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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-21-580

SHAWNA JORDAN APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILD APPELLEES	**Opinion Delivered** September 21, 2022 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION [NO. 60JV-20-628] HONORABLE TJUANA C. BYRD, JUDGE AFFIRMED; MOTION TO BE RELIEVED GRANTED

PHILLIP T. WHITEAKER, Judge

Appellant Shawna Jordan appeals a Pulaski County Circuit Court order terminating her parental rights to her daughter, K.T.[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(j) (2021), Jordan's counsel has filed a motion to be relieved as counsel and a no-merit brief asserting that there are no issues of arguable merit to support an appeal. The clerk of our court sent copies of the brief and the motion to withdraw to Jordan, informing her of her right to file pro se points for reversal pursuant to Rule 6-9(j)(3); she has not done so. Having examined the record, we are satisfied that there are no issues of arguable merit to

[1]Two putative fathers were identified in this case—Curtis Toney and Nicholas Geter; however, the circuit court found that neither Toney nor Geter had proved significant contacts with the juvenile; therefore, parental rights had not attached. Neither Toney nor Geter is a party to this appeal.

support an appeal. We therefore affirm the termination decision and grant counsel's motion to be relieved.

I. *Factual and Procedural History*

The Arkansas Department of Human Services (DHS) removed K.T. from Jordan's care and custody due to Jordan's substance abuse that was seriously affecting her ability to supervise, protect, or care for the child. In July 2020, DHS received a referral because K.T. was born with methamphetamine and marijuana in her system. At that time, DHS held a team decision-making meeting and determined that Jordan was in need of services. Jordan initially agreed to the services, and DHS referred her to Arkansas Cares. During her September 2020 intake at Arkansas Cares, Jordan tested positive for methamphetamine and THC; at that time, she became "upset and out of control and refused treatment due to her positive drug results." Jordan became so belligerent that the police were called. DHS then placed a seventy-two-hour hold on K.T.[2]

DHS filed a petition for ex parte emergency custody. The court granted ex parte relief and subsequently found probable cause. K.T. was adjudicated dependent-neglected on November 24. The court found that Jordan subjected K.T. to neglect by exposing her to drugs in utero and to parental unfitness because of her issues related to drug abuse. Jordan was ordered to comply with DHS's standard welfare orders, including drug screens, drug-and-alcohol assessments, parenting classes, counseling, and visitation. It was determined that the goal of the case would be reunification at that time.

[2]DHS placed the initial seventy-two-hour hold on September 4, 2020; however, because it was "not . . . able to prepare the affidavit in [a] timely [fashion]," DHS placed another seventy-two-hour hold on September 8.

The court conducted two review hearings. At the first hearing, the court heard evidence that Jordan still suffered from substance-abuse issues and had not remedied the conditions that caused removal. Specifically, Jordan admitted she would test positive the date of the hearing, and DHS had experienced difficulty contacting Jordan, which resulted in an inability to make referrals for services. Despite this evidence, the court retained reunification as the goal of the case. The court directed Jordan to attend counseling, submit to drug screens, and remain drug-free, noting that her "drug treatment must be a priority." The court further ordered frequent, preferably daily, visits via Zoom because of the pandemic.

At the second review hearing, which Jordan did not attend, the court heard evidence that Jordan had not exercised the previously authorized daily visitation with K.T. Jordan was found noncompliant with the case plan and court orders; the court stated that "aside from starting parenting classes, the mother has not done much else since the last hearing and has not maintained contact with DHS." The court thus changed the goal of the case to termination of parental rights and adoption and authorized, but did not require, DHS to file a petition for termination of parental rights.

