

Cite as 2023 Ark. App. 334
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-22-709

STEPHANIE WATTS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered May 31, 2023

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[NO. 10JV-20-49]

HONORABLE BLAKE BATSON,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

STEPHANIE POTTER BARRETT, Judge

This is a no-merit appeal from the Circuit Court of Clark County terminating the parental rights of Stephanie Watts to her three children, MC1, MC2, and MC3.¹ Following the dictates of Arkansas Supreme Court and Court of Appeals Rule 6-9(j) (2022) and *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), Watts’s attorney 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

¹Watts’s parental rights to a fourth child were terminated in a separate case—No. CV-22-711—however, the termination hearing on both cases was held simultaneously. A separate opinion is issued today in *Watts v. Ark. Dep’t of Hum. Servs.*, 2023 Ark. App. 339. Another child, MC5, was in the permanent custody of his maternal grandmother at the time of removal and is not a subject of either appeal. The parental rights of Lincoln Brown (MC1’s father) and Franklin Williams (father of MC2 and MC3) were also terminated. They have not appealed and, thus, are not parties to this appeal.

the brief and the motion to withdraw to Watts, informing her of her right to file pro se points for reversal pursuant to Rule 6-9(j)(3), and Watts has filed pro se points for reversal. After reviewing counsel's brief, Watts's pro se points, and the record, we agree that an appeal would be wholly without merit. Therefore, we affirm the order terminating Watts's parental rights and grant counsel's motion to withdraw from representation.

On September 21, 2020, the Arkadelphia Police Department conducted a welfare check of Watts's home. While performing the welfare check, police discovered that Watts had an outstanding warrant.² Watts then fled out a bedroom window, leaving MC2 and MC3 behind. As a result, the police contacted the Arkansas Department of Human Services (DHS). MC1 returned home from school shortly thereafter.

When the family service worker arrived at the home, she found the home dirty and in disarray with trash and plastic shopping bags in reach of the children. The refrigerator was filled with beer and dog food; there were no kid-friendly beverages or food, and the family service worker was unable to find any baby formula for MC3. As a result, MC1, MC2, and MC3 were removed from Watts's care, and a seventy-two-hour hold was instituted. DHS alleged the removal was necessary because Watts's behavior toward the children was violent or out of control; she was unwilling or unable to meet the children's needs for food, clothing, shelter, and medical or mental-health care; her current substance use seriously affected her

²Watts was subsequently arrested and charged with two counts of second-degree endangering the welfare of a minor and fleeing.

ability to supervise, protect, or care for the children; and she had been found to have previously maltreated a child.

The children were subsequently adjudicated dependent-neglected due to inadequate supervision, environmental neglect, and Watts's parental unfitness. Among other things, Watts was ordered to attend parenting classes; complete drug-and-alcohol assessments; participate in counseling; participate in random drug screens; refrain from drug use; maintain stable and appropriate housing; obtain a psychological evaluation; and have no contact with Franklin Williams, the putative father of MC2 and MC3. Watts obtained two psychological evaluations early in the case but had not followed the recommendation to submit to a psychiatric evaluation. At the review hearing in February 2022, DHS requested that the goal of the case be changed from reunification to adoption as a result of Watts's failure to comply with the case plan and her continued contact with Williams, despite a no-contact order.³ The court deferred the motion to the next review hearing on March 7, 2022, to allow Watts the opportunity to schedule or obtain a psychiatric evaluation. The court emphasized that the psychiatric evaluation was the key to reunification.

Watts did not appear at the March 2022 permanency-planning hearing, nor did she provide proof that she had made an appointment for a psychiatric evaluation as ordered. As a result, the court changed the goal of the case to termination of parental rights and

³This no-contact order stemmed from domestic-violence issues between Williams and Watts.

adoption. Shortly thereafter, on May 24, DHS filed an amended petition for termination of parental rights as to MC1, MC2, and MC3.⁴ The petition alleged termination was in the best interest of the children and cited the following grounds for termination as to Watts: (1) twelve-month failure to remedy (Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2021)); (2) subsequent other factors (Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a)); and (3) aggravated circumstances—little likelihood services will result in successful reunification (Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(a)). Watts responded, denying the grounds cited for termination and denying that termination was in the best interest of the children.

