

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 08-892

BARBARA POSEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered February 4, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JN2007-325]

HONORABLE WILEY A. BRANTON,
JR., JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

By an order dated May 14, 2008, the circuit court terminated the parental rights of appellant Barbara Posey to her son, PF, who was born on September 15, 2005. For reversal of that decision, appellant argues that the trial court erred in finding that termination was in the child's best interest and that sufficient grounds were proven. We affirm.

On February 26, 2007, the police arrested appellant and her long-term boyfriend, Paul Fraser,¹ at K-Mart in Little Rock for shoplifting. PF was with them at the time of the arrest, and appellee, the Arkansas Department of Human Services (DHS), obtained emergency custody of the child. The circuit court later found the child to be dependent-neglected. In the adjudication order filed on April 23, 2007, the circuit court noted that the child had come

¹ Appellant identified Mr. Fraser as the putative father of PF. However, he did not establish paternity, and he declined to participate in the proceedings. The termination order also extinguished his rights, but he is not a party to this appeal.

into DHS custody because appellant and Mr. Fraser's arrest left the child without a legal caregiver. The court also found that other issues had come to light since then. In this regard, the court found that appellant was currently homeless and that she was arrested after the adjudication hearing on an outstanding warrant for prostitution. The circuit court further found that appellant was an "admitted drug addict, and she is begging for inpatient rehabilitation." The court set the goal of reunification and ordered appellant to submit to a psychological evaluation, to submit to random drug and alcohol screenings, to submit to a drug-and-alcohol assessment, to enter inpatient drug rehabilitation, to take parenting classes, to take domestic-abuse and anger-management classes, and to maintain stable housing and income. The court granted appellant supervised visitation.

In August 2007, the circuit court conducted a review hearing. At this juncture, appellant had entered inpatient drug treatment, and the circuit court found that appellant had made some effort to comply with the case plan but that little progress had been made. The court specifically found that appellant was not a credible witness and that she had engaged in inappropriate behavior during visitation. The goal of the case continued to be reunification, and the court ordered appellant to complete inpatient treatment and to follow the discharge recommendations.

The permanency-planning hearing took place on December 18, 2007. In the order arising from this hearing, the circuit court changed the goal of the case plan to termination of appellant's parental rights. The court found that appellant had made no measurable progress toward reunification. Although she had completed inpatient drug treatment, appellant continued to test positive for drugs on numerous occasions, and she had not

obtained stable housing. The circuit court also characterized appellant as a “chronic liar.” The court found that appellant was having far more contact with Mr. Fraser than she would admit, noting that Mr. Fraser had taken her out of the rehabilitation program for a brief time, that he had been in her new home, and that he had ridden the bus with her to visitation. The court also noted that appellant attributed a positive test for cocaine to prescription drugs, but that she admitted in court that she had been using cocaine. The court stated that “[t]rust is absolutely critical in this case because the Court has to know, with no doubt, that the mother will be able to stay off drugs, will stay away from Paul Fraser, Sr., and will be able to provide a safe and secure home for this juvenile. Today, the Court does not trust this mother, and at no point in this case has the mother given the Court any reason to trust her.”

To place the current circumstances into perspective, the court in its order quoted extensively from the psychological evaluation prepared by Dr. Paul Deyoub in June 2007, where Dr. Deyoub wrote about appellant and Mr. Fraser’s problems and the dysfunctional nature of their relationship. In the report, Dr. Deyoub noted that both of them suffered from personality disorders and had histories of drug addiction, which kept PF in a “drug-infested” environment. They had no place to live except “flea bag” motels, and they were prone to shoplifting and stealing during their relationship. Dr. Deyoub reported that Mr. Fraser was not interested in receiving drug treatment but that appellant maintained the desire for them to continue a relationship. He opined that, for appellant to achieve reunification, it would be necessary for appellant to complete residential treatment, remain drug free, participate in individual therapy and outpatient drug treatment, obtain stable housing and income, and decide to live independently without breaking the law. Dr. Deyoub felt that appellant may

never succeed because of her significant addiction to drugs and alcohol, coupled with her personality disorder.

DHS called Wendy Childs as its first witness at the termination hearing held on April 14, 2008. As an adoption specialist, she had no concerns about finding an adoptive home for PF, who was three years old, and she said that she had matched him with twenty-four families.

