NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 08-914

ATALAYA HOLLISTER-DAVIS APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** January 28, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. JJN2007-239] HONORABLE WILEY A. BRANTON, JR., JUDGE AFFIRMED

COURTNEY HUDSON HENRY, Judge

This is a termination-of-parental-rights case. Appellant Atalaya Hollister-Davis is the single mother of AS, a daughter who was born on October 16, 2001. After AS had been in the custody of appellee, the Arkansas Department of Human Services (DHS), for fourteen months, the trial court found that the child's best interest required the termination of appellant's parental rights because appellant had failed to remedy the circumstances that had caused the removal of the child, despite the offer of appropriate services. Appellant challenges the trial court's findings in this appeal. We find no merit in her arguments and affirm.

The record reflects that AS came into DHS custody on an emergency basis predicated on allegations of both physical and emotional abuse. According to the affidavit in support of the emergency petition, DHS initiated an investigation on January 22, 2007, when the child came to school bearing two black eyes, red marks on her face, and what appeared to be a slap

impression on the side of her face. AS reported that appellant inflicted these injuries on her because she had muddied her clothes. When first questioned, appellant stated that the child's injuries resulted from a fall.

Later, on February 8, 2007, appellant agreed to visit the DHS office with AS for an interview, and afterwards DHS took AS into emergency custody. During her interview, appellant admitted that she had whipped AS because AS had muddied her clothes, but appellant claimed not to know how the child's face had become bruised. When AS was being interviewed, appellant burst into the room and yelled at the child, saying such things as "These people are taking you from me, and you're not going to see your family again," "I did the best I could, but if they think they can do better, I'm going to let them," "I'm the one that takes you to the beauty shop every week," "I'm the one who buys your clothes and now you're going to have to wear hand-me-downs," and "You're not going to get to eat what you want to eat and will now have to share everything." After this outburst, appellant left to retrieve the child's clothing, but upon returning, she again confronted AS and told her that she was never going to see her family again. A security guard escorted appellant out of the building, and in the presence of the child, appellant shouted obscenities at a caseworker, displayed her middle finger, and told the worker that she would like to "bust her in the mouth." In the affidavit in support of the emergency petition, the affiant also noted that the family had three previous contacts with DHS, including a "true" finding in July 2006 because appellant had locked AS in a closet.

At the adjudication hearing in March 2007, the trial court found that AS was dependent-neglected due to physical and emotional abuse, as well as dental neglect.[1] The trial court also expressed concern about a general lack of stability because appellant had changed residences frequently in the last few months. In addition, the trial court noted that a portion of appellant's income was derived from a disability check she received based on a diagnosis of schizophrenia, although appellant did not believe that she suffered from that condition. The trial court set the goal of the case as reunification and ordered appellant to submit to a psychological evaluation and to participate in family counseling as recommended. The court noted appellant's representation that she was already receiving individual counseling. The court ordered her to continue with that therapy at her own expense but authorized DHS to make a referral for counseling if appellant wished. In addition, the court granted appellant supervised visitation.

Within a week of the adjudication hearing, DHS filed a motion to suspend appellant's visitation. DHS alleged that appellant had engaged in inappropriate behavior during a family counseling session and had screamed "at the top of her lungs" at AS's foster parent, who as a result no longer wished to care for AS. Reportedly, appellant also used profanity at a caseworker during this episode. DHS also alleged that two days later appellant appeared at the DHS office without an appointment demanding to see AS. Reportedly, appellant cursed at the receptionist and supervisors and stormed out of the building. Appellant later called a

[1] The child recently had dental work done to correct "major tooth decay." The trial court faulted appellant for neglecting the child's teeth.

supervisor and cursed at her, appeared at the DHS office again and cursed at everyone present, and then later called and cursed at the supervisor. The trial court granted the motion to suspend visitation after a hearing on April 17, 2007, and also ordered appellant not to make threats of violence or threats to destroy property.