DHS filed its petition to terminate parental rights, alleging multiple statutory grounds. The circuit court held a hearing on the petition in August, at which time it heard testimony from an adoption specialist, the DHS caseworker, the foster mother, and Jordan. Following the hearing, the circuit court entered an order terminating Jordan's parental rights, finding that DHS had proved each of the statutory grounds it had alleged, that there was evidence that K.T. is adoptable, and that K.T. would be exposed to the potential for

harm because of Jordan's instability and drug exposure. Jordan filed a timely notice of appeal, and her attorney has now filed a no-merit brief and motion to be relieved as counsel.

II. *Standard of Review*

Arkansas Supreme Court Rule 6-9(j)(1) allows counsel for an appellant in a termination case to file a no-merit brief and motion to withdraw if, after studying the record and researching the law, counsel determines that the appellant has no meritorious basis for appeal. In the brief, counsel must include an argument section that lists all circuit court rulings that are adverse to the appellant on all objections, motions, and requests made by the party at the hearing from which the appeal arose and an explanation why each adverse ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 6-9(j)(1)(A). In evaluating a no-merit brief, we determine whether the appeal is wholly frivolous or whether there are any issues of arguable merit for appeal. *Linker-Flores*, *supra*; *Cullum v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 34, at 5–6.

We review termination-of-parental-rights cases de novo. *Hune v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 543. We will not reverse the circuit court's ruling unless its findings are clearly erroneous. *Holmes v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 495, 505 S.W.3d 730.

III. *Analysis*

A. Statutory Grounds

To terminate parental rights, a court must find sufficient proof of one or more of the statutory grounds for termination. Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2021). Here, the court terminated Jordan's parental rights after it found three statutory grounds to exist:

abandonment, subsequent other factors, and aggravated circumstances. Although the circuit court found three statutory grounds for termination, we may affirm a termination on only one ground. *Cullum*, *supra*. We hold that there was ample evidence submitted to support the court's aggravated-circumstances finding.

A court of competent jurisdiction may terminate parental rights when the parent is found to have subjected any juvenile to aggravated circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix*)(a)(3)(A)*. As applied in this case, aggravated circumstances means that "a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification." Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i)*. To prevail on this ground, DHS was required to demonstrate that if appropriate reunification services were provided, there is little likelihood that reunification could be achieved. *Rocha v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 454, 637 S.W.3d 454; *Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). A parent can create this type of aggravated circumstance by not following through with offers of assistance, by not completing basic goals of the case plan, and when there is a lack of significant progress on the parent's part. *Collier v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 100, at 9, 641 S.W.3d 67, 73; *Wright v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 263, 576 S.W.3d 537.

Here, the circuit court heard evidence in support of this ground. Jordan failed to comply with the case plan. Jordan had been ordered to undergo a drug-and-alcohol assessment, complete parenting classes, attend individual counseling, have random drug screens, and have supervised visits with K.T. Felicia Vinson, Jordan's caseworker, testified

that other than starting—but not completing—parenting classes, Jordan had not complied with any of the court's directives. During the entire pendency of the case, Jordan had never had a visit with K.T. Vinson noted that DHS did not know where Jordan lived or whether Jordan's home would ever be a safe environment for K.T.

Even Jordan's own testimony supports the aggravated-circumstances finding. She acknowledged that she had not seen K.T. since DHS took her into custody and agreed that she would test positive for marijuana if she were drug tested. She further agreed that she had not completed her parenting classes, her psychological evaluation, or individual counseling as ordered by the court. Finally, she conceded that she was not in an appropriate place to get K.T. back because her housing situation was unstable and she was not working, looking for employment, or going to school.

