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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-17-718

JACQUELYN HALL APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILDREN APPELLEES	**Opinion Delivered:** January 10, 2018 APPEAL FROM THE POINSETT COUNTY CIRCUIT COURT [NO. 56JV-15-73] HONORABLE RALPH WILSON, JR., JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

BRANDON J. HARRISON, Judge

Jacquelyn Hall appeals the termination of her parental rights to X.H., K.H., and J.H. Hall's counsel has filed a motion to withdraw and a no-merit brief pursuant to our rules and caselaw, stating that there are no meritorious grounds to support an appeal. Ark. Sup. Ct. R. 6-9 (2016); *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004). Our court clerk mailed a certified copy of counsel's motion and brief to Hall's last known address informing her of her right to file pro se points for reversal. Hall has not filed pro se points for reversal, and the Arkansas Department of Human Services (DHS) has not filed a brief. We affirm the court's decision to terminate Hall's parental rights and grant counsel's motion to withdraw.

I.

X.H., K.H., and J.H. were adjudicated dependent-neglected in 2015 and 2016 in some measure because Hall failed to appear at court hearings. In any event, Hall did not appeal the dependency-neglect adjudication orders.

In a May 2016 review order, the circuit court found that Hall had cooperated with the case plan and court orders, visited on a regular basis with the juveniles, and submitted to random drug screens, but she had not remained drug free because a hair-follicle test showed a history of amphetamines, methamphetamine, and MDMA. The circuit court ordered Hall to attend a second drug-and-alcohol assessment. In December 2016, the court entered a permanency-planning order by stipulation of the parties. The court changed the case goal to adoption and termination of parental rights. It found that Hall had not complied with the case plan, failed to maintain stable housing, and continued to test positive for illegal drugs. DHS filed a termination petition in March 2017. Four grounds were alleged against Hall: (1) twelve-month failure-to-remedy; (2) willful failure to provide significant support or maintain meaningful contact; (3) other factors arising, and (4) aggravated circumstances. *See* Ark. Code Ann. §§ 9-27-341(b)(3)(B)(i)*(a)*, (ii)*(a)*, (vii)*(a)*, and (ix)*(a)*. The circuit court terminated Hall's parental rights, determining that DHS had proved three grounds by clear and convincing evidence and that termination was in the children's best interest.

II.

We review termination-of-parental-rights cases de novo. *Cheney v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 209, 396 S.W.3d 272. An order terminating parental rights must be based on a finding by clear and convincing evidence that the sought-after termination is in the children's best interest. The circuit court must consider the likelihood

that the children will be adopted if the parent's rights are terminated and the potential harm that could be caused if the children are returned to a parent. *Harper v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 280, 378 S.W.3d 884. The circuit court must also find that one of the grounds stated in the termination statute is satisfied. *Id.* Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction that the allegation has been established. *Pratt v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 399, 413 S.W.3d 261. When the burden of proving a disputed fact is by clear and convincing evidence, we ask whether the circuit court's finding on the disputed fact is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.*

In dependency-neglect cases, if, after studying the record and researching the law, appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. Ark. Sup. Ct. R. 6-9(i)(1) (2017). The petition must include an argument section that lists all adverse rulings that the parent received at the circuit court level and explain why each adverse ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 6-9(i)(1)(A). The petition must also include an abstract and addendum containing all rulings adverse to the appealing parent that were made during the hearing from which the order on appeal arose. Ark. Sup. Ct. R. 6-9(i)(1)(B).

Counsel correctly states in the argument portion of her brief that only one ground of section 9-27-341(b)(3)(B) must be proved to support a termination. *Sims v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 137, at 7. She explains that the children were removed from Hall's custody largely because she failed to appear for X.H.'s adjudication hearing.

The adjudication orders were not appealed, and subsequent factors arose after the children's removal: drug use, interpersonal problems, and instability in housing, employment, and transportation. Given the stipulation in the record that it was in the best interest of her children for the court to change the goal to adoption—and that Hall had not complied with the case plan, continued to use drugs, and did not show any stability throughout the case—the circuit court's decision to terminate Hall's parental rights on the other-factors-arising ground was not clearly erroneous, and it would be frivolous to argue so.

