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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-725

VERONICA KIRA		Opinion Delivered June 5, 2024
	APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72JV-20-258]
V.		HONORABLE DIANE WARREN, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN		
	APPELLEES	AFFIRMED; MOTION TO WITHDRAW GRANTED

RITA W. GRUBER, Judge

Veronica Kira appeals the August 8, 2023 Washington County Circuit Court order terminating her parental rights to seven of her eight children. 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(j), her counsel has filed a no-merit brief asserting that there are no issues that would support a meritorious appeal and setting forth all adverse rulings from the termination hearing. Counsel has also filed a motion asking to be relieved. The clerk of this court sent a copy of counsel's brief and motion to be relieved to Veronica, informing her

that she had the right to file pro se points for reversal under Arkansas Supreme Court Rule 6-9(j)(3).¹ We grant counsel's motion to withdraw and affirm the termination order.

I. *Background*

On March 11, 2020, the Arkansas Department of Human Services (DHS) filed a petition for emergency custody and dependency-neglect alleging that Veronica's eight children (MC1, MC2, MC3, MC4, MC5, MC6, MC7, and MC8) were at substantial risk of serious harm due to abuse, neglect, sexual abuse, sexual exploitation, and parental unfitness. Approximately two months earlier, DHS had opened a protective-services case on the family after a true finding was made for sexual contact and sexual penetration. MC1 was identified as the victim, and Veronica's husband, Patrick Kira, as the offender.² Patrick was arrested for rape on February 5, 2020, but Veronica subsequently bailed him out. Veronica continued to permit contact between Patrick and the remaining children, despite knowing he was not to be at the residence. She also covered for him when DHS attempted to make contact, while also avoiding DHS herself. On March 7, 2020, DHS placed an emergency hold on the

¹This mailing was returned to sender and marked as "unclaimed/unable to forward." The tracking number indicates delivery was attempted three times by the USPS. The clerk's office contacted counsel and asked for additional contact information. Counsel communicated that the mail she had sent to Veronica at the same address had not been returned. No additional contact information was provided or made available.

²A September 30, 2022 order placed permanent custody of MC1 with her maternal grandmother with whom MC1 had been residing since the protective-services case was opened. That order closed the case as to MC1. Patrick was MC1's stepfather. He is the biological and was the legal father of MC2, MC3, MC4, MC5, MC6, MC7, and MC8. His parental rights to those seven children were terminated in 2021, and he is not a party to this appeal.

children for failure to protect and suspected child sex abuse of one of the other children. That same day, Patrick was arrested for domestic battering, and Veronica was arrested for endangering the welfare of a minor.

On March 12, 2020, the circuit court entered an ex parte emergency custody order finding that there was probable cause to believe the children were dependent-neglected, it was contrary to their welfare to remain with their parents, and it was in their best interest to be removed from their parents' custody. On March 18, the court entered an order finding probable cause existed for the children's removal and ordering the children to remain in DHS custody. The court ordered that a Marshallese interpreter be present for hearings.

The children were adjudicated dependent-neglected due to abuse, neglect, and parental unfitness in a June 1, 2020 order. The adjudication was based on Patrick's rape arrest, Veronica's permitting him back in the home after the arrest, and her subsequent arrest for failure to protect. The court additionally found that it was not safe to return the children to Veronica even if Patrick had moved out of the house because DHS has a history with the family—there had been true findings for similar allegations going back to December 2012. Veronica did not have a job to support the children at the time, and other witnesses had testified credibly that she did not stop the abuse because she relied on Patrick's income. Veronica was ordered to complete services, and she was allowed supervised visitation with the children. A goal of reunification was set.

Over the next two and a half years, multiple orders—emergency, review, permanency-planning, and otherwise—were entered. Throughout the case, the circuit court found that

DHS had made reasonable efforts to provide extensive services to Veronica, and Veronica was found to have availed herself of those services. On two different occasions, custody of some of the children was returned to Veronica for a trial home placement—from December 2020 until May 2021 and during the latter half of 2022. However, at no point did the circuit court find that all seven children could be returned fully to Veronica’s custody. Veronica was found to be compliant with the court orders and case plans at various points in time, with some notable exceptions. Veronica continued to permit contact between Patrick and the children both before and after his rights were terminated, despite knowing she was prohibited from doing so pursuant to multiple orders. Orders entered during the case reflected that some of the children had testified regarding Patrick’s continued presence in their lives and at their home, including overnight, and they had been told by Veronica and Patrick not to tell anyone about those contacts. There was also testimony by some of the children that they had been physically abused by Patrick on more than one occasion, they feared his return, and they were anxious about their mother’s ability to meet their needs. At each turn, the court credited the children’s testimony and found any conflicting testimony by Veronica to be not credible.