The court conducted a termination hearing on August 1, 2022, to determine if Watts’s parental rights should be terminated. At the hearing, family service workers, LaRoyce Browning and Regina Moore, recommended termination of parental rights because, despite Watts’s compliance with some aspects of the case plan, Watts had failed to address her mental-health issues and her domestic-violence issues with Franklin Williams. They also testified that Watts had a hostile attitude and had refused to cooperate with them. They further testified that Watts had not maintained safe, suitable, and adequate housing for the juveniles, had not followed the recommendations of the psychiatric evaluation until the eleventh hour, had not consistently allowed DHS entry into her place of residence upon request, had not maintained employment suitable to support herself and the juveniles, had not submitted to random drug tests, and had not followed or complied with all of the court’s

⁴The original petition is not in our record.

orders. In addition, the caseworkers testified that because of Watts's housing instability and her behavior toward the children during visitation, which had the potential of being violent, it was their opinion that it was in the children's best interest for parental rights to be terminated due to potential harm toward the children.

In addition to the testimony of the caseworkers, several medical records were introduced at the hearing, including a psychological evaluation by Dr. George DeRoeck. Dr. DeRoeck performed a forensic psychological evaluation of Watts in February 2021. In his report, he stated that "Watts presented as patently unstable. The possibility of schizoaffective disorder-bipolar type may be indicated." Dr. DeRoeck further stated, "In my opinion, Ms. Watts's capacity to be involved in the independent care of her children is minimal, issues associated with compliance with medications, diagnostic accuracy and significant potential for substance abuse in addition to heightened volatility in interpersonal relations are limiting factors." Dr. DeRoeck recommended a psychiatric evaluation to assess diagnostic considerations and stabilization on medication for a minimum of four to six months before reunification should be considered.

In addition, a July 2021 psychological report by Melissa McCready, a licensed psychological examiner at Arkansas Counseling & Psychodiagnostics, Inc. (ACaP), found that Watts's thought dysfunctions were serious and stated, "Stephanie's responses indicated serious and pervasive thought dysfunction. She reports a large number of unusual thoughts and perceptions. She very likely experiences symptoms that can include auditory and/or

visual hallucinations and non-persecutory delusions, such as thought broadcasting and mind reading.”

Watts testified she had obtained the psychiatric evaluation recommended by Dr. DeRoeck on July 26, 2022—just days before the termination hearing on August 1, 2022—but presented no evidence that the evaluation had been conducted. Despite being confronted with the medical reports detailing her mental-health issues and her admission that she had been prescribed lithium in the past, she continued to deny the need for psychiatric medications.

No relative or fictive kin came forward to seek custody of the three children. However, Sandra Marfoglio-Hinton, the area adoption specialist, testified that the children are adoptable, and she identified a number of families available to adopt the children, including the families with whom they were currently placed. Further, she testified there were no issues with the children that would impede adoption.

After the hearing, the court entered an order terminating Watts’s parental rights. In so doing, the court found that termination was in the best interest of the children and that DHS had proved by clear and convincing evidence two of the three statutory grounds pled in the petition: twelve-month failure to remedy and subsequent other factors. Watts filed a timely notice of appeal.

An order terminating parental rights must be based upon a finding by clear and convincing evidence that termination of a parent’s rights is in the best interest of the children, considering the likelihood that the children will be adopted if the parent’s rights

are terminated, and the potential harm caused by returning the children to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A). The court must also find one of the grounds outlined in the termination statute. The relevant grounds here are outlined at Arkansas Code Annotated sections 9-27-341(b)(3)(B)(i)(a) and 9-27-341(b)(3)(B)(vii)(a):

That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent; and,

That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the juvenile in the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent placement of the juvenile in the custody of the parents.

