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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-22-203

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-21-102]

HONORABLE STACEY
ZIMMERMAN, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BART F. VIRDEN, Judge

Appellant Aslyn Smith appeals from the termination of her parental rights to her child, P.S. (02/06/21). 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(i), Aslyn’s counsel has filed a no-merit brief and motion to withdraw, asserting that there are no issues of arguable merit to support an appeal, and she should be relieved as counsel. A copy of Aslyn’s counsel’s brief and motion was mailed to her, and after being informed of her right to file pro se points, she declined to file any points. We affirm and grant counsel’s motion to withdraw.

We review termination-of-parental-rights cases de novo. *Dinkins v. Ark. Dep’t of Hum. Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). At least one statutory ground must exist in addition to a finding that it is in the child’s best interest to terminate parental rights; these

must be proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2021); *Mitchell v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 715, 430 S.W.3d 851. 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. *Houseman v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 227, at 2, 491 S.W.3d 153, 155. The appellate inquiry is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

On February 9, 2021, the Arkansas Department of Human Services (Department) filed a petition for emergency custody and dependency-neglect regarding P.S. The affidavit attached to the petition set forth the following facts. When P.S. was born on February 6, Aslyn tested positive for methamphetamine, amphetamines, and THC. P.S.'s cord-blood sample was sent to the laboratory for drug testing, and pursuant to Garrett's Law, the Department placed an emergency hold on P.S. Aslyn had a history with the Department going back to 2017 regarding her two older children. A.S. (06/13/14) was in her father's custody, and her whereabouts were unknown; and A.E. (06/20/18) was the subject of an open dependency-neglect case with which Aslyn was not compliant. In August 2020, Aslyn was arrested for possession of drugs and firearms and again in November for two counts of felony possession of methamphetamine. Both criminal cases were still pending. P.S. was

removed from Aslyn's custody due to her current substance abuse affecting her ability to supervise, protect, and care for her child and because she had previously maltreated a child.

On February 11, the trial court entered an ex parte order for emergency custody. A probable-cause order was entered on February 24, in which the court found that P.S. was dependent-neglected. Aslyn was ordered to have no contact with P.S. (due to his fragility and because he was still in the NICU), submit to random drug screens, maintain stable housing and employment, attend staffings, maintain contact with her attorney and the Department, and complete all recommendations.

An amended ex parte order for emergency custody was entered on April 5, and in it the court acknowledged in more detail Aslyn's drug history, finding that she had been offered services that had not prevented the removal P.S., and the Department made reasonable efforts to prevent the removal of the child.

The trial court entered an adjudication order on April 15. The court found P.S. dependent-neglected because he was at serious risk of harm due to his mother's drug use. The goal of the case was reunification with a concurrent goal of adoption, and the court additionally ordered that Aslyn participate in family and individual counseling, attend supervised visitation, undergo a drug-and-alcohol assessment if it had not been completed in A.E.'s case, and resolve all criminal charges.

On July 2, 2021, the trial court entered a review order and scheduled a no-reunification-services hearing/permanency-planning hearing. In the order, the court found that Aslyn was "not even doing the bare minimum" to comply with the case plan. P.S. had been placed with his sibling in A.E.'s paternal grandfather's home. On August 23, the court

entered an order to join a necessary party after identifying Michael Waste as P.S.'s biological father through DNA testing.

On August 29, the Department filed a petition to terminate Aslyn's parental rights to P.S. on the following statutory grounds: (1) "other factors" due to her lack of compliance with the case plan and (2) aggravated circumstances due to exposing P.S. to methamphetamine and THC and her open case regarding P.S.'s sibling. The Department argued that it was in P.S.'s best interest from both the potential harm and the adoptability standpoints that Aslyn's parental rights be terminated.

At the November 17 termination hearing, family service worker Karen Lee testified that in A.E.'s case, Aslyn had not complied with the case plan. Specifically, she had not kept in contact with the Department, submitted to random drug screens, participated in counseling, consistently attended visitation, completed the drug-and-alcohol assessment, or demonstrated sobriety. The same was true in P.S.'s case. Aslyn had not consistently exercised visitation throughout the case and had attended two out of six scheduled visits since October. Aslyn had not completed a drug-and-alcohol assessment, counseling, parenting classes, or submitted to random drug screens. Lee testified that Aslyn had not demonstrated sobriety or stability, and she had not submitted proof of employment. A.E.'s paternal grandfather testified that he and his wife wished to adopt both children and that A.E. and P.S. share a close bond and are "inseparable."

