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**ARKANSAS COURT OF APPEALS**  
DIVISION I  
No. CV-23-355

CATHERINE CODY

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES AND MINOR  
CHILD

APPELLEES

Opinion Delivered January 17, 2024

APPEAL FROM THE MILLER  
COUNTY CIRCUIT COURT  
[NO. 46JV-21-99]

HONORABLE BRENT HALTOM,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**ROBERT J. GLADWIN, Judge**

Appellant Catherine Cody (“Cody”) timely appeals the Miller County Circuit Court’s order terminating her parental rights to her minor child. Cody’s counsel filed a motion to withdraw and a no-merit brief pursuant to our rules and case law, stating that there are no meritorious grounds to support an appeal. Ark. Sup. Ct. R. 6-9 (2023); *Linker-Flores v. Ark. Dep’t of Hum. Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004). Our court clerk mailed certified copies of counsel’s motion and brief to Cody’s last-known address informing her of her right to file pro se points for reversal. Cody has not filed pro se points for reversal, and the Arkansas Department of Human Services (“DHS”) has not filed a brief. We affirm the circuit court’s decision to terminate Cody’s parental rights and grant counsel’s motion to withdraw.

## I. *Background Facts*

On August 9, 2021, DHS filed a petition for emergency custody and dependency-neglect over the child. In the affidavit attached to the petition, DHS alleged that both the juvenile and Cody tested positive for methamphetamine and THC at the time of the juvenile's birth. When Cody was questioned at the hospital regarding illegal drug use, she stated she had smoked a couple of days prior but could not remember the exact date. Cody was also unable to provide a specific address for DHS to verify housing.

After exercising the emergency hold, DHS filed a formal petition on August 11, and the circuit court entered an emergency order on the same date. On August 18, Cody agreed that probable cause existed for DHS to remove the minor from her custody, and an agreed probable-cause order was entered. As a result, the juvenile was to remain in foster care pending an adjudication hearing. The adjudication hearing took place on September 29, and the circuit court found the juvenile dependent-neglected and Cody unfit. Specifically, the court found that Cody's drug use caused the juvenile to be born with illegal substances in the body. The goal of the case was reunification, and Cody was ordered to start and complete all of the services outlined in the case plan created by DHS; to follow all recommendations of those services; to obtain and maintain safe and suitable housing and employment; to allow DHS entry into her place of residence upon request; to maintain regular contact with the juvenile and DHS; to cooperate with DHS; and to follow and abide by all court orders.

The first review hearing was held on December 21, and the court found that DHS and Cody had both complied with the case plan and the court's orders. Further, the court found that Cody had begun to benefit from the goals of the case plan and was working toward remedying the issues that prevented the safe return of the child. At the subsequent review hearing on March 2, 2022, the court held that DHS remained in compliance but characterized Cody's compliance as "partial." Specifically, the court noted that Cody's hair-follicle test was positive for methamphetamine and amphetamine and that Cody had not obtained housing and was not employed. The court ordered Cody to continue participating in her services but noted that DHS planned to file a motion to terminate reunification services if she did not remain compliant with the case plan and previous orders of the court. On May 10, DHS filed a motion to terminate reunification services, alleging that aggravated circumstances existed because there was little likelihood that further services would result in successful reunification.

The court held another review hearing on May 11, and by order entered May 23, held that Cody was not in compliance with the case plan and orders of the court because (1) she had not obtained safe, stable, and adequate housing for herself or the minor; (2) she had not provided an address to DHS; (3) she had not provided verification of employment; (4) she had been reassessed for drug treatment and needed to enter inpatient treatment but continued to decline because of work; (5) she had missed several visits with the minor; and (6) she had not performed random drug screens. Accordingly, the court reiterated the services with which Cody must comply and further ordered her to enter inpatient drug

treatment and submit to a nail-bed drug test. The court also set the case for a hearing on the motion to terminate reunification services.