Dr. Deyoub testified that appellant was age forty-two with an established borderline personality disorder that was consistent with mood instability and depression. He learned from appellant that she had run away from home when she was fourteen years old and had begun using drugs and alcohol at that young age. As a juvenile, she spent time at the Alexander Youth Services Center. Appellant married as a teenager, had a daughter, and divorced. Appellant's daughter also had problems with drugs and alcohol as a teenager.

Dr. Deyoub stated that appellant had dealt with drug problems her entire life and that she had spent time at the Log House, a facility for victims of alcoholism. Appellant had arrests for public intoxication, DWI, shoplifting, and prostitution. Her test results were significant for all of the traits associated with borderline personality disorder, which included substance abuse, antisocial behavior, depression, and psychopathic deviancy. Dr. Deyoub stated that a thirty-day inpatient rehabilitation program would not suffice as treatment for someone in her forties who had a life-long history of addiction and instability. He said that it would be necessary to follow up that program with an extended chemical-free, halfway-house environment and that appellant would need to demonstrate over a significant period of time that she was drug free and stable.

Terlyn Vick served as appellant's caseworker. She testified that appellant had completed parenting classes and had taken anger-management and domestic-abuse classes. Appellant was in counseling at the time of the hearing and was taking Zoloft for depression. Appellant had completed a thirty-day inpatient drug treatment program beginning August 13, 2007, although she had left the program with Mr. Fraser for a short period of time. At a staffing in December 2007, appellant agreed to attend AA/NA meetings. Vick said that appellant told her that she attended AA/NA meetings twice a week, but appellant presented no documentation of attendance.

Vick testified that appellant had visited PF regularly, although appellant continued to be disruptive during the visits by raising her voice and cursing at Vick and other caseworkers. Vick reported that appellant had been evicted from her home in March 2008 but that she had been living in a mobile home in Jacksonville for three weeks. Vick stated her belief that appellant was still seeing Mr. Fraser because, after a home visit, Vick saw appellant collect Fraser at a gas station and take him to her home.

Vick further testified that appellant tested positive for cocaine in February and March 2007. Appellant received negative screenings on May 21, May 29, and July 6, 2007. Appellant refused a test on July 12 and received negative tests on July 23 and August 22. On October 1, 2007, appellant tested positive for cocaine and received other positive tests on November 16 and 20. Appellant tested negative for drugs on December 10 and 12, but she tested positive for methamphetamine on December 17. Another negative test resulted on December 18. In 2008, appellant produced negative tests on January 14 and February 11. On March 3, she was positive for cocaine and methamphetamine. Appellant refused a test

on March 31 and, on April 7, tested positively for cocaine and opium. Negative tests resulted on April 11 and 14.

Marchell Seawood served as the DHS supervisor in the case, and she testified that appellant asked for assistance with her drug problem. Seawood stated that, after leaving inpatient treatment, appellant was offered a step-down rehabilitation program that included a one-bedroom apartment but that appellant refused to participate. She recommended the termination of appellant's rights because of appellant's continued use of drugs and her inability to maintain stable housing.

Appellant also gave testimony at the hearing. She said that she had recently moved into a mobile home in Jacksonville and that she had been evicted from her previous residence because she was arrested again in the latter part of December 2007 and thus could not pay her rent on time. She stated that she had not stayed with Mr. Fraser since the last court date but that she had allowed him to stay in her place while she was in jail. She claimed that Mr. Fraser was in Florida. Appellant denied that she had been using drugs and said that she had been attending AA/NA meetings twice a week. Appellant introduced into evidence a sign-in sheet, which showed that she attended thirteen meetings between February and April 2008. Appellant testified that she left the sign-in sheet for January at home. She explained the positive drugs screens by saying that DHS did not maintain the screens very well and that her samples might have been confused with those of other people. Appellant admitted that she was in no position to take PF home. She further stated that she loved her son and had been

doing the best she could and that she was not going to stop working toward reunification. Appellant testified that she had always been slow to do the things she was told but that, given more time, she would do better.

