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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-338

JENNIFER THORNTON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered January 17, 2024

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26JV-21-300]

HONORABLE LYNN WILLIAMS,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

RAYMOND R. ABRAMSON, Judge

Jennifer Thornton appeals a Garland County Circuit Court order terminating her parental rights to her minor child (MC). Thornton’s counsel has filed a no-merit brief and motion to withdraw as counsel pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 6-9(j) (2023). We affirm and grant counsel’s motion to withdraw.

On November 8, 2021, the Arkansas Department of Human Services (DHS) filed a petition for dependency-neglect and emergency custody concerning MC (born in June 2013). In the affidavit attached to the petition, DHS alleged that MC had reported that her parents,

Jennifer and Jason Thornton,¹ were using drugs. DHS stated that Jennifer refused to be drug screened, Jason tested positive for methamphetamine, and methamphetamine crystals were found in the home within MC's reach. DHS further alleged that MC's hair-follicle test was positive for methamphetamine and amphetamine. On that same day, the court entered an ex parte order for emergency custody. On November 16, the court entered an agreed probable-cause order.

On January 24, 2022, the court entered an agreed adjudication order, and the court found that MC was at substantial risk of harm due to abuse, neglect, and parental unfitness. The court ordered Jennifer to comply with the case plan, which included submitting to random drug screenings, submitting to a drug-and-alcohol assessment, following the assessment's recommendation, participating in therapy, and obtaining and maintaining appropriate housing.

On April 28, the court entered a review order. The court found Jennifer had not complied with the case plan, and it noted that she had not completed a drug-and-alcohol assessment, counseling, or parenting classes. The court further stated that Jennifer did not have appropriate housing or employment and had tested positive for methamphetamine.

On August 26, the court entered a second review order. The court again found that Jennifer lacked employment and appropriate housing. The court further noted that she had not completed a drug-and-alcohol assessment, counseling, or parenting classes. The court

¹The court also terminated Jason's parental rights. He, however, is not a party to this appeal.

stated that Jennifer denied having an addiction problem; however, she tested positive for methamphetamine on August 4, had been discharged from outpatient drug treatment for noncompliance, and did not appear for the intake appointment for inpatient drug treatment.

On November 3, the court entered a permanency-planning order. The court noted that Jennifer had been living in a chemical-free home and “had been clean” for six weeks but that she had not made significant and measurable progress. The court found adoption to be the appropriate plan for MC.

On December 30, DHS petitioned for termination of Jennifer’s parental rights on the basis of the failure-to-remedy ground. DHS further alleged that termination was in MC’s best interest. The court held a termination hearing on February 8, 2023.

At the hearing, Jennifer testified that she had lived in her current housing for two weeks and that she had three roommates. She stated that her roommates are recovering addicts and that the home was inappropriate for MC. She anticipated obtaining new housing within the next month. She noted that she is unemployed but that she receives a disability check.

Jennifer denied using drugs at that time, and she stated that she last used in October 2022. She acknowledged that she had tested positive for methamphetamine in November and December 2022. She explained she did not produce a sample at a January 2023 drug screening because she did not need to use the bathroom.

Sidney Sexton, the DHS caseworker, testified that the case was opened in November 2021 after MC reported that her parents were using drugs in the home. She further stated that MC's hair-follicle test was positive for methamphetamine. As to Jennifer, Sexton testified that she had completed a psychological evaluation and a drug-and-alcohol assessment and had consistently visited MC. She noted, however, that Jennifer had not completed inpatient drug treatment, outpatient drug treatment, counseling, or parenting classes. She also stated that Jennifer did not have housing or employment. She noted that Jennifer had stable income through disability payments.

Sexton testified that DHS screened Jennifer the week before the termination hearing and that the screening was "abnormal." She explained that DHS had sent that sample to the lab, but it had not received the results. She testified that Jennifer tested positive for methamphetamine on October 27 and November 10, 2022, and DHS introduced the screenings into evidence. She stated that Jennifer tested positive for methamphetamine and buprenorphine on December 29, 2022, and DHS introduced the screening into evidence. Sexton further stated that on January 26, 2023, DHS attempted to screen Jennifer but that Jennifer could not produce a sample.

