

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-1177

LEROY GIPSON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR CHILD
APPELLEES

Opinion Delivered February 23, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, EIGHTH
DIVISION

[No. JJN-10-792]

HONORABLE WILEY A. BRANTON,
JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

LARRY D. VAUGHT, Chief Judge

Appellant Leroy Gipson appeals from the order of the Pulaski County Circuit Court adjudicating his daughter M.G. (DOB 3-5-09) dependent-neglected. Gipson's attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Rule 6-9(i) of the Rules of the Arkansas Supreme Court and Court of Appeals and *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004).¹ Counsel's brief discusses each adverse ruling and explains why there is no meritorious basis for an appeal. Despite being given the opportunity to do so, Gipson has filed no pro se points for reversal.

¹We note that *Linker-Flores* specifically addressed and authorized the no-merit appeal of a termination-of-parental-rights order, while the instant case presents the no-merit appeal of an adjudication order. Because Rule 6-9(a) of the Rules of the Arkansas Supreme Court and Court of Appeals lists an adjudication order as an appealable order and Rule 6-9(i) outlines the procedure for no-merit appeal of orders under this rule, the no-merit appeal of an adjudication order is authorized under Rule 6-9.

After a review of the record, we confirm that there were two adverse rulings. The first was an evidentiary ruling concerning the admission of a report from the Arkansas State Police—Crimes Against Children’s Division. Counsel properly abstracted this adverse ruling and explained why an appeal of this ruling was frivolous. We agree.

At the hearing, Gipson offered no basis for the objection to the report, which is required. *Blanchard v. State*, 2009 Ark. 335, at 6, 321 S.W.3d 250, 253 (stating that our case law requires that an objection be sufficiently specific to apprise the trial court of the particular error complained of; otherwise the right to appellate review is not preserved). Additionally, when the report was later offered into evidence, Gipson failed to renew his objection, thereby waiving any argument on appeal that it was inadmissible. *Baker v. State*, 334 Ark. 330, 338, 974 S.W.2d 474, 478–79 (1998) (holding that even if defense counsel initially makes a proper objection, he or she must renew that objection when the State attempts to introduce that evidence).

The second ruling adverse to Gipson was the finding that his daughter, M.G., was dependent-neglected. Adjudication hearings are held to determine whether the allegations in a dependency-neglect petition are substantiated by the proof. Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009). Dependency-neglect allegations must be proven by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009). We will not reverse the trial court’s findings unless they are clearly erroneous. *Worrell v. Ark. Dep’t of Human Servs.*, 2010 Ark. App. 671, 378 S.W.3d 258. In reviewing a dependency-neglect adjudication, we defer to the trial court’s evaluation of the credibility of the witnesses. *Worrell*, 2010 Ark. App. 671, at 9, 378 S.W.3d at 263. The focus of an adjudication hearing is on the child, not the parent; at this stage of a proceeding, the juvenile code is concerned with whether the child is dependent-neglected.

Id., 378 S.W.3d at 263. An adjudication of dependency-neglect occurs without reference to which parent committed the acts or omissions leading to the adjudication; the juvenile is simply dependent-neglected. *Id.* at 9–10, 378 S.W.3d at 263. Arkansas Code Annotated section 9-27-302(2)(B) provides that one purpose of the juvenile code is “[t]o protect a juvenile by considering the juvenile’s health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his or her parents or custodians.” *Brewer v. Ark. Dep’t of Human Servs.*, 71 Ark. App. 364, 368, 43 S.W.3d 196, 199 (2001).

The juvenile code defines a dependent-neglected child as “any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: . . . (iii) Sexual abuse.” Ark. Code Ann. § 9-27-303(18)(A)(iii) (Repl. 2009). Sexual abuse is defined as sexual contact by a person older than eighteen with a person younger than sixteen. Ark. Code Ann. § 9-27-303(51)(B)(i). Sexual contact includes touching, directly or through clothing, the sex organs or the breast. Ark. Code Ann. § 9-27-303(52)(A)(i).

In adjudicating Gipson’s daughter M.G. dependent-neglected, the trial court found that Gipson had sexually abused his girlfriend’s daughter K.K. (DOB 3-17-00). At the hearing, it was learned that Gipson, his girlfriend (Cassyphis Williams), their child M.G., and Williams’s separate children, K.K. and M.T., all resided together. K.K. testified that while watching television with Gipson, he touched her under her clothes on her breasts and “private part” between her legs. At the conclusion of the hearing, the trial court found that K.K., M.G., and M.T. were dependent-neglected. One of the bases for this finding was that Gipson sexually abused K.K.

Counsel argues that a preponderance of the evidence adduced at the adjudication hearing supports the trial court's conclusion that Gipson sexually abused K.K.; accordingly, the trial court did not clearly err in finding that M.G. was dependent-neglected. After a review of the record in this case, we agree. K.K.'s testimony, which the trial court expressly stated was credible, was sufficient to support the sexual-abuse finding.

Furthermore, no argument can be made that the trial court erred by adjudicating M.G. dependent-neglected because of the lack of evidence that Gipson sexually abused M.G. Section 9-27-303(18)(A) explicitly states that a dependent-neglected child is one at substantial risk of serious harm from an unfit parent.

Parental unfitness is not necessarily predicated upon the parent's causing some direct injury to the child in question. Such a construction of the law would fly in the face of the General Assembly's expressed purpose of protecting dependent-neglected children and making those children's health and safety the juvenile code's paramount concern. To require Logan to suffer the same fate as his older sister before obtaining the protection of the state would be tragic and cruel.

Brewer, 71 Ark. App. at 368, 43 S.W.3d at 199.

In sum, we hold that Gipson's appellate counsel's brief complies with the requirements of Rule 6-9(i). And we agree with counsel's conclusion—there are no issues of arguable merit for appeal. We therefore affirm the trial court's adjudication decision and grant counsel's motion to withdraw as counsel.

Affirmed; motion to withdraw granted.

GLADWIN and MARTIN, JJ., agree.