On February 1, 2023, DHS filed an amended petition to terminate Veronica’s parental rights (PTR) as to all the children based on aggravated circumstances and because it was in their best interest.³ On June 12, 2023, the court held a hearing on this PTR.

³DHS had previously filed a PTR regarding only four of the children on December 30, 2022.

Veronica appeared and was represented by counsel and was provided with an interpreter. The following documents were entered into evidence: multiple prior orders of the court; counseling letters for MC3, MC4, MC5, and MC6; two case plans, one dated April 16, 2020, and one dated March 14, 2023; visitation logs; attendance records for MC5, MC7, and MC8; and a conviction record for Veronica.

Family Service Worker Nicole Netherton testified, recounting the history of the case and all the services Veronica had received and completed—including individual, family, and marriage counseling; domestic-violence classes; parenting classes; rental assistance; and intensive family services when the children were home. Netherton testified regarding the two failed trial home placements, Patrick’s presence in violation of the court’s orders, and educational and housing instability. She further testified that the children would be at risk of potential harm if they remained in Veronica’s custody because she was unable to separate herself from Patrick, even though the children feared him and he had a true finding for sex abuse. Netherton did not believe Veronica could remedy the issues that prevented her from meeting the children’s needs, noting that the case had been open for three years, and Veronica’s circumstances had not improved. Netherton explained that Veronica understood what was expected of her regarding the children and Patrick, Veronica had been provided with counsel and an interpreter throughout the case, and the only stability and security the children had experienced had been with their foster placements. Netherton stated that the children are adoptable, their foster placements desired to adopt them, and the placements were open to facilitating continued contact among the siblings.

Veronica testified that she was currently living with an uncle in a two-bedroom apartment but could not provide the address. She was no longer in counseling because she believed that she had completed it. She denied having had any contact with Patrick since an incident in early 2023, for which she sought police intervention. She further denied that the children had had any contact with Patrick since “the beginning.” She did not know why MC5 would say that he saw his dad. She acknowledged that Patrick had been violent toward her and the children and that she and the children were afraid of him. She admitted that she had given two of the children a letter from Patrick at the beginning of the year that had been passed to her by an aunt. She explained that the children’s school absences and tardies were due to things that were out of her control. She believed she could provide and care for the children if they were returned home and did not believe that her rights should be terminated because she and the children are bonded and love one another, and termination would cause the children to miss her. She could not think of any other services that she needed.

On August 8, 2023, the court entered an order terminating Veronica’s parental rights. Pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(a)(3)(A)–(B)(i) (Supp. 2023), the circuit court found that DHS had proved by clear and convincing evidence that aggravated circumstances existed because there was little likelihood that services to the family would result in a successful reunification. The court further found that despite DHS’s reasonable efforts and the provision of a multitude of services over three years, Veronica had not remedied the conditions that caused removal so that custody of all the children could

be returned to her on a permanent basis. The court noted DHS's involvement with the family since 2012 along with Patrick's arrest for rape. The court emphasized that, despite knowing she was court-ordered otherwise, Veronica repeatedly permitted contact between Patrick and the children, including during the two failed trial home placements. The court also emphasized Veronica's ongoing failure to protect the children from Patrick. The court specifically found that the children who had testified about Patrick's presence were credible, and Veronica's testimony was not. The court noted that the children had been in DHS custody three years, and despite DHS's reasonable efforts to assist Veronica and the provision of extensive services, Veronica had been unable to maintain stable employment or housing or meet the basic or educational needs of the children, all of which had been issues since the inception of the case.