Sexton further testified that MC is "ready get on with her life even at nine years old" and that she has requested to not have any additional visits with her parents. She testified that MC "knows that her parents love her but they love drugs more and she does not believe that either of her parents will be able to get sober or find housing or employment." Sexton

stated that MC's foster parents are not interested in adopting her, but DHS had found 169 possible adoption matches.

Following Sexton's testimony, Jennifer testified again. She stated that she has been in counseling at Conway Counseling since January 2. She explained that she has been trying to attend counseling since October, but she had difficulties with insurance. Jennifer further stated that DHS had MC's "best interest at heart" but "not necessarily my own."

On February 21, the court entered an order terminating Jennifer's parental rights. The court found that the failure-to-remedy ground supported termination. The court further found that it was in MC's best interest to terminate Jennifer's parental rights. In making the best-interest finding, the court considered the likelihood that MC would be adopted and the potential harm that could be caused by returning MC to Jennifer. Jennifer filed a timely notice of appeal, and her counsel has filed a no-merit brief and a motion to withdraw.

Arkansas Supreme Court Rule 6-9(j)(1) allows counsel for an appellant in a termination 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 appeal. The petition must include an argument section that includes 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, the issue for the court is whether the appeal is wholly frivolous or whether there are any issues of arguable merit for appeal. *Linker-Flores*, 359 Ark. 131, 194 S.W.3d 739.

The appellate court reviews termination-of-parental-rights cases de novo but will not reverse the circuit court's ruling unless its findings are clearly erroneous. *Trogstad v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 443, 609 S.W.3d 661. 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. *Id.* In determining whether a finding is clearly erroneous, an appellate court gives due deference to the opportunity of the circuit court to assess the witnesses' credibility. *Lee v. Ark. Dep't of Hum. Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

In order to terminate parental rights, a circuit court must find clear and convincing evidence as to one or more of the grounds for termination listed in Arkansas Code Annotated section 9-27-341(b)(3)(B) (Supp. 2023). *Trogstad*, 2020 Ark. App. 443, 609 S.W.3d 661. Clear and convincing evidence is defined as that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Posey v. Ark. Dep't of Health & Hum. Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007). Only one ground is necessary to terminate parental rights. *Id.*

In her no-merit brief, counsel explains that any challenge to the statutory grounds for termination of Jennifer's parental rights would have no arguable merit. We agree. DHS presented clear and convincing evidence to support the failure-to-remedy ground. The failure-to-remedy ground defined in Arkansas Code Annotated section 9-27-341(b)(3)(B)(i) permits termination when the child is adjudicated dependent-neglected and has been out of the parent's custody for a year, and despite meaningful efforts by DHS to rehabilitate the

parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

Here, MC was removed from Jennifer's custody in November 2021 due to drug use. DHS located methamphetamine in the home, and Jennifer refused to be drug screened. Most significantly, MC's hair-follicle test was positive for methamphetamine. The court held the termination hearing in February 2023, and DHS presented evidence that Jennifer tested positive for methamphetamine in October, November, and December 2022. Further, Jennifer had not completed drug treatment and did not have appropriate housing. These facts support the failure-to-remedy ground.

The circuit court must also find by clear and convincing evidence that termination is in the best interest of the juvenile, taking into consideration (1) the likelihood that the child will be adopted if the termination petition is granted; and (2) the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii).

In this case, the court specifically found that it had considered adoptability and potential harm to MC. As to adoptability, the court found MC adoptable because there are 169 possible adoption matches. As to potential harm, the court found that the facts supporting the termination ground support potential harm. Both best-interest factors are supported on this record.

Counsel also accurately states that other than the termination decision, the circuit court made no other adverse rulings against Jennifer. Accordingly, having examined the

record and counsel's brief, we have determined that this appeal is wholly without merit. We therefore affirm the termination of Jennifer's parental rights, and we grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GRUBER and THYER, JJ., agree.

Eden Law Firm, by: *Kimberly Eden*, for appellant.

One brief only.