DHS' motion was heard on August 17, and the court denied the motion by order entered September 2. In doing so, the court allowed Cody the opportunity to reenter inpatient drug treatment. On September 7, the court held a permanency-planning hearing and held that the goal of the case would be to authorize a plan to return the juvenile to Cody, a guardian, or custodian. Specifically, the court found that Cody was complying with the case plan and court orders, she was making measurable progress toward achieving the goals established in the case plan, and she was diligently working toward reunification. The court also set a concurrent goal of adoption. Another review hearing was set for December 14, and by order dated January 11, 2023, the court held that the goal of the case was still reunification with a concurrent goal of relative placement. However, the court found that Cody had not been visiting the juvenile consistently, and she had not complied with the case plan and orders of the court. Further, the court noted she had not provided a current address; she had not obtained employment; and she continued to have positive drug screens. Further, while she did complete inpatient drug treatment, she had not started the aftercare program for continued drug rehabilitation.

After a subsequent review hearing, the court entered its order on January 31, 2023, finding that Cody had complied in part with the case plan but still had not obtained suitable housing or employment; refused to submit to aftercare services; and continued to have positive drug screens. Thus, the court held that Cody had not demonstrated progress toward

the goal of the case plan and had not remedied the issues that prevented the safe return of the juvenile to her custody. On the same day, DHS filed a second petition for termination of parental rights. DHS alleged that termination was in the juvenile's best interest as well as three grounds supporting the termination of parental rights.

On February 22, the court held a hearing on the termination petition. Sheila Johnson-Carter ("Carter"), the counselor at Harbor House, was the first to testify. Carter testified that she called Cody three times to set her up in the aftercare program, but she had not been able to contact her. Alexis Lampkins ("Lampkins"), the Miller County DHS supervisor and the caseworker for the family also testified. Lampkins testified that Cody admitted she had smoked methamphetamine and marijuana a couple of days prior to giving birth and that on three subsequent occasions, Cody tested positive for illegal substances. Lampkins also testified that she was unaware of any source of income for Cody; that she did not know where Cody was living; that she believed Cody had at least five different residences; and that she had not completed all the services required, including the aftercare program. Further, she testified that out of eighty visits Cody was offered with the juvenile, Cody attended only twenty-eight. An adoption specialist with DHS—Ruthann Murphy—testified the juvenile was likely to be adopted if Cody's parental rights were terminated and that the foster family was a potential adoptive placement.

Cody testified and provided a new address in New Boston, Texas. She stated that she also had a house in Hot Springs but could not remember the house number. Regarding the aftercare program, she testified she set up an appointment with her primary-care physician

to get a referral into the program. She acknowledged that she had not seen the minor in a while but admitted that was her choice because it broke her heart to see him cry.

At the conclusion of the hearing, the court orally terminated Cody's parental rights, finding that she had been given many chances; the court also recited a note from the prior hearing wherein it gave Cody a final warning about compliance and ordered her to stay in touch with DHS. The court noted the lack of consistent housing, lack of consistent employment, and evidence demonstrating that drug addiction was still an issue. Finally, the court held that DHS had complied with the case plan, but despite every opportunity to remedy the issues causing removal, Cody failed to do so.

On March 9, the court entered its written order of termination finding the juvenile had been out of the home for at least twelve months, and that, notwithstanding the offer of meaningful services by DHS, Cody had failed to remedy the issues causing removal. The court also held that termination was in the child's best interest because permanent placement through adoption was likely, and the child would be subject to potential harm if returned to Cody's custody. Cody appealed the court's decision on March 17.

## II. *Standard of Review*

We review termination-of-parental-rights cases de novo. *Roland v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 333, at 3, 552 S.W.3d 443, 445. An order terminating parental rights must be based on a finding by clear and convincing evidence that the sought-after termination is in the child's best interest. *Id.* The circuit court must consider the likelihood that the child will be adopted if the parent's rights are terminated and the potential harm

that could be caused if the child is returned to a parent. *Id.* The circuit court must also find that one of the grounds stated in the termination statute is satisfied. *Id.*

In dependency-neglect cases, if after studying the record and researching the law, appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. *Id.* (citing Ark. Sup. Ct. R. 6-9(i)(1)). The petition must include an argument section that lists all adverse rulings that the parent received at the circuit court level and explain why each adverse ruling is not a meritorious ground for reversal. *Id.* (citing Ark. Sup. Ct. R. 6-9(i)(1)(A)).