The circuit court also found that the evidence proved that termination was in the children's best interest. In doing so, the circuit court found that the children had maintained stability in their current placements; that their foster parents had expressed interest in adopting them; and that adoption was in the children's best interest—even if adopted separately. Therefore, they are adoptable. The court further found that the children would be subjected to potential harm if they were returned to Veronica's custody because she continued to expose them to Patrick, who had shown himself to be violent and whose parental rights had previously been terminated. The court also found that potential harm existed due to Veronica's financial and housing instability as well as her inability to meet the children's basic needs. This timely appeal followed.

II. Discussion

We review termination-of-parental-rights cases de novo. *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, at 4, 554 S.W.3d 285, 289. The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* at 5, 554 S.W.3d at 289. 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 resolving the clearly erroneous question, we give due regard to the opportunity of the circuit court to judge the credibility of witnesses. *Id.*

To terminate parental rights, DHS must prove by clear and convincing evidence that a minimum of one statutory ground exists. *Id.* at 4-5, 554 S.W.3d at 289. Clear and convincing evidence is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established. *Id.* 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. *Lyall v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 81, at 15, 661 S.W.3d 240, 248.

Counsel correctly asserts that there can be no meritorious challenge to the sufficiency of the evidence supporting the termination of Veronica's parental rights. As discussed by counsel, it is indisputable that aggravated circumstances were present because there was little

likelihood that further services would result in reunification. See Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3). Counsel notes that Veronica was provided with three years of services; she testified that she could not think of any other services that she needed other than what DHS had already provided to her; and she had two opportunities to demonstrate that she could safely parent her children in the home, both of which had failed. As the court found, although Veronica generally complied with services, she continually permitted Patrick access to the children and herself, despite court orders prohibiting contact. She further could not sufficiently meet the children's housing or educational needs and failed to maintain stable employment. Thus, there is no meritorious argument to be made challenging the court's findings as to the statutory ground.

In finding that termination is in the best interest of the child, the circuit court is required to consider the likelihood that the child will be adopted if the petition is granted and the potential harm to the health and safety of the child that might result from returning the child to the parent's custody. Ark. Code Ann. § 9-27-341(b)(3)(A). Whether the children are living in continued uncertainty may be considered in making a best-interest finding. *Cole v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 481, at 11, 611 S.W.3d 218, 224. The circuit court may consider past behavior as a predictor of likely potential harm should the child be returned to the parent's care and custody. *Id.* at 10, 611 S.W.3d at 223. Full compliance with the case plan is not determinative; the issue is whether the parent is a stable, safe parent able to care for her child. *Id.*, 611 S.W.3d at 224.

Counsel also adequately explains that the circuit court's best-interest finding was supported by clear and convincing evidence and that no issue of arguable merit could be asserted on appeal as to the sufficiency thereof. DHS provided testimony that the children are adoptable and that the two separate foster homes in which the children were placed had each expressed a desire to adopt a sibling group and a commitment to ensuring their continued contact. As to potential harm, Veronica clearly demonstrated she was either unable or unwilling to put herself in a position to protect the children, even after being given every opportunity to do so. She voluntarily facilitated contact between Patrick and the children, who feared him—one to such a degree that he gave Patrick fake addresses and emailed the caseworker to report Patrick's presence at the residence. She did not have stable housing and failed to timely and consistently get the children to school when they were in her care. Thus, there was sufficient evidence to find that the children would be at risk of harm if returned to Veronica's custody, and there is no meritorious argument to be made challenging the court's findings as to best interest. Accordingly, the evidence was sufficient to terminate Veronica's parental rights.

In addition to the sufficiency of the evidence, and in accordance with Arkansas Supreme Court Rule 6-9(i)(1)(A), appellate counsel addressed the one ruling adverse to Veronica other than the termination itself. Veronica testified that she stopped attending counseling because the counselor told her that she had completed counseling. This drew a hearsay objection twice from the ad litem, and after Veronica's counsel had no response, the court sustained the objection. As counsel explained, the court's ruling was correct. *See Ark.*

R. Evid. 801(c). Moreover, as further explained by counsel, even if the circuit court committed error in not permitting Veronica to repeat the counselor's statements to her, the error was not reversible.

From our examination of the record and the brief presented to us, we have determined that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases, and we hold that the appeal is wholly without merit. Accordingly, we affirm the termination order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ABRAMSON and WOOD, JJ., agree.

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

One brief only.