Second, counsel explains how the court's best-interest finding was not clearly erroneous. The caseworker testified that a relative had expressed interest in adopting the children and was waiting on a home study. She also testified the three children are adoptable, that there was someone interested in adopting all three children, and there were no significant barriers to adoption. When the termination hearing was convened, Hall still struggled with a major drug-addiction problem that two inpatient treatments had not abated, and she had no home, transportation, or job. An addicted parent's illegal drug use and instability may demonstrate a risk of potential harm for the children. *Robinson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 262, at 5, 520 S.W.3d 322, 325 (continued drug use demonstrates potential harm sufficient to support a best-interest finding in a termination-of-parental-rights case). The record supports a finding of potential harm. Counsel has adequately explained why there is sufficient evidence to support the court's termination decision and why an appeal would be wholly frivolous.

Finally, counsel discusses all adverse rulings pursuant to Ark. Sup. Ct. R. 6-9(i)(1)(A). She explains that the circuit court correctly overruled Hall's hearsay objection to the testimony of Wendell Harper, the assistant administrator of Project New Start, who said

that he received a report that caused him to investigate whether Hall had acted inappropriately while attending inpatient drug treatment. The circuit court overruled trial counsel's hearsay objection to the contents of the report via Harper's testimony, but that hearsay objection was later waived when the report (DHS Exhibit No. 4) itself was received into evidence without any objection. Counsel has adequately explained why these adverse "hearsay" rulings are clearly not meritorious.

A third adverse ruling occurred during DHS's cross-examination of Luanne Saint. Saint is Hall's aunt, and she testified on Hall's behalf at the termination hearing. She testified that she is the children's godparent, that she had room for them at her house, that DHS had tried to run a background check on her, and that she had a prior criminal charge that had been expunged. When asked by DHS's attorney on cross-examination what she had been arrested for, the circuit court sustained Hall's objection. Saint subsequently announced that she had issues with drugs in the past. Hall then objected to DHS's next question: "Okay, and what drugs were those?" Hall argued to the circuit court that "this is a backdoor way to try to get in the question the Court sustained[.]" The court overruled Hall's objection, and Saint answered that the drug was "methamphetamine back in 2000. But I completed treatment[.]" No further questions were asked. Appellate counsel argues that the court's ruling was correct because

> [Hall's trial counsel] opened the door to the aunt's fitness to take custody of the children, and the Department was simply cross-examining her about her past issues—not about her past convictions or charges. It was appropriate for the Department to ask her about general drug use in the past.

When a party invites discussion of a certain subject, he or she opens the door to a line of questioning by the opposing party so that the opposing party may "fight fire with fire,"

Pursley v. Price, 283 Ark. 33, 34, 670 S.W.2d 448, 449 (1984), yet we do not think this was exactly the case here. DHS's attorney was simply asking a follow-up question to Saint's unprompted admission that she had struggled with drug use in the past. In its discretion, a circuit court may permit inquiry on cross-examination into additional matters as if on direct examination. Ark. R. Evid. 611(b) (2017); *Bd. of Comm'rs v. Rollins*, 57 Ark. App. 241, 250, 945 S.W.2d 384, 389 (1997) (court has "wide latitude" in governing cross-examination). We conclude that this adverse ruling was within the court's discretion, and it is not a meritorious point to argue on appeal.

Out of an abundance of caution, appellate counsel discusses several circuit court rulings that were favorable to Hall, including the dismissal of one of the statutory grounds DHS had alleged. Because these rulings were not adverse to Hall's interest, we will not discuss them. After reviewing the record and counsel's brief, we agree with counsel that an appeal from the circuit court's decision to terminate Hall's parental rights would be wholly without merit. Hall's counsel has adequately addressed the sufficiency of the evidence in the no-merit brief and complied with the requirements of *Linker-Flores* and this court's rules, so we affirm the court's termination order and grant the motion to withdraw.

Affirmed; motion to withdraw granted.

WHITEAKER and HIXSON, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

One brief only.