

## ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CA 09-661

KIM DAVIS AND MATTHEW DAVIS  
APPELLANTS

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES  
APPELLEE

Opinion Delivered December 16, 2009

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. JV-08-1-2]

HONORABLE GARY ISBELL, JUDGE

AFFIRMED; MOTION TO BE  
RELIEVED GRANTED

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### COURTNEY HUDSON HENRY, Judge

By an order entered on April 3, 2009, the Boone County Circuit Court terminated the parental rights of appellants Kim and Matthew Davis to their son, D.D., who was born on March 26, 2006. On appeal, appellants' attorney has filed a motion to be relieved as counsel pursuant to *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 6-9(i) of the Arkansas Rules of the Supreme Court and Court of Appeals, asserting that there are no issues of arguable merit to support an appeal. Counsel's motion is accompanied by a brief listing all adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal. The clerk of this court sent a copy of counsel's motion and brief to Kim and Matthew, informing them of their right to file pro se points for reversal. They have chosen not to file any pro se points on appeal.



Cite as 2009 Ark. App. 872

The record reflects that D.D. came into the emergency custody of appellee, the Department of Human Services (DHS), on January 3, 2008. On that day, Kim had left the child at a daycare center. DHS received a report of neglect and maltreatment from the center, and Donna Mattox, a DHS investigator, was dispatched to assess the situation. Mattox observed that D.D. displayed poor hygiene, that he was clothed in pajamas that were too small, and that his chest was sunken due to malnutrition. Although D.D. was almost five years old, he was wearing a diaper and weighed only twenty-eight pounds, placing him in the third percentile in weight for a child his age. At the daycare center, D.D. appeared to be sleeping, but Mattox realized that he was unresponsive and in respiratory distress. Mattox immediately took D.D. to a hospital where he was diagnosed with severe bronchitis. At the hospital, Mattox noticed that the child was also developmentally delayed, as he spoke only in three-word sentences. The examining physician recommended that D.D. be transported by ambulance to Arkansas Children's Hospital in Little Rock.

Before leaving for Little Rock, Mattox accompanied Kim to her home. Mattox observed a six-to-eight-inch gap in the front door and a cracked window in the rear of the house. Despite the cold temperatures, the only source of heat was two space heaters. Mattox did not have contact with Matthew that day because he was incarcerated in a Missouri prison for the nonpayment of support for a child from a previous relationship.

The trial court found probable cause for the removal of D.D. from the home. On January 24, 2008, the trial court entered an order finding that D.D. was dependent-neglected based on inadequate housing and medical neglect, which included a diagnosis of failure to



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thrive. The trial court set a goal of reunification. The case plan required Kim to maintain stable employment, obtain adequate housing, attend parenting and nutrition classes, obtain a driver's license, undergo a psychological evaluation, and participate in counseling. Matthew was released from prison in July 2008, and the case plan required him to complete essentially the same tasks with the additional requirement of obtaining reliable transportation.

The trial court conducted review hearings at all appropriate intervals. On March 3, 2009, DHS filed a petition to terminate Kim and Matthew's parental rights. At the hearing, the testimony revealed that Kim and Matthew visited regularly with D.D. and attended parenting and nutrition classes. They both had undergone a psychological evaluation and had attended weekly counseling sessions. However, Kim and Matthew did not maintain consistent employment. They also frequently changed residences and did not obtain adequate housing. Kim still had no driver's license, and their vehicle had exhaust problems and no glass in the back window.

The trial court heard the testimony of Kim and Matthew's counselor, their family service worker, and the person who taught parenting and nutrition classes. The consensus among them was that Kim and Matthew had made only minimal progress toward achieving the goal of reunification. Despite Kim and Matthew's receipt of instruction and counseling, the witnesses did not believe that Kim and Matthew were able to implement the skills they had been taught. D.D. had special, ongoing difficulties, particularly in the area of nutrition, and the witnesses expressed the view that Kim and Matthew did not possess the ability to meet his basic, much



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less exceptional, needs. Although D.D. had made progress, the witnesses feared that he would be at a significant risk of regressing in their care.

The trial court ruled from the bench and also made extensive findings in its order terminating parental rights. In its findings, the trial court commented that it was ordering termination, not because Kim and Matthew were poor, but because they displayed an “abject lack of understanding.” The court found that they lived in the moment, reacting to present circumstances with no thought of planning ahead. Further, the court stated that Kim and Matthew failed to grasp the desperate situation the child was in when he was removed from the home. The trial court also found that the problems that existed from the outset of the case were still present. Kim and Matthew, admittedly, did not acquire a suitable home, and they continued to be content with sporadic, part-time employment. The court found that they remained unable or unwilling to appreciate the nutritional and medical needs of the child. The trial court stated that Kim and Matthew “lived in a constant state of unpreparedness,” which was detrimental to D.D., who required full parental commitment to meet the challenges of his fragile medical condition and developmental state. The trial court concluded that termination was in D.D.’s best interest and that grounds existed pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(a), (ii)(a) & (vii)(a) (Supp. 2009).

After reviewing the record and counsel’s brief, we conclude that counsel has complied with the requirements regarding no-merit appeals and that the appeal is wholly without merit. Therefore, we grant counsel’s motion to be relieved and affirm the termination order.

Affirmed; motion to be relieved granted.



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BROWN, J., agrees.

BAKER, J., concurs.

*Therese Free*, for appellants.

No response.