

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 10-283

BILLIE HUNE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES, MINOR
CHILDREN

APPELLEES

Opinion Delivered JUNE 30, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. JN-08-1977]

HONORABLE WILEY A.
BRANTON, JR., JUDGE

AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellant Billie Hune appeals the termination of her parental rights to three of her children, son DW1 born in March 1997, son DW2 born in January 2001, and daughter LH born in October 2002. The order terminating her rights was entered on December 17, 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, which addresses the sole adverse ruling, 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). 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 (1) shows that it is in the child's best interest, and (2) that statutory grounds have been proved. Ark. Code Ann. § 9-27-341(b).

With these legal principles in mind, we examine the course of events in this case. The Department of Human Services (DHS) took emergency custody of Hune's children in October 2008 because Hune was generally unfit, manifesting drug problems and a failure to provide for her children's educational, nutritional, physical, and supervisory needs. Hune's daughter MS, born in 1993, had a child at age fourteen, while living with Hune and Hune's mother, but MS and her child are not part of this appeal.

Subsequent to the adjudication of DW1, DW2, and LH as dependent-neglected children, Hune was ordered to attend parenting classes, to follow recommendations of a psychological evaluation, to submit to a drug-and-alcohol assessment and follow those recommendations, to submit to random drug testing, and to obtain and maintain stable housing and income to support herself and her children. Hune was permitted supervised visitation with her children. The result of Hune's psychological evaluation showed a poor prognosis (noting slow cognitive processing with mild confusion, anger issues, low frustration threshold, and characteristics of substance abuse).

By early March 2009, Hune was found to have completed the drug-and-alcohol assessment and parenting classes. Hune was encouraged to enter inpatient drug treatment but, at a minimum, was required to attend outpatient treatment. By the permanency planning hearing in August 2009, however, the plan was changed to termination of parental rights. She lacked a specific home address and steady income, she had failed to attend therapy as recommended, and she had been jailed since late March 2009 for probation revocation, the

underlying offense being theft of property. DHS was deemed to have made reasonable efforts to provide reunification services throughout the case plan.

DHS moved to terminate her parental rights in October 2009. DHS alleged that Hune had not had custody of her children in more than one year, and despite the offer of appropriate services designed to help the family reunify, Hune had not remedied the causes for removal.

At the termination hearing conducted in November 2009, all previous orders were noted. DHS demonstrated that when its personnel tried to visit Hune at her stated address, she was never there. Hune did not have a job; she was still in jail for the revocation of her probation and would be for months. An adoption specialist testified that although the older two children (the boys) had some behavioral problems, all three were adoptable. DHS testified to various drug screens on Hune over the past months, noting the positive results, some negative results, and one time she refused to provide a urine sample. In her testimony, Hune pleaded for more time to “do right” after her release from jail.

The trial judge concluded that as of November 2009, Hune had sporadically tested positive for drugs, including cocaine, marijuana, opiates, and amphetamines, through the course of the case plan. The judge noted that Hune failed to engage in counseling or drug rehabilitation, and Hune had been in jail since March 2009 with release unlikely until March 2010. Hune’s psychological assessment was deemed a critical obstacle to reunification because even if Hune were not in jail, she would need several more months of work to

establish and maintain any parental stability. In line with the attorney ad litem and DHS's recommendation, her parental rights were terminated. A timely notice of appeal followed the termination order.

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 children, including the likelihood of adoption and the potential harm if they were returned to their mother. The trial judge found proof of grounds, being the children's absence from her custody for at least a year, and despite the provision of appropriate services, the mother failed to remedy the causes for removal. All of these findings were found by clear and convincing evidence.

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, and we grant appellant's attorney's request to be relieved as counsel.

GLADWIN and BAKER, JJ., agree.