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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-22-200

ASLYN SMITH APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILD APPELLEES	**Opinion Delivered** October 5, 2022 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72JV-20-507] HONORABLE STACEY ZIMMERMAN, JUDGE AFFIRMED

BART F. VIRDEN, Judge

The Washington County Circuit Court terminated the parental rights of appellant Aslyn Smith to her son, A.E.[1] On appeal, Smith argues that the trial court abused its discretion in refusing to accept her consent to voluntary termination. We affirm.

I. *Background*

Given the narrow focus of this appeal, only a brief recitation of the facts is necessary. On July 24, 2020, the Arkansas Department of Human Services (DHS) placed a hold on then two-year-old A.E. after receiving a report that Smith had left A.E. with a stranger over Memorial Day weekend and had failed to pick him up after two months. A.E. was later

[1]The trial court also terminated the parental rights of A.E.'s father, Andrew Ewing; however, he is not a party to this appeal.

adjudicated dependent-neglected as a result of parental unfitness and neglect and placed in the home of his paternal grandfather, Eric Pike.

DHS offered reunification services to Smith, but when the case was reviewed in January 2021, the trial court found that Smith had made little progress. At a permanency-planning hearing in June, the trial court changed the goal of the case from reunification to adoption and termination of parental rights because of Smith's lack of progress. In August, DHS filed a petition to terminate Smith's parental rights on grounds of failure to remedy; subsequent factors; and aggravated circumstances (little likelihood that services will result in successful reunification).[2] A hearing on DHS's petition was set for October 7.

On October 7, the trial court learned that A.E.'s father had not been served, so it held what was called "part one" of the hearing and scheduled "part two" for November 17. At the beginning of the hearing held on November 17, Smith announced that she wanted to consent to voluntary termination of her parental rights. The trial court offered to scan and email a consent form to Smith, which she immediately signed and had her attorney file the document during the hearing; however, the trial court proceeded with testimony.

Smith testified in relevant part that she was consenting to termination of her parental rights so that Pike could adopt A.E. While Smith insisted that she was sober, she conceded that A.E.'s sibling, P.S., had been born in February 2021 with drugs in his system.[3] P.S. had

[2]*See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)*(a)*; (vii)*(a)*; & (ix)*(a)(3)(B)(i)* (Supp. 2021).

[3]Immediately following the hearing pertaining to A.E., the trial court heard a petition for termination of parental rights as to P.S. We are also deciding on this day the case involving P.S. in which Smith's counsel filed a "no-merit" brief pursuant to Ark. Sup. Ct.

also been placed in Pike's custody. Smith testified that she was contesting termination of her rights as to P.S. as well as his adoption by Pike because she wanted P.S.'s father, Michael Waste, to be given a chance to work toward obtaining custody of P.S. Smith acknowledged that there is a no-contact order in place between her and Waste.

DHS objected to the trial court's acceptance of Smith's consent. At the conclusion of the hearing, the trial court ruled,

> I find that DHS, number one, properly served both parents with a petition for termination of parental rights. Number two, I find that neither parent has been in full compliance with the case plan. They haven't even been in partial compliance with court orders and case plan. They haven't even really been in minimal compliance with the court orders and case plan. And for them to say, "Oh, I'll voluntarily give up my rights," doesn't mean that we don't have a hearing today and just say, "Oh, we're going with that voluntary termination." Today, this child needs permanency. And the voluntary termination of parental rights form, parent still gets to have ten days to change their mind[.] [E]ven if their voluntary termination paperwork was signed and filed more than ten days ago, the record is replete and heavy and clear and convincing that DHS has proven its grounds for termination of parental rights as to both mom and dad.

The trial court then terminated Smith's parental rights to A.E. on the basis of all three grounds pled by DHS in its petition.

II. *Discussion*

Smith does not challenge the sufficiency of the evidence supporting the trial court's findings as to grounds or best interest. As a result, those issues are waived. *Scott v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 200, 624 S.W.3d 697. The only matter on appeal is whether the trial court abused its discretion in rejecting Smith's consent to voluntary termination of her parental rights. A trial court abuses its discretion when it acts

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R. 6-9(i) and *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and a motion to withdraw as counsel.

improvidently and without due consideration. *Schultz v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 93.