In her no-merit brief, counsel asserts that she can "only state the obvious that by the time of the termination hearing, [Jordan], by her own admission had failed to complete any of the court ordered services and had failed to exercise any visitation in the eleven months since K.T. came into foster care." We agree. Jordan continued to suffer from housing instability; she was still using marijuana; she had not completed any of the programs ordered by the court despite DHS's assistance; and she was simply not making the kind of progress necessary for reunification with her child. These are the kinds of situations in which we have consistently found aggravated circumstances to exist. *See, e.g.*, *Cullum*, *supra* (father received various services but continued to test positive for drugs, suffer from housing instability, and have anger-management issues); *Kloss v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 389, 585 S.W.3d 725 (despite services, father continued to test positive for drugs and

failed to take advantage of therapy and counseling). Indeed, we have frequently held that a parent's failure to benefit from the services provided demonstrates little likelihood that further services will result in a successful reunification. *Jones v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 299, 578 S.W.3d 312; *Reyes-Ramos v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 46, 571 S.W.3d 32; *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, 554 S.W.3d 285. We therefore conclude that the circuit court's findings are supported by the testimony and evidence presented at the termination hearing and that there would be no meritorious ground for arguing that the statutory grounds were not sufficiently proved.

B. Best Interest

In addition to finding the existence of at least one statutory ground in order to terminate parental rights, a court must also find that termination of parental rights is in the child's best interest, taking into consideration two statutory factors: (1) the likelihood of adoption if parental rights are terminated and (2) the potential harm caused by continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A). Here, the court considered both statutory factors in light of the overall evidence, finding that termination was in K.T.'s best interest. Counsel contends that there are no issues of arguable merit for reversal in challenging this best-interest finding.

Regarding adoptability, the circuit court heard testimony from adoption specialist Elizabeth Oldridge that K.T. is adoptable. Oldridge based her opinion on K.T.'s young age, lack of any physical illnesses or chronic conditions, and lack of any developmental delays. In addition, a data-matching list revealed 372 possible adoptive matches for K.T. We have frequently held that the testimony of an adoption specialist is sufficient to support a circuit

court's adoptability findings. *See Hardiman v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 542, 589 S.W.3d 412; *Reed v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 416. We therefore agree with counsel that there could be no meritorious challenge on this point.

Regarding potential harm, the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Ross v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 503, 529 S.W.3d 692. Potential harm must be viewed in broad terms, and "potential" necessarily means that the court is required to look to future possibilities. *Id.* We have frequently held that continued drug use and instability demonstrate potential harm sufficient to support a best-interest finding in a termination-of-parental-rights case. *Beaird v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 415, 585 S.W.3d 172; *Murphy v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 426, 560 S.W.3d 465; *Robinson v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 262, 520 S.W3.d 322.

The circuit court was presented sufficient evidence of potential harm. Jordan was using drugs when these proceedings were initiated. In fact, K.T. tested positive for methamphetamine and THC at birth. In addition, Jordan testified that she continued to use drugs throughout this proceeding, resulting in instability in her housing and in other aspects of her life. On this evidence, the circuit court found that K.T. would be at risk of potential harm because of "instability and drug exposure." In her no-merit brief, counsel asserts that the circuit court's finding that K.T. would be at risk of potential harm if returned to Jordan "cannot be seriously disputed on appeal." We agree with counsel's assessment and conclude that the evidence was sufficient to support the circuit court's best-interest analysis.

C. Other Adverse Rulings

Finally, counsel notes that other than the termination decision itself, there was one other ruling that was adverse to Jordan: the denial, implied in the termination decision, of Jordan's request for more time to work toward reunification. Here, counsel states that there was no error in the court's decision in this respect because K.T. had been in foster care since she was two months old, and in light of Jordan's history throughout the case, "including the failure to even exercise even one visitation with her daughter or complete any of the court-ordered services, it was unclear when [Jordan] would be capable of safely parenting her daughter." We agree.

Having carefully examined the record and the no-merit brief, we hold that Jordan's counsel has complied with the requirements for a no-merit termination-of-parental-rights appeal and that the appeal is wholly without merit. We therefore affirm the termination of Jordan's parental rights and grant counsel's motion to be relieved.

Affirmed; motion to be relieved granted.

VIRDEN and KLAPPENBACH, JJ., agree.

Jennifer Oyler Olson, Arkansas Commission for Parent Counsel, for appellant.

One brief only.