One month later, DHS petitioned the court to cease reunification services. DHS based its request upon the report of Dr. Paul Deyoub, who stated that appellant would not be a candidate for reunification so long as she continued to deny physically abusing AS. DHS also alleged that appellant had continued to exhibit disturbing behavior by threatening to kill an employee of Youth Home, Inc., who planned to conduct a home study. According to that employee, appellant threatened her life on two different days, which prompted the employee to lock the office and call the police on both occasions. DHS further alleged that at a family-counseling appointment appellant had engaged in another angry outburst during which appellant cursed, yelled at, and threw grape juice on the supervisor. The trial court held hearings on this motion on June 1 and August 13, 2007, and the trial court found that appellant had continued to engage in aggressive, violent, and assaultive behavior. Although the trial court found that DHS had proven that there was little likelihood of successful reunification, the court declined to terminate reunification services. The trial court ordered appellant to have no further contact with DHS personnel but directed her to continue with counseling and anger-management classes.

The permanency-planning hearing was held on January 8, 2008. In its order, the trial court found no compelling reason to continue the goal of reunification, and the court

changed the goal of the case plan to termination. DHS subsequently filed a motion to terminate appellant's parental rights, and the hearing on the motion was held on April 22, 2008.

At the termination hearing, appellant presented testimony that she had completed parenting and anger-management classes. She presented evidence that her home was appropriate and well maintained and that she was currently enrolled in classes at Pulaski Technical College. Appellant had also faithfully attended individual counseling sessions for eleven months and had attended four family-counseling sessions with AS. In her testimony, appellant acknowledged that she had "whooped" AS, but appellant maintained that she had not slapped the child on the face. She said that the child's facial injuries came about as the result of dental work. Appellant stated that she had benefitted from services and that she was just getting back to normal. She asked for more time and additional services to promote reunification with her daughter.

Appellant's therapist, Dr. Estella Morris,[2] testified that appellant had made remarkable progress as a result of therapy and the maintenance of a regular medication regimen. She said appellant was no longer experiencing the level of anger she previously displayed and that appellant had not engaged in violent or aggressive behavior since the previous summer. Dr. Morris had witnessed a notable change in appellant's demeanor from being withdrawn to now being more engaging. She said that appellant had become active in her church and was helping with children in the after-school program.

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[2] Dr. Morris holds a Ph.D. in social work.

Dr. Morris further testified that appellant had admitted that she whipped AS but that appellant consistently denied physically abusing AS by striking her in the face. She said appellant would not apologize to the child, saying that she had done nothing for which an apology was necessary. Dr. Morris regretted that appellant and the child had not had more time for family counseling. She recommended further counseling and continuing reunification efforts, primarily because AS wanted to return home.

Next, Ann Brown, AS's therapist, testified. Brown stated that she had participated in family-counseling sessions with appellant, AS, and Dr. Morris. She said that initially AS was frightened of appellant and that the family therapy was geared toward identifying the reason AS was placed in foster care. Brown testified that, despite prodding, appellant had not acknowledged any wrongdoing and had not apologized to the child for the physical abuse. Nor had appellant offered any reassurances to AS that she would be safe and secure at home. Brown stated that appellant had not gained any insight as a result of long-term therapy. Brown believed that the child could not be safely returned home as long as appellant refused to acknowledge the abuse and because the child had not felt safe in her care. Brown mentioned the previous substantiated finding of abuse when appellant locked AS in a closet and disclosed that appellant had a domestic-battery conviction for spraying Mace on her boyfriend. The record also contains evidence that appellant had one other battery conviction and convictions for terroristic threatening.

Dr. Paul Deyoub conducted a psychological evaluation of appellant in April 2007 that the court admitted into evidence. In it, he wrote that appellant was "out of control" and

angry throughout the interview. Appellant denied that she had any parenting problems and accused AS of lying about the abuse. Testing suggested that appellant had an abusive personality marked by several personality disorders, and Dr. Deyoub opined that AS would not be safe in appellant's custody unless she accepted responsibility for her conduct. He reported that, if appellant regained custody while continuing to deny the abuse, appellant would abuse the child again. In his testimony at the hearing, Dr. Deyoub reiterated that it was critical for appellant to take responsibility for abusing AS, and that if she continued to deny the abuse even after months of therapy, she remained unfit to care for the child. He testified that, if the court allowed appellant to regain custody without acknowledging the abuse, she would be emboldened by it and would abuse AS when angry.

