

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-702

KAREN DAVIS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered January 27, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. JN2007-2055]

HONORABLE JOYCE WILLIAMS
WARREN, JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

This is an appeal from the decision of the Pulaski County Circuit Court that terminated appellant Karen Davis's parental rights in her five sons. Appellant's counsel has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 6-9(i), stating that there are no issues of arguable merit for appeal. Counsel lists the termination decision as the circuit court's only adverse ruling and explains why that ruling is not a meritorious ground for reversal. However, our review of the record reveals several adverse rulings that counsel did not identify and discuss as required by Ark. Sup. Ct. R. 6-9(i)(1)(A).

At the termination hearing held on March 19, 2009, appellant candidly admitted that she was not able to raise her children, and she asked the court to place them with her mother, Becky McConnell. The court did not choose the less-restrictive alternative of placing the

children with a relative but instead terminated appellant's parental rights and approved a permanency plan of adoption. The court's rejection of appellant's request for a less-restrictive alternative constitutes an adverse ruling. See *Ivers v. Ark. Dep't of Human Servs.*, 98 Ark. App. 57, 250 S.W.3d 279 (2007).

Additionally, during the testimony of CASA supervisor Darryl Capps, the attorney ad litem asked Capps if he had any concerns about Becky McConnell's decision-making process, given that McConnell considered divorcing her husband in order to obtain custody of appellant's children. Appellant objected to the form of the question. The court allowed Capps to answer the question as asked, thereby overruling appellant's objection.

Further, at the originally-scheduled termination hearing on February 20, 2009, appellant's counsel presented a motion for a continuance and for mediation, based on the potential availability of Becky McConnell as a placement for the children. The court granted the continuance for other reasons but did not order mediation as appellant requested.

As shown, the record contains three adverse rulings that counsel has not discussed in her brief. In the recent per curiam of *Sartin v. State*, 2010 Ark. 16, 372 S.W.3d 877, the supreme court held that the failure to list and discuss all adverse rulings in a no-merit termination-of-parental-rights case does not automatically require rebriefing, if the ruling would clearly not present a meritorious ground for reversal. We decline, however, to overlook the omissions in this case. Therefore, we order rebriefing and direct counsel either to explain why the above adverse rulings do not present meritorious grounds for reversal or to file a brief in a merit format, if warranted.

Cite as 2010 Ark. App. 88

Rebriefing ordered.

HART and KINARD, JJ., agree.