjudication orders did not effect a waiver of the issue of the adequacy of services provided to accommodate her condition.

Because there is at least one issue of arguable merit, we deny the motion to withdraw and order rebriefing in a merit format.

Motion to withdraw denied; rebriefing ordered.

HART and MARTIN, JJ., agree.