Termination of parental rights is an extreme remedy and in derogation of a parent's natural rights; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, at 5, 554 S.W.3d 285, 289. A heavy burden is placed upon a party seeking to terminate the parental relationship, and the facts warranting termination must be proved by clear and convincing evidence. *Friend v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 606, at 9, 344 S.W.3d 670, 675 (citing *Strickland v. Ark. Dep't of Hum. Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008)); *see also* Ark. Code Ann. § 9-27-341(b)(3). 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. *Baker v. Ark. Dep't of Hum. Servs.*, 340 Ark. 42, 48, 8 S.W.3d 499, 503 (2000). When the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the circuit court's finding was clearly erroneous. *Payne v. Ark. Dep't of Hum. Servs.*, 2013 Ark. 284, at 3. 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. *Bridges v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 50, 571 S.W.3d 506. Such cases are reviewed de novo on appeal, but appellate courts give a high degree of deference to the circuit court since it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. Clear and convincing evidence to terminate an appellant's parental rights on at least one statutory ground is all that is required. *Gossett v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 240, at 7, 374 S.W.3d 205, 208.

After hearing the testimony and arguments of counsel, the circuit court terminated Watts's parental rights, finding that there was clear and convincing evidence that termination was warranted under the Juvenile Code. While the circuit court acknowledged that Watts complied with several aspects of the case plan, it concluded on the basis of testimony elicited at the hearing that Watts had not maintained safe, suitable, and adequate housing for the juveniles, had not followed the recommendations of the psychological evaluation, had not consistently allowed DHS entry into her place of residence upon request, had not maintained employment suitable to support herself and the juveniles, and had not followed or complied with all of the court's orders. The court also found that she never

resolved her mental-health issues and had never resolved her violent relationship with Franklin Williams.

Counsel has identified only two potential adverse rulings: the termination decision itself and the denial of her request to take the matter under advisement until the psychiatric evaluation could be presented. After reviewing the record, we conclude that counsel has adequately explained why neither of these adverse rulings constitute meritorious grounds for reversal.

In her pro se points for reversal, Watts claims that she has matured and changed; that she has a home and a job; that she is in counseling and is scheduled to attend outpatient rehab; and that she is drug-free. She further claims that her caseworker and attorney were against her, and she challenges the evidence regarding her altercations with Franklin. She closes by asking the court to reconsider the termination of her rights based on ineffective assistance of counsel, a biased caseworker, and evidence that she had completed or was in the process of completing the case plan. Her arguments for reversal are also without merit.

First, we cannot consider her post-termination achievements on appeal. *See Owens v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 789. Second, she never raised ineffective assistance of counsel below; thus, it is not preserved for our review. We cannot consider arguments raised for the first time on appeal. *Hill v. State*, 341 Ark. 211, 16 S.W.3d 539 (2000); *Wallace v. State*, 326 Ark. 376, 379, 931 S.W.2d 113, 115 (1996). Third, as to the biased caseworker, Watts's counsel was able to cross-examine the caseworker at the hearing, and Watts is either introducing new evidence or asking us to reweigh the evidence. Neither is appropriate. *See*

Owens, supra; *Snider v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 502, 612 S.W.3d 199. Finally, as to her argument that she had completed or was in the process of completing the case plan, the intent behind the termination-of-parental-rights statute is to provide permanency in a child's life when it is not possible to return the child to the family home because it is contrary to the child's health, safety, or welfare, and a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3). This need for permanency overrides a parent's request for additional time to improve circumstances, and courts will not enforce parental rights to the detriment of the well-being of the child. *McElwee v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 214, at 7, 489 S.W.3d 704, 708.

Counsel has complied with the dictates of *Linker-Flores* and the rules of this court. Accordingly, we affirm that order and grant counsel's motion to withdraw from representation.

Affirmed; motion to withdraw granted.

THYER and WOOD, JJ., agree.

Pamela Fisk, for appellant.

One brief only.