On January 6, 2022, the trial court entered an order terminating Aslyn's parental rights to P.S. The trial court found by clear and convincing evidence that termination of parental rights was in the P.S.'s best interest, and the court specifically considered the

likelihood of adoption as well as the potential harm of returning the child to Aslyn's custody as required by Arkansas Code Annotated section 9-27-341(b)(3)(A) (Supp. 2021). The trial court also found clear and convincing evidence of two statutory grounds. Under subdivision (b)(3)(B)(ix)(a), the court found that Aslyn had subjected P.S. to aggravated circumstances and that there was little likelihood that services to the family would result in successful reunification. Under subdivision (b)(3)(B)(vii)(a), the court found that subsequent factors arose after the filing of the original petition that demonstrated that return of custody to Aslyn is contrary to P.S.'s health, safety, and welfare, and despite the offer of services, Aslyn had manifested the incapacity or indifference to remedying the subsequent issues.

The court determined that P.S. is extremely adoptable and did not have any specific medical or behavior needs that would prevent adoption. As to potential harm, the court found that there was a "lack of measurable or sustainable progress throughout the case," and Aslyn had not demonstrated that she could avoid jailtime, refrain from drug use, or meet P.S.'s basic needs.

In her no merit brief, counsel asserts, correctly, that there could be no meritorious challenge to the sufficiency of the evidence to support termination of Aslyn's parental rights. Although the trial court found two statutory grounds for termination, only one ground is necessary to support the termination. *See Brown v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 303, 521 S.W.3d 183. In the termination order, the trial court found under the aggravated-circumstances ground that there was little likelihood that further services would result in reunification. Specifically, despite having services offered in connection to the previous dependency-neglect case involving A.E. and the current case involving P.S., Aslyn had not

remedied either her instability or her lack of sobriety, and she had unresolved criminal charges related to the issues that caused the children to be removed from her custody.

Counsel also correctly asserts that there can be no meritorious challenge to the trial court's finding that termination of parental rights was in P.S.'s best interest. In the month prior to termination, Aslyn had visited P.S. two out of six times, and Aslyn's visitation had been inconsistent during the entire case. The testimony at the hearing showed that Aslyn had no stable housing or employment, and she had not meaningfully complied with any part of the case plan. Aslyn had either refused drug screens or had failed to make herself available for them. This evidence supports the trial court's finding that P.S. would be at risk of harm if returned to Aslyn's custody. There was also testimony that the likelihood of adoption was very high and that P.S.'s foster parents were interested in adopting him. In light of the evidence presented, the trial court's finding that termination of Aslyn's parental rights was in P.S.'s best interest was not clearly erroneous.

Additionally, counsel accurately asserts that Aslyn made several objections during the hearing regarding evidence and testimony concerning Waste, and most of these objections were sustained. Moreover, because the objections concerned Waste's parental rights, they could not be adverse to Aslyn, who had no standing regarding Waste's parental rights. Additionally, in closing, trial counsel requested that the termination hearing be reset "because the child is not a year old yet" meaning that the termination hearing was taking place before a year had passed since P.S.'s removal. The court did not grant this request and terminated Aslyn's parental rights. Arkansas Code Annotated section 9-27-338(b)(1)(A) (Repl. 2020) does not prevent the Department or the attorney ad litem from filing a petition

to terminate parental rights at any time prior to the permanency-planning hearing, which is required to be held no more than twelve months after the child enters an out-of-home placement. *See* Ark. Code Ann. § 9-27-338(a)(1)(A).

Having examined the record and counsel's brief, we believe that counsel has complied with our no-merit rules and that this appeal is wholly without merit. Accordingly, we affirm the order terminating Aslyn's parental rights and grant counsel's motion to withdraw from representation.

Affirmed; motion to withdraw granted.

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.