

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 10-156

LASANDRA WATKINS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered JUNE 2, 2010

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[NO. JV2008-8]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

JOHN B. ROBBINS, Judge

Appellant LaSandra Watkins appeals the termination of her parental rights to her son, DG, born on December 10, 2008. The order terminating her rights was entered on December 8, 2009. In accordance with *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)(2010), her attorney filed a no-merit brief and a motion to withdraw contending that there are no issues of arguable merit to support an appeal. The clerk of this court provided a copy of the brief and motion to appellant, but she did not file any pro se response. We have reviewed the brief and motion for any adverse rulings, and we agree that there is no basis upon which to advance a meritorious argument for reversal. We therefore affirm the termination order and grant her attorney's motion to be relieved.

We review termination-of-parental-rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Grounds for termination of parental rights must be proven by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). The appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Where there are inconsistencies in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Dinkins, supra*. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

The goal of Arkansas Code Annotated section 9-27-341 is to provide permanency in a minor child's life in circumstances in which returning the child to the family home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return

to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more grounds must be shown by clear and convincing evidence. Arkansas Code Annotated section 9-27-341(b)(2)(A) provides the grounds upon which a termination of parental rights may be established.

With these legal principles in mind, we examine the course of events in this case. The Department of Human Services (DHS) had maintained an open case for Watkins and her family dating back to November 2006, in large measure due to Watkins's history of cocaine addiction. Watkins had four children older than DG who ultimately ended up out of Watkins's custody, but they are not part of this appeal.

DG was removed from her custody at his birth because he tested positive for cocaine. After the probable cause hearing on December 31, 2008, Watkins was ordered to complete inpatient drug treatment and parenting classes, obtain stable housing and employment, become and remain drug-free, cooperate with DHS, and resolve any pending criminal matters. These remained the primary requirements of her case plan for the entirety of this case.

DHS made referrals for a psychiatric evaluation and for inpatient drug treatment, but Watkins never submitted to the psychiatric evaluation and stayed in drug treatment no more than three days. Watkins did not attend parenting classes, she did not maintain regular contact

with DHS, nor did she obtain stable employment or any adequate income to support herself and her child. On the few occasions when DHS was able to make contact with Watkins, she tested positive for drugs. Watkins was required to complete inpatient drug treatment in order to be allowed to visit DG, but that never happened.

Due to the mother's utter failure to participate in any meaningful way toward rectifying the reasons for her son's removal, DHS moved to be relieved of providing reunification services to Watkins, which was granted in June 2009. Thereafter, DHS moved to terminate her parental rights in August 2009. DHS alleged that Watkins was a long-time drug abuser and addict, that she was totally uncooperative, that she had abandoned her child, that she had manifested the incapacity or indifference to remedy the issues or rehabilitate her circumstances preventing return of the child, and that she had subjected her child to aggravated circumstances.

At the termination hearing conducted on November 24, 2009, Watkins was tardy by approximately two hours and she was disruptive in court. Watkins testified that she had moved from Arkansas to Marietta, Georgia, in October to get away from the bad influences in Jonesboro, where her drug problems originated. She said she had held a job at a fast-food chicken restaurant in Marietta since October 31, 2009. Watkins stated that she had attended two evening outpatient drug-treatment sessions, and she would be moving to her own HUD apartment when she garnered enough money for utilities. Although Watkins tested positive for cocaine on the day of this hearing, she claimed that she only smoked marijuana the night

before, not cocaine. She claimed that when she was in Georgia, she did not even think about drugs, and it was only the environment in Jonesboro that tempted her. Watkins said she wanted DG returned to her because she did not carry him for nine months just to give him away.

A Jonesboro police officer also attended the hearing, and he intended to arrest Watkins that day for seventeen outstanding criminal warrants, failure to pay over \$3500 in fines, and failure to complete public service. Watkins responded to his testimony, “ain’t that a bitch.” The trial judge admonished Watkins not to make outbursts.

A DHS caseworker testified to the positive drug screen that day and to Watkins’s failure to complete nearly every case-plan requirement. The caseworker also described that eleven-month-old DG was very adoptable with potential adoptive parents already identified. The caseworker stated that although Watkins would have been able to visit her son if she completed inpatient drug treatment, she did not do so and had not seen her son since he was born. The caseworker urged that her parental rights be terminated. The attorney ad litem agreed. Watkins’s attorney argued against termination, stating that Watkins cooperated “to a certain extent” and she was making progress in Georgia with a job, some drug treatment, and a decrease in her drug use.

The trial judge announced her findings at the conclusion of the termination hearing. She found Watkins to be an admitted long-term cocaine addict, using during pregnancy and through the date of the hearing. The trial judge found that Watkins was non-compliant and

not credible about her drug use, and that DG would be subjected to potential harm if returned to his drug-addicted parent. The trial judge praised Watkins for having found a job in Georgia, but noted that Watkins still was unable to provide housing and would be indefinitely detained for her outstanding criminal issues. Watkins was tearful and upset as she listened to the judge recite her findings. The termination order was filed, and a timely notice of appeal followed.

The only adverse ruling was the termination itself. There could be no issue of arguable merit advanced on appeal to support reversal. The trial court considered the best interest of the child, including the likelihood of adoption and the potential harm if DG were returned to his mother. The trial judge found that Watkins had manifested the indifference or incapacity to remedy the conditions as outlined in Ark. Code Ann. § 9-27-341(b)(3)(B)(vii). All of these findings were found by clear and convincing evidence. Indeed, the overwhelming proof was that Watkins was an addict who could not or would not participate in her recovery in a meaningful way or within a time frame consistent with being a parent. Moreover, even if she had done so, she was going to be detained criminally for an indeterminate period of time, inconsistent with parenting.

Because there is no issue of arguable merit for reversal, we hold that this brief is compliant with the requirements of *Linker-Flores v. Ark. Dep't of Human Servs.*, *supra*, and the Rules of the Arkansas Supreme Court. We affirm the termination of appellant's parental rights to DG, and we grant appellant's attorney's request to be relieved as counsel.

Cite as 2010 Ark. App. 467

GRUBER and HENRY, JJ., agree.