As noted above, the trial court found all three grounds pled by DHS in its petition. Arkansas Code Annotated section 9-27-341(b)(3)(B)(v)*(a)* provides as another ground for termination that "a parent has executed consent to termination of parental rights or adoption of the juvenile, *subject to the court's approval*." (Emphasis added.) A parent may withdraw consent to termination of parental rights within ten calendar days after it was signed. Ark. Code Ann. § 9-27-341(g)(1)(A). To the extent that Smith questions the meaning of the statute, specifically, the consent ground, we review issues of statutory interpretation de novo because it is for the appellate courts to decide what a statute means. *Tovias v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 228, 575 S.W.3d 621. In considering the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.*

Section 9-27-341(b)(3)(B)(v)*(a)* is plain and unambiguous in providing the trial court with discretion whether to accept a parent's consent to voluntary termination of his or her parental rights. Indeed, Smith appears to understand the plain language of the statute; nevertheless, she complains that the trial court gave no reason for taking the extreme measure of involuntarily terminating her rights. The statute, however, does not require specific findings to support its decision. Smith further asserts that the trial court involuntarily terminated her parental rights as punishment for her noncompliance with the case plan and court orders. It is clear, however, from the trial court's ruling that it was concerned about the ten-day period during which Smith could withdraw her consent.

Smith cites *Jordan v. Arkansas Department of Human Services*, 2011 Ark. App. 592, and argues that she was not still deciding whether to consent. In *Jordan*, the mother requested additional time to consider whether to consent to termination. In refusing her request, the trial court noted that the fourteen-month-old case had already been continued once; the hearing had been set for a month; and Jordan had been afforded ample time in which to consent yet appeared ambivalent about doing so. This court on appeal held that the trial court did not abuse its discretion in denying a motion for continuance and pointed out that Jordan had indicated to her counsel that she would condition her consent on the outcome of the hearing, i.e., she would consent if the trial court were "inclined" to involuntarily terminate her parental rights. While it may be true that Smith was not still deciding whether to consent as in *Jordan*, Smith's case had dragged on for fifteen months. Moreover, Smith had known since July 2 that a termination hearing was scheduled for October 7, and then that hearing was essentially continued until November 17. In other words, Smith had over four months within which to execute her consent to the termination of her parental rights.

Moreover, in *Russell v. Arkansas Department of Human Services*, 2014 Ark. App. 734, this court held that the trial court did not abuse its discretion by going forward with a decision based on evidence at the termination hearing rather than accepting the mother's consent to voluntary termination as related by her attorney. While the case is distinguishable in that the mother in *Russell* was not present at the termination hearing to voice her consent, this court found no error in the trial court's decision that the termination would be involuntary based, in part, on the appellant's "past credibility and the circumstances of the case." Here, the trial court found that Smith had not even minimally complied with the

case plan and perhaps questioned her motives for waiting to offer her consent when she had ample opportunity to consent before the attorneys and witnesses met for "part two" of the termination hearing.

Smith also contends that, had the trial court allowed her to consent to termination, A.E. could have achieved permanency and stability much sooner than the court "forcing the case to trial" followed by an appeal. Smith cites *Rhine v. Arkansas Department of Human Services*, 101 Ark. App. 370, 278 S.W.3d 118 (2008), in which this court reversed the trial court's denial of a motion for continuance to allow the mother to consent to adoption of A.I. by his grandmother. That case, however, involved good cause for a continuance, and we found, in part, that the trial court had failed to exercise its discretion with regard to the continuance request because it felt compelled to "press on" with the termination hearing in light of the ninety-day limitation in Ark. Code Ann. § 9-27-341(d) and the attorneys' scheduling conflicts, with little regard for A.I.'s need for permanency. Here, the trial court exercised its discretion in denying Smith's request to consent. While it is likely true that permanency could have been achieved faster through a voluntary termination, that assumes that Smith would not withdraw her consent over the next ten days.

Smith maintains that whether she intended to fight the upcoming termination petition with respect to P.S. does not justify the involuntary termination as to A.E. Voluntary termination, or consent, does not carry the same onus as involuntary termination where a parent still has other children in his or her custody, given that, under the aggravated-circumstances ground, it is also a ground for termination if a parent has had a prior involuntary termination with respect to another child. Ark. Code Ann. § 9-27-

341(b)(3)(B)(ix)*(a)(4)(A)*. The fact that the trial court involuntarily terminated Smith's rights as to A.E. had no bearing in P.S.'s case given that DHS did not use the involuntary termination in A.E.'s case as a ground for terminating Smith's parental rights as to P.S.

Finally, Smith argues that the trial court itself sent her the consent form and gave no indication that it would then routinely dismiss that consent and minimize it. The fact that the trial court had a consent form readily available and provided it to Smith as a courtesy did not mean that the trial court was then bound to accept Smith's consent. In conclusion, we cannot say that the trial court abused its discretion in refusing to accept Smith's consent to voluntary termination of her parental rights.

Affirmed.

KLAPPENBACH and WHITEAKER, JJ., agree.

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

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.