

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-490

STEPHANIE SITES

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered SEPTEMBER 29, 2010

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. JV-07-44]

HONORABLE TERRY M.
SULLIVAN, JUDGE

AFFIRMED; MOTION GRANTED

RITA W. GRUBER, Judge

This appeal is from an order terminating appellant's parental rights to her children, S.B., born May 22, 2002, and A.P., born April 18, 2007.¹ Pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(i), appellant's counsel has filed a no-merit brief asserting that there are no issues that would support a meritorious appeal. He has also filed a motion asking to be relieved as counsel. The clerk of this court mailed a certified copy of counsel's motion and brief to appellant's last known address informing her of her right to file pro se points for

¹The court's order also terminated the parental rights of A.P.'s legal father, George Prine. S.B.'s putative father consented to the termination of parental rights. Neither is a party to this appeal.

reversal. She has not done so. We grant counsel's motion to withdraw and affirm the order terminating appellant's parental rights.

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. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007). Grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* 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. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *Id.* 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 only adverse ruling in this case was the termination itself. Parental rights may be terminated if the court finds by clear and convincing evidence that it is in the child's best interest, including consideration of the likelihood that the child will be adopted and the potential harm caused by returning the child to the parent's custody. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). The court must also find by clear and convincing evidence one or more of the grounds set forth in section 9-27-341(b)(3)(B).

This case has been open for almost four years, during which the Arkansas Department of Human Services has been providing reunification services. It began in September 2006, when emergency custody was taken of S.B. after the home in which he was living with appellant was discovered to be dirty, flea-infested, and without hot water. S.B. had not been bathed, was pale and underweight, and had scabies. A.P. was born on April 18, 2007, and DHS took emergency custody of her after hospital staff reported that appellant was refusing to hold or feed her. Both children were adjudicated dependent-neglected, and their cases were consolidated. The goal was reunification, and DHS provided parenting and nutrition classes, mediation, a psychological evaluation and counseling, and transportation services. Although appellant completed some parenting classes and attended counseling sporadically, she failed to focus on her children's needs, failed to maintain stable housing suitable for children, and failed to attend counseling on a consistent basis. Shortly after DHS took custody of S.B., S.B. was returned to appellant for a trial placement. S.B. was removed after one month because appellant was not able to keep him clean and nourished. Weekend visits were discontinued when DHS discovered appellant had hit S.B. with a toy gun, leaving bruises on his back.

Appellant's caseworker, Susan Newby, testified that appellant had moved five times in three years and had never provided a space for S.B., other than a laundry room with a bed in one home. Ms. Newby said that she had not visited appellant's current residence because appellant would not return her calls or provide the address. Ms. Newby also testified that

appellant changed counselors several times, failed to attend sessions, and made little to no progress in the sessions she did attend. Ms. Newby testified that the children were adoptable and recommended termination of appellant's parental rights.

Tenethra Thompson, appellant's most recent counselor, testified that in her opinion appellant had made no progress in counseling, was not open to learning the skills necessary to parent, and could not raise her children. Melissa Long, a psychological examiner for Health Resources of Arkansas, served as S.B.'s counselor for over a year and occasionally saw appellant in family counseling during that period. She testified that there had been limited progress in family counseling and that she had worked with appellant on very basic parenting skills. Ms. Long saw no improvement in appellant's skills and testified that, in her opinion, it was not in the children's best interest to be returned to appellant's custody.

The trial court in this case determined that it was in the children's best interest to terminate appellant's parental rights and noted that the children were adoptable. It found that the children had been adjudicated dependent-neglected, had continued to be out of appellant's custody for twelve months and, despite a meaningful effort by DHS to rehabilitate appellant and correct the conditions that caused removal, the conditions had not been remedied. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(i)*. All of these findings were by clear and convincing evidence. The court also recognized that appellant had not followed through with counseling, parenting, employment, orders to obtain a driver's license, and orders to maintain a stable home.

Cite as 2010 Ark. App. 642

Because there is no issue of arguable merit for reversal, we agree that an appeal of the merits would be frivolous. We hold that this brief is compliant with the requirements of *Linker-Flores* and the Rules of the Arkansas Supreme Court, affirm the termination of appellant's parental rights, and grant her attorney's request to be relieved as counsel.

Affirmed; motion to withdraw granted.

HENRY and BAKER, JJ., agree.