After hearing the evidence, the circuit court determined that termination was in PF's best interest because a return to appellant's home could not be accomplished in a reasonable period of time as viewed from the child's perspective, because PF was young and likely to be adopted, and because the child would face potential harm by continued contact with appellant. The circuit court also found that there was sufficient evidence of two grounds found in Arkansas Code Annotated section 9-27-341(b)(3) (Repl. 2008) to warrant the termination of appellant's parental rights. First, the trial court determined that the child had been adjudicated dependent-neglected and had been out of the home for twelve months and that, despite a meaningful effort by DHS to rehabilitate appellant and correct the conditions that caused removal, those conditions had not been remedied by appellant. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a)*. Second, the trial court found that other factors arose subsequent to the filing of the original petition for dependency-neglect, which demonstrated that returning the child to the custody of appellant was contrary to the child's health, safety, or welfare and that, despite the offer of appropriate family services, appellant had manifested the incapacity or indifference to remedy the subsequent issues that prevented the return of the child to appellant's custody. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a)*.

After recounting the history of the case in detail, the circuit court made the following specific findings with respect to the factors that had arisen since the filing of the dependency-neglect petition. The court observed that appellant remained unstable in that she had spent

ten days in jail in December 2007, had been evicted from her home, had continued to test positive for drugs, and had on other occasions refused to take drug tests. The court noted that appellant had declined to participate in the after-care program recommended to her. The court further found that appellant was maintaining a relationship with Mr. Fraser, which was of concern because Fraser also misused drugs but yet he had refused to participate in the proceedings. The court also found that appellant was attempting to deceive the court by saying that she was no longer seeing Mr. Fraser.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Lee v. Arkansas Dep't of Human Servs.*, 102 Ark. App. 337, ___ S.W.3d ___ (2008). Thus, a heavy burden is placed upon a party seeking to terminate the parental relationship, and the facts warranting termination must be proven by clear and convincing evidence. *Strickland v. Arkansas Dep't of Human Servs.*, 103 Ark. App. 193, ___ S.W.3d ___ (2008). Clear and convincing evidence is that degree of proof which will produce in the factfinder a firm conviction regarding the allegation sought to be established. *Id.* The question this court must answer is whether the circuit court clearly erred in finding that there was clear and convincing evidence of facts warranting the termination of parental rights. *Hall v. Arkansas Dep't of Human Servs.*, 101 Ark. App. 417, ___ S.W.3d ___ (2008).

Appellant's first argument on appeal is that the circuit court erred in finding that termination was in PF's best interest. Appellant concedes that the circuit court's finding concerning the likelihood of adoption was not in error, but she argues that the evidence does not support the court's finding that PF would be subject to potential harm if returned to her custody. In making this argument, she relies on her own testimony that she was not presently

using drugs and her testimony questioning the accuracy of the drug tests conducted by DHS. Appellant also explains that she did not participate in the after-care drug program because the one-bedroom apartment offered to her would not accommodate both her and the child.

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. *See Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). In conducting our review, we must give due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Hall v. Arkansas Dep't of Human Servs.*, *supra*. Here, the circuit court was not required to believe appellant's testimony that she was no longer using drugs. And, the results of the drug tests were admitted into evidence without objection; thus, the trial court was entitled to accord them great weight. Moreover, the only test result that appellant questioned was one in which she tested negative for drugs. A parent who is hopelessly addicted to drugs cannot provide a stable home. Our case law clearly recognizes that a parent who continues to test positive for drugs demonstrates an indifference to remedying adverse conditions, which is contrary to a child's health, safety, and well-being. *See Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). It follows that the circuit court's finding of potential harm is not clearly erroneous.

Next, appellant contests the circuit court's findings concerning the grounds for termination. The circuit court found sufficient evidence of two grounds, but only one ground is necessary to terminate parental rights. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). We hold that the court's finding, that other issues arose subsequent to the filing of the original petition that appellant failed to remedy despite

the offer of appropriate services, is not clearly erroneous. Early on, appellant admitted that she was addicted to drugs, and the record shows that her addiction was a life-long problem. Appellant completed inpatient treatment, but she refused to participate in an after-care program. The record further shows that appellant continued to use drugs on a fairly consistent basis after receiving inpatient treatment and that she continued to use drugs in the weeks immediately preceding the termination hearing. Although appellant argues that her drug addiction does not fit within this ground because her addiction was known from the outset, the record is clear that appellant's arrest was the immediate and pressing reason for the child to be taken into custody. As evidenced by the trial court's findings in the adjudication order, the concern about drug addiction was brought to light at the adjudication hearing. Thus, it was a factor that arose subsequent to the filing of the dependency-neglect petition. We, therefore, affirm the trial court's finding on this basis, which makes it unnecessary for us to discuss the alternative ground found by the trial court in the termination order.

Affirmed.

GLADWIN and BAKER, JJ., agree.