### III. Discussion

The purpose of terminating a parent's rights to his or her child is to provide permanency in a child's life when return to the family home "cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective." Ark. Code Ann. § 9-27-341(a)(3) (Supp. 2023). A court may order termination of parental rights if it finds there is an "appropriate permanency placement plan" for the child, Ark. Code Ann. § 9-27-341(b)(1)(A), and further finds by clear and convincing evidence that termination is in the best interest of the child, taking into consideration the likelihood of adoption and the potential harm to the health and safety of the child that would be caused by returning him or her to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A). Finally, there must be clear and convincing evidence supporting one or more statutory grounds listed in the Code. Ark. Code Ann. § 9-27-341(b)(3)(B).

In terminating Cody's parental rights, the circuit court found DHS proved that aggravated circumstances existed; the juvenile has been out of Cody's custody for twelve months; and despite meaningful efforts by DHS to rehabilitate and correct the conditions that caused removal, those conditions had not been remedied. Furthermore, the court held that it was in the juvenile's best interest to terminate Cody's parental rights. The evidence supports both findings. The failure to comply with the case plan or court orders is a subsequent factor that justifies termination. The record is replete with evidence of Cody's noncompliance. Cody failed to stay in touch with DHS, she has no stable home or employment; and there was evidence demonstrating ongoing drug usage and addiction. Accordingly, there is no merit to an argument on appeal that there was insufficient evidence to support a statutory ground. Furthermore, in deciding the child's best interest, the court considered both the likelihood of adoption and the potential harm in returning the child to Cody. Both of these considerations weighed in favor of termination.

Other than the termination order, there were two additional adverse rulings by the circuit court. First, at the termination hearing, counsel for Cody sought a continuance, alleging that she was in the process of hiring private counsel; however, the continuance was denied after the court verified that private counsel had not been retained. Second, during closing arguments, Cody asked if she could address the court and add her own closing statement, which the court denied. Counsel's no-merit brief addressed the first adverse ruling but not the second.



Regarding the request for a continuance, such a request is reviewed by this court under an abuse-of-discretion standard. Therefore, to succeed on review, Cody must demonstrate that the circuit court abused its discretion in denying the request and demonstrate prejudice that amounts to a denial of justice. *See Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). Cody cannot satisfy her burden. The circuit court verified that counsel had not been retained; thus, the court committed no error in denying the request.

Regarding the court's denial of Cody's request to make a statement during closing arguments, counsel did not address this adverse ruling in her brief. Thus, counsel has not followed Rule 6-9(i)(1)'s clear instruction to list all adverse rulings made by the circuit court and explain why each adverse ruling is not a meritorious ground for reversal. However, because this case is one for termination, we are able to affirm by addressing the adverse ruling that counsel omitted from her brief. *See Houseman v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 227, at 10, 491 S.W.3d 153, 159 (citing *Hughes v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 526, at 5-6) (holding that even when an adverse ruling is omitted from a no-merit brief in a termination case, we may affirm if the ruling would clearly not constitute a meritorious ground for appeal). As stated in *Houseman*, in termination cases, "through de novo review for clear error, the appellate court will review all of the evidence presented for error, resolving all inferences in favor of the appellee." *Id.* at 10, 491 S.W.3d at 159-60.

In denying the motion, the circuit court explained that Cody had already testified; therefore, it was not going to allow her to "make a broad statement" if there was any objection, which there was. After conducting a de novo review of all the relevant evidence,

we conclude that the circuit court did not clearly err in denying Cody's request to add her own statement to closing arguments. This adverse ruling, therefore, would clearly not be a meritorious ground for appeal. Accordingly, we affirm the order of termination and grant counsel's motion to withdraw.

#### IV. *Conclusion*

For the above-stated reasons, the circuit court's termination order is affirmed, and counsel's motion to withdraw is granted.

Affirmed; motion to withdraw granted.

HARRISON, C.J., and HIXSON, J., agree.

*Leah Lanford*, Arkansas Commission for Parent Counsel, for appellant.

One brief only.