

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-733

STACY HART

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD

APPELLEES

Opinion Delivered November 10, 2010

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. JV-08-376]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

RAYMOND R. ABRAMSON, Judge

The circuit court terminated Stacy Hart’s parental rights to her child, M.T. Hart’s attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Rule 6-9(i) of the Rules of the Arkansas Supreme Court and Court of Appeals and *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004). The brief discusses each adverse ruling and explains why there is no meritorious basis for an appeal. Despite being given the opportunity to do so, Hart has filed no *pro se* points for reversal.

The Termination Decision

In terminating Hart’s parental rights, the court found termination to be in M.T.’s best interest. The court specifically found that M.T. is likely to be adopted and that returning M.T. to Hart’s care presented a potentially harmful situation due to the lack of bonding

between Hart and M.T. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). The court also found several statutory grounds supporting termination, though only one is required. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, at 14, 314 S.W.3d 722, 729. One ground was that M.T. had been adjudicated dependent-neglected and had been out of Hart's care for more than a year, and despite DHS's meaningful efforts to rehabilitate Hart and to correct the conditions that caused M.T.'s removal, Hart had not remedied those conditions. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

On the best-interest question, Valorie McDuff, the caseworker, testified that M.T. is likely to be adopted—M.T.'s foster parents had been approved for adoption and were very interested in adopting M.T. McDuff further opined that M.T. was at a good age for adoption and had no handicaps that would prevent him from being adopted. On the potential-harm issue, Dr. David Blaske, a psychologist, testified that M.T. would cling to the DHS worker and was very hesitant to approach Hart during their sessions. Dr. Blaske said he tried to help Hart reconnect with M.T., but there was no improvement. When asked by the court whether any psychological harm could result if M.T. was returned to Hart, Dr. Blaske stated that the most significant issue was the lack of bonding. The court pressed further, asking “[a]nd would that cause emotional harm to a child to be in an environment on a regular basis where the child was [not] receiving the kind of love and affection that you would expect between mother and child?” Dr. Blaske responded, “[u]nfortunately, that’s an extremely significant predictor for long-term problems.”

As to the statutory ground, M.T. was removed from Hart's care in late November 2008 and was adjudicated dependent-neglected pursuant to a February 2009 order. By the time of the February 2010 termination hearing, M.T. had been out of Hart's care for more than a year. McDuff testified about DHS's efforts to rehabilitate Hart. Despite these efforts, however, Hart had only partially complied with her case plan and had not corrected the conditions that caused M.T. to be removed from her care. McDuff testified that Hart did not actively participate in counseling. And Dr. Blaske testified that Hart had cancelled appointments or just failed to show up several times, ultimately leading him to discontinue their visits. McDuff also said that Hart, despite being taken off all medication by her psychiatrist so that he could better determine what medications Hart needed to bring her into stabilization, went to her primary care physician and obtained more prescription medication. Though Hart was supposed to maintain stable employment and housing, McDuff said that Hart had been evicted from her home and was fired from her job after only two weeks of work. McDuff also testified that Hart had failed to keep DHS informed of her current address and to stay in contact with her caseworker.

In short, DHS proved its case by clear and convincing evidence. *Rodgers v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 452, at 5–6, 376 S.W.3d 496, 499. We are not left, after looking at all the evidence, with a definite and firm conviction that a mistake has been made. *Id.* In other words, the circuit court's best-interest and statutory-ground findings are not clearly erroneous. *Id.*

Other Adverse Rulings

Motion for a Continuance. At the start of the February 23, 2010 termination hearing, Hart’s attorney informed the court that Hart was not present and asked for a continuance. The court had an extensive conversation with the attorneys on this issue. Hart’s attorney said that he told Hart about the February 23 hearing, that she was “fully aware” of the termination hearing, and that she had called him two weeks earlier requesting a continuance. Hart’s attorney also said that Hart had recently moved to Corning and that she claimed that she could not get transportation to the hearing. There was also some discussion about Hart’s mother’s recent passing, though it had apparently been several weeks since that event. DHS’s attorney pointed out Hart’s failure to attend a previously scheduled termination hearing in early January 2010. The court had continued that hearing and rescheduled the termination hearing for February 23. The court noted that Dr. Blaske was already present and had been sitting in court for several hours waiting for the termination hearing to begin. Taking all of these facts into consideration, the court denied Hart’s motion for a continuance. We see no abuse of discretion here. *Smith v. Ark. Dep’t of Human Servs.*, 93 Ark. App. 395, 401, 219 S.W.3d 705, 708 (2005).

Evidentiary Objection. During Hart’s attorney’s cross-examination of McDuff, the following colloquy occurred:

- Q. Okay. Ms. Hart has had a difficult time keeping a job, maintaining stable housing throughout this whole case; is that correct?
- A. Yes.

Q. Do you think part of that is based upon her mental status?

A. I believe that has a big—

The attorney *ad litem* objected, arguing that the question called for speculation. Hart's attorney neither laid any foundation nor presented any argument, the court sustained the objection, and Hart's attorney moved on. We see no abuse of discretion here either. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 821, at 6, 373 S.W.3d 361, 365.

Conclusion

In sum, Hart's appeal counsel's brief complies with all the requirements of Rule 6-9(i). And we agree with counsel's conclusion—there are no issues of arguable merit for appeal. We therefore affirm the court's termination decision and grant counsel's motion to withdraw as counsel.

Affirmed; motion to withdraw granted.

HENRY and BROWN, JJ., agree.