

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-1166

SUSAN MARTIN

APPELLANT

V.

ARKANSAS DEP'T OF HUMAN
SERVS. and MINOR CHILDREN

APPELLEES

Opinion Delivered February 23, 2011

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. JV-09-485]

HONORABLE JAY T. FINCH, JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

On August 17, 2010, the Benton County Circuit Court entered an order terminating appellant Susan Martin's parental rights to her children, D.M., born on May 29, 2007; N.P., born on April 10, 2002; and I.P., born on March 6, 2005.¹ Martin's counsel has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*,² and Arkansas Supreme Court Rule 6-9(i). Counsel's brief purportedly discussed the sufficiency of the evidence to support the termination. Counsel states that there were no objections made by Martin and no other rulings adverse to Martin. DHS agrees that there is no merit in an appeal and has elected not to file a brief at this time. The attorney ad litem has

¹The court also terminated the parental rights of each of the children's fathers; however, the fathers are not subjects of this appeal.

²359 Ark. 131, 194 S.W.3d 739 (2004).

also decided not to file a brief. The clerk of this court attempted to mail a certified copy of counsel's motion and brief to Martin; however, both attempts were unsuccessful. We deny counsel's motion to withdraw and order rebriefing.

Dr. Martin T. Faitak performed a psychological evaluation of Martin on June 29, 2009. Martin was diagnosed with attention deficit hyperactivity disorder, learning disabilities, and borderline personality disorder. As a result of the evaluation, Dr. Faitak made the following recommendations: (1) that Martin be seen by a psychiatrist in order to determine if medication would be useful in helping to stabilize her mood, (2) that Martin receive hands-on parenting because her attention and learning problems would make it difficult for her to learn and apply information through a classroom setting, (3) that Martin be in individual therapy in order to improve her judgment and to help her accept responsibility for the choices she is making. Martin was subsequently seen by a psychiatrist and placed on medication. DHS made referrals for individual counseling for Martin. However, by the time of the termination hearing, Martin still had not participated in hands-on parenting.³ In its oral ruling, the court conceded that DHS had not complied with the recommendation for one-on-one parenting. Despite this, the court ruled that termination was in the best interests of the children, and terminated Martin's parental rights.

Here, we do not agree that it would be frivolous to argue that since Martin did not receive the one-on-one parenting recommended by Dr. Faitak and ordered by the court,

³Martin testified that she took parenting classes on her own.

termination should not have been granted. Because there is at least one issue of arguable merit, we deny the motion to withdraw and order rebriefing in a merit form.

Motion to withdraw denied; rebriefing ordered.

HART and WYNNE, JJ., agree.