

ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-18-254

BREONNA HOGUE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered: December 12, 2018

APPEAL FROM THE JOHNSON
COUNTY CIRCUIT COURT
[NO. 36JV-16-38]

HONORABLE KEN D. COKER,
JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

The Johnson County Circuit Court terminated the parental rights of appellant Breonna Hogue to her three children, I.H. (DOB 12-17-15), S.H. (DOB 11-13-14), and J.H. (DOB 08-22-13).¹ Hogue’s counsel has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*² and Arkansas Supreme Court Rule 6-9(i),³ contending that there are no meritorious grounds to support an appeal. The clerk of our court mailed a certified copy of counsel’s motion and brief to

¹The court also terminated the parental rights of Lamar Williams, but he is not a party to this appeal.

²359 Ark. 131, 194 S.W.3d 739 (2004).

³(2017).

appellant, informing her of her rights to file pro se points for reversal. Appellant has not filed any pro se points for reversal. We affirm the termination and grant counsel's motion to withdraw.⁴

Arkansas Supreme Court Rule 6-9(i)(1) allows counsel for an appellant in a termination-of-parental-rights case to file a no-merit petition and motion to withdraw if, after studying the record and researching the law, counsel determines that the appellant has no meritorious basis for an appeal. The petition must include an argument section that lists all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.⁵ The abstract and addendum shall contain all rulings adverse to the appellant made by the circuit court at the hearing from which the order on appeal arose.⁶

This case began after the Arkansas Department of Human Services (DHS) was contacted following a call to the Child Abuse Hotline concerning I.H. DHS exercised a seventy-two-hour hold on the children on May 6, 2016, and filed a petition for emergency custody and dependency-neglect on May 9, 2016. The court entered an ex parte order for emergency custody the same day. In the adjudication order filed on August 11, 2016, the court found that I.H. was dependent-neglected due to abuse and that S.H. and J.H. were

⁴This is the second time this case has been before us. We initially denied counsel's motion to withdraw and ordered rebriefing. *Hogue v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 432.

⁵Ark. Sup. Ct. R. 6-9(i)(1)(A).

⁶Ark. Sup. Ct. R. 6-9(i)(1)(B).

dependent-neglected due to the abuse of a sibling. The court set the goal of the case as reunification and ordered DHS to provide certain services.

DHS filed a petition for termination of parental rights on November 7, 2017, alleging two grounds for termination: (1) failure-to-remedy ground and (2) subsequent-issues ground. The termination hearing took place on December 12, 2017. The trial court granted DHS's petition to terminate appellant's parental rights and filed an order on December 19, 2017. It stated in pertinent part:

The juveniles were adjudicated dependent-neglect[ed] on July 5, 2016 due to physical abuse by the mother and putative father towards [I.H.] and abuse to a sibling as to [S.H. and J.H.]. The juveniles have continued out of the custody of the mother for twelve (12) months and despite a meaningful effort by the department to rehabilitate the parent and correct the conditions which caused removal, those conditions have not been remedied by the mother. A.C.A. § 9-27-341 (b)(3)(B)(i)(a)[.] The juvenile, [I.H.], had several broken bones and the Court sees a correlation between the mother's mental health and violent outburst and the injuries sustained by [I.H.].

. . . .

That, subsequent to the filing of the original petition for dependency-neglect other factors or issues arose which demonstrate that return of the juveniles to the custody of the mother is contrary to the juveniles' health, safety or welfare and that despite the offer of appropriate family services, the mother has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances which prevent return of the juvenile[s] to the custody of the parent. A.C.A. § 9-27-341(b)(3)(B)(vii)(a). The mother currently resides in a homeless shelter after surrendering a good home. The mother has had inconsistent employment throughout the case. The mother is prone to violent outbursts and has been arrested twice for disorderly conduct since the permanency planning hearing. The mother's mental health is not stable at this time. The mother has an ongoing, violent relationship with Felix Herrera and his family.

The court found that termination was in the children's best interests because the children were adoptable, and they faced potential harm if returned to appellant's custody. Appellant filed a timely notice of appeal. This appeal followed.

Our standard of review in termination-of-parental-rights cases is well settled; we review these cases de novo.⁷ We will not reverse the trial court's rulings unless its findings are clearly erroneous.⁸ In determining whether a finding is clearly erroneous, we give due deference to the opportunity of the trial court to judge the credibility of witnesses.⁹ In order to terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground for termination exists and that termination is in the child's best interest.¹⁰ 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.¹¹

The termination of parental rights is an extreme remedy and in derogation of the natural rights of parents.¹² As a result, there is a heavy burden placed on the party seeking to terminate the relationship.¹³ However, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child.¹⁴

⁷*Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

⁸*J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

⁹*Dinkins, supra*.

¹⁰Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2017).

¹¹*Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992).

¹²*Fox v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 666, 448 S.W.3d 735.

¹³*Id.*

¹⁴*Smithee v. Ark. Dep't of Human Servs.*, 2015 Ark. 506, 471 S.W.3d 227.

After examining the record and appellant's counsel's brief, we conclude that counsel has complied with the requirements for no-merit appeals and that the appeal is wholly without merit. Accordingly, we affirm the termination order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ABRAMSON and GLOVER, J.J., agree.

Tina Bowers Lee, Arkansas Public Defender Commission, for appellant.

One brief only.