In its order terminating appellant's parental rights, the trial court began by recounting the turbulent history of the proceedings, noting that appellant had made it difficult for services to be delivered because of the court's concern that appellant would attack service providers. The trial court considered Dr. Deyoub's evaluation, and also the March 2008 CASA report, which stated that appellant chose at a staffing to sit in a chair away from the table and work on her laptop computer, and that appellant continued to refuse to work with DHS or to allow DHS personnel in her home. The report also stated that appellant could not identify any particular skill she had acquired as a result of the services provided to her, and that when appellant was questioned about what she had learned in parenting classes, she answered by saying that parenting was an instinct that could not be taught. The court examined Dr. Morris's testimony but did not give it significant weight, finding that the progress Dr. Morris

spoke of was an "act" on appellant's part. Instead, the trial court gave more credence to the opinion of Dr. Deyoub, particularly concerning the significance of appellant's failure to accept responsibility for abusing AS. The court found that additional time with therapy would not be productive, stating that "[i]f a problem is not acknowledged, it cannot be fixed."

The trial court found that termination was in the best interest of AS and that DHS had also carried its burden of proving the ground for terminating parental rights found at Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(*a*) (Repl. 2008), which allows termination where "a juvenile has been adjudicated by the court to be dependent-neglected and has continued 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."

We review termination-of-parental-rights cases *de novo*. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). A heavy burden is placed upon a party seeking to terminate the parental relationship, and our statute requires clear and convincing proof that termination is in the child's best interest in addition to clear and convincing proof of at least one of the enumerated grounds for termination. *Strickland v. Arkansas Dep't of Human Servs.*, ___ Ark. App. ___, ___ S.W.3d ___ (Sept. 24, 2008). The question on appeal is whether the trial court's finding that the disputed facts were proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Sowell v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 325, 241 S.W.3d 767 (2006). 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.*

Appellant contests the trial court's finding of best interest concerning the potential harm of returning AS to her care, and she also argues that the trial court erred in finding that she had failed to remedy the conditions that caused the removal of the child from her custody. She relies on the testimony of Dr. Morris in support of both issues; thus, the arguments can be combined. Appellant asserts that Dr. Morris's testimony shows she had made measurable progress toward achieving reunification. She notes that she had attained control over her anger and had made improvements in her mental stability. Although she has yet to admit her abuse of AS, appellant argues that this failing can be overcome by continued counseling and that her failure to accept responsibility is outweighed by her completion of other parts of the case plan and the overall progress she has made. She contends that the fear expressed by the witnesses of her abusing AS again is based on mere speculation and conjecture.

The supreme court has directed that the potential-harm analysis be conducted in broad terms, including the harm a child suffers from the lack of stability in a permanent home. *Bearden v. Arkansas Dep't of Human Servs.,* 344 Ark. 317, 42 S.W.3d 397 (2001). Appellant's arguments ignore that the trial court gave little credence to the testimony of Dr. Morris, upon whose testimony her arguments are made. Specifically, the trial court rejected the premise that appellant had undergone a significant transformation. On the whole, the trial court found that appellant had not remedied the issue of abuse because she steadfastly refused to acknowledge that she had abused AS, and thus had not come to terms with the problem that

had caused the child to be removed from her custody. In this regard, the trial court was entitled to accept and heed the warning of Dr. Deyoub that the child could not be safely returned to appellant's care unless this problem was addressed.

Having a safe home is a basic need of a child, and we have recognized that a parent's failure to take personal responsibility for abuse supports a finding that the behavior which caused the removal of the child has not been remedied. *Corley v. Arkansas Dep't of Human Servs.*, 46 Ark. App. 265, 878 S.W.2d 430 (1994); *see also Sparkman v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2003); *Wright v. Arkansas Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). We are unable to say that the trial court's findings are clearly erroneous, and we affirm the termination decision.

Affirmed.

GLADWIN and BAKER, JJ., agree.