Cite as 2010 Ark. App. 521

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 10-179

	Opinion Delivered JUNE 23, 2010
KAREN DIEMER APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, ELEVENTH DIVISION [NO. JN2008-1778]
V.	
ARKANSAS DEPARTMENT OF HUMAN SERVICES, MINOR CHILDREN APPELLEES	HONORABLE MELINDA GILBERT, JUDGE
	AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellant Karen Diemer filed a notice of appeal from the termination of her parental rights by the Pulaski County Circuit Court, in an order filed on December 2, 2009. This case concerned her two sons, JD (age 3) and MD (age 1). The children were removed from appellant's custody in the fall of 2008. After more than a year's provision of services, appellant was found not to have corrected the causes for removal of her children, primarily based upon her failure to properly address her mental-health issues, drug problems, and environmental neglect.

Appellant's attorney has filed a no-merit brief and a motion to be relieved, stating that there is no issue of arguable merit and that she should be relieved as appointed counsel. In compliance with *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739

(2004) and Rule of the Arkansas Supreme Court 6-9, counsel ordered the entire record and examined it for adverse rulings, explaining why each would not support a meritorious argument for reversal. Appellant was provided a copy of her counsel's brief and motion, and she filed pro se points for reversal. The Department of Human Services (DHS) did not file any responsive brief. After review of this case under the proper standards for no-merit termination-of-parental-rights cases, we affirm the order and relieve counsel.

The single adverse ruling in this case was the decision to terminate appellant's parental rights. 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). At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these 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. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

DHS alleged that Diemer had not had custody of her children in over a year and, despite the provision of services to her, she had not remedied the causes for removal. DHS also contended that it was in JD and MD's best interest to terminate parental rights,

considering that they were adoptable and that there was potential harm in returning the children to her care. The trial judge found that DHS had proved its contentions by clear and convincing evidence. As for the evidence to support those findings, counsel recites the following evidence considered in the November 2009 hearing.

A protective-services case had been open since 2007 on appellant and JD, which set in motion DHS's obligation to provide services to the family. At that time, appellant's residence was roach-infested and cluttered, qualifying as environmental neglect. By September 2008, appellant was showing little to no progress and was evidencing drug and emotional problems. Appellant was late in her pregnancy with MD. When a DHS case worker came to appellant's brother's apartment to take JD into custody, appellant resisted vigorously. It escalated into a yelling match in which appellant put a "choke hold" on JD, and she kicked the case worker and a police officer.

MD was taken into custody when he was born the next month. Appellant admitted to using drugs during that pregnancy. Throughout the following year, appellant maintained that she did not need drug treatment, she refused treatment, and she attributed her failure to attend therapy to coping with the death of her mother. Her testimony was not consistent with the results of her drug testing during the case. She continued to live in an environmentally unfit, unsafe apartment that was infested with roaches and piled up with clutter, despite services rendered. Appellant did not attend counseling sessions designed to address her personality disorder. She was not consistent in taking medication. Appellant did

not maintain employment. She did not make effort to benefit from the array of supportive services given to her, like bus passes and housing assistance.

Appellant's testimony at the termination hearing reflected that she still did not understand why her boys were taken. She believed DHS was seeking to terminate her rights because she was not cooperative in allowing JD to be taken. She acknowledged that she had her parental rights terminated to an older son, TD, about ten years prior, due to drug use. Appellant testified that she was pregnant again.

As for potential harm and grounds, there was evidence that appellant exhibited emotional instability, poor decision making, excuses for noncompliance with the case plan, failure to stay drug-free, failure to provide an appropriate and safe home environment, and lack of motivation to do what was necessary to have her sons back in her custody. Regarding the children's best interest, an adoption specialist testified that both boys were very adoptable as a sibling pair. A survey of pre-registered adoptive families showed thirty-four possible adoption matches. The attorney ad litem and DHS urged that the boys needed permanency in a proper and safe home with an able parent, so termination of her rights was necessary.

In short, appellant did not abide by the vast majority of case-plan requirements. We are convinced that due to appellant's significant noncompliance with the case plan, there could be no meritorious argument for reversal.

Appellant states in her pro se points that termination was not appropriate because (1) the events at the taking of JD were unfairly viewed against her, (2) she is now abstaining

from the use of marijuana, and (3) she deserves "one last chance." This is addressed to the sufficiency of the proof and credibility calls made by the trial judge at the termination hearing. Her attorney's brief sufficiently addresses these pro se points.

We affirm the termination of appellant's parental rights to JD and MD, and we relieve counsel.

GLADWIN and BAKER, JJ., agree.