

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-1073

ERIKA JORDAN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered April 6, 2011

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. JV-09-206]

HONORABLE TERRY SULLIVAN,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED

RAYMOND R. ABRAMSON, Judge

The Conway County Circuit Court terminated appellant Erika Jordan's parental rights in her four-year-old daughter, J.J. Jordan's attorney has filed a no-merit brief and motion to withdraw pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 6-9(i) of the Rules of the Arkansas Supreme Court and Court of Appeals, explaining that the adverse rulings from the termination hearing present no meritorious grounds for appeal. We deny the motion to withdraw and order rebriefing.

The Arkansas Department of Human Services (DHS) removed J.J. from Jordan's custody on April 17, 2009, when a traffic stop revealed components of a methamphetamine lab in the vehicle she occupied. Authorities searched Jordan's home, found additional lab components, and discovered J.J. wandering alone near the lab. Over the next fourteen

months, Jordan tested positive for drugs on several occasions, obtained no stable employment or housing, and failed to take advantage of DHS's counseling and drug-treatment referrals. She was also arrested on June 4, 2010, on new drug charges stemming from possession of a controlled substance with intent to deliver and possession of drug paraphernalia. Jordan was pregnant at the time of her arrest and tested positive for drugs. Based on these facts, the circuit court terminated Jordan's parental rights in J.J. after finding by clear and convincing evidence that termination was in J.J.'s best interest and that grounds for termination existed.

At the start of the termination hearing, Jordan's attorney asked the circuit court to hold its judgment in abeyance so the attorney could meet with Jordan the next day to consider a possible voluntary termination of her parental rights. The court reserved ruling on the request pending Jordan's testimony. Jordan later testified that she would like the court to consider accepting her voluntary consent to termination if the court was inclined to terminate her parental rights. DHS objected that the case had already gone on for over a year and that the issue of voluntary consent was no longer "ripe." The court apparently concurred and continued with the involuntary-termination hearing. The termination order, entered on July 22, 2010, listed several statutory grounds for termination, but the "consent to termination" ground listed at Ark. Code Ann. § 9-27-341(b)(3)(B)(v)(a) (Repl. 2009), was not among them.

Counsel's no-merit brief cites the circuit court's rejection of Jordan's request for voluntary termination as an adverse ruling but concludes that an appeal from that ruling would be wholly without merit. We disagree. Counsel cites no law, and we have found none,

that either favors or prohibits a request for voluntary termination of parental rights during the termination hearing. The circuit court's duties in the face of such a request are therefore unclear. Further, Jordan's pregnancy afforded her an arguable interest in voluntary termination, given that *involuntary* termination of her parental rights in J.J. could serve as a ground for termination of her parental rights in her unborn child. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(4) (Repl. 2009) (listing, as a ground for termination, that a parent has been found by the court to have had his or her parental rights involuntarily terminated as to a sibling of the child).

Because there is at least one issue of arguable merit, we deny the motion to withdraw and order rebriefing in the merit format.

Rebriefing ordered; motion to withdraw denied.

PITTMAN and MARTIN, JJ., agree.