

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA08-948

February 11, 2009

ANTOINETTE ZAMORA
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES, and
MINOR CHILDREN

APPELLEES

APPEAL FROM THE BAXTER
COUNTY CIRCUIT COURT
[JV-2006-182]

HONORABLE GARY ISBELL,
JUDGE

AFFIRMED

By order entered June 2, 2008, the Baxter County Circuit Court terminated Antoinette Zamora's rights to her three children: M.Z. (born December 14, 2000), J.Z. (born March 1, 2003), and A.Z. (born February 18, 2005). For reversal she contends that the circuit court should have dismissed the Arkansas Department of Human Services's (DHS) termination petition when it failed to comply with the Americans with Disabilities Act (ADA). She challenges the sufficiency of the evidence to support the statutory grounds for termination, specifically contending that DHS's noncompliance with the ADA rendered the applicable grounds moot. We affirm because appellant failed to challenge an independent ground that supports the termination of her parental rights.

*Factual and Procedural History*¹

On October 31, 2006, appellant took J.Z. and A.Z. to the Baxter County Health Department to apply for WIC assistance. Part of the application required A.Z. to be weighed without clothes. The examiner called DHS after observing extreme bruising on A.Z.'s stomach, back, buttocks, and leg. A.Z. also had a large bump on his forehead and many bruises on his face. During the subsequent investigation, J.Z. reported that appellant and her husband had spanked A.Z. for sucking his thumb and that they spanked him all the time. Investigators also questioned M.Z., who initially stated that A.Z.'s biological father had hurt him. M.Z. then recanted, shared with investigators that appellant told her to blame the biological father for the abuse, and identified appellant and her husband as the perpetrators. M.Z. had bruises on her buttocks, legs, and forehead, and she reported that appellant hit her as well. Investigators next interviewed appellant, who initially blamed the children's biological father, but ultimately admitted that she and her husband had left the bruises on the children. Both appellant and her husband submitted to drug tests; she tested positive for marijuana, and he tested positive for methamphetamine, amphetamine, and marijuana.

On October 31, 2006, DHS exercised a seventy-two-hour hold due to lack of food, physical abuse, drug abuse, and lack of care. The circuit court entered an *ex parte* order of emergency custody on November 2, 2006, and found probable cause for removal of the

¹Because appellant only challenges whether DHS provided a reasonable accommodation in light of her mental health, most of the facts regarding the progress of the children in foster care are omitted. Suffice it to say that all three children did well outside the custody of appellant, and the two older children consistently expressed a desire not to return to appellant.

children from the home on November 6, 2006. The children were adjudicated dependent-neglected on January 3, 2007, with the goal of the case set at reunification. In review orders dated January 17, March 22, and August 20, 2007, the trial court found that DHS had made reasonable efforts to provide services and reunify the family. At the permanency-planning hearing, held November 19, 2007, the court changed the goal of the case to termination and adoption. In a report prepared for the permanency-planning hearing, the case worker indicated that appellant failed to take responsibility for her actions, had not obtained individual counseling, had limited contact with the children at the recommendation of the children's therapist, and had moved without providing information for over a month. Appellant, however, had attended drug counseling, completed anger-management classes, and completed parenting classes, although she scored the same on both the pretest and the posttest.

On January 10, 2008, appellant submitted to a psychological evaluation. Intelligence testing showed that appellant had a full-scale IQ of 67. Lewis Campbell, the examiner, concluded his report as follows:

SUMMARY

[Appellant] is seen as a 27-year-old Caucasian female who functions in the Mild range of Mental Retardation. She states that she has been diagnosed with dyslexia. This diagnosis was allegedly made when she was in Kindergarten. At the present time, her reading level is only slightly below her general intelligence level, so dyslexia is a questionable diagnosis.

This woman is quite anxious and distrusting. She states that she has trouble being around people. At the same time, she is quite dependent. One of the stresses that she is feeling right now is the severe health problems of her father. Apparently, she has depended on him all her life and fears his loss.

Her MCMI is invalid due to overreporting of symptoms. However, in conversation, the client shows significant indicators of depression, anxiety and bipolar disorder. It's felt that this diagnosis should be refined by someone who is following her more closely over a period of time.

This woman seems to be a hard worker and wants to get her children back. She is holding down two part-time jobs at the present time and wants to get her G.E.D. It's felt that self-esteem and lack of assertiveness are big problems for this young lady. It's not clear whether these skills can be acquired or not at the present time.

In order for appellant to regain custody of her children, Campbell recommended that she be in the care of a psychiatrist to refine her diagnosis and to see if medical intervention would improve her functioning; be in routine psychotherapy to help her become more assertive and plan for herself and her children; be more aware of her limitations; increase her self-direction and independent life skills; and have a lot of accountability and compassionate support.

On March 17, 2008, DHS filed a petition to terminate appellant's parental rights. Appellant filed a motion to dismiss the termination petition, alleging that DHS failed to comply with the ADA. At the termination hearing, held May 19, 2008, the court first addressed appellant's motion to dismiss. Appellant testified on her own behalf and stated that she was receiving SSI benefits because she was bipolar, had ADHD, and had a short attention span. However, she admitted that those diagnoses had come from her psychological evaluation. She wanted more time to work on reunification. On cross-examination, she recalled testifying at a previous hearing that her only disability was dyslexia; that she needed someone to read documents to her, to provide her counseling, and to teach her about parenting outside of a big class; and that there was nothing else she needed for her disability. She stated that she had her driver's license, though she had to take the exam three times

before obtaining it. She testified that she had to have her father fill forms out for her. Regarding the case plan, she stated someone had always been available to explain everything to her and she was able to concentrate until she understood what was being read to her. She stated that up to that point, she had not had any questions that had not been answered for her. At the conclusion of her testimony, the court denied appellant's motion to dismiss, finding that appellant failed to prove that she qualified for protection under the ADA, that there had been no testimony as to what additional efforts would be necessary, and that everything appellant claimed was needed had been provided. Then, the court continued with the termination hearing.

DHS presented testimony from Dr. Arlene Gaut, who began seeing appellant for individual therapy on December 13, 2007. The treatment goals were to use assertiveness skills, to recognize the warning signs of an abusive relationship, to learn techniques on raising her self-esteem and feeling good about herself, and to process her feelings about the children. Dr. Gaut had five sessions with appellant before closing the chart on April 30, 2008, due to appellant's failure to keep several appointments. Dr. Gaut's opinion was that, as of the last appointment on March 13, 2008, appellant had not displayed a commitment toward improving her mental health. The only mental-health diagnoses of which Dr. Gaut was aware occurred during intake, where another doctor diagnosed appellant with adjustment disorder with anxiety and depressed moods. Due to appellant's mental health, Dr. Gaut determined that appellant would need consistent therapy plus case management. Dr. Gaut testified that case-management services were available through her agency, but appellant did not stay with

her long enough for a referral. Even with such a commitment, Dr. Gaut stated that appellant would be unable to obtain mental-health stability within ninety days.

Karen Moore, a social worker, provided therapy to the children. Following the last court date, appellant was scheduled to see Moore; appellant made several appointments; however, she kept none of them. Moore stated that appellant made no progress in family therapy; that although there were a few family sessions, the children would have nightmares afterward. Moore ceased treating the children in October 2007 to allow another therapist to take over, and M.Z. and J.Z. were making progress. When asked why she stopped seeing them, Moore explained that it was not therapeutically sound; she stated that M.Z. would want to talk about the abuse, but appellant would always deny hurting M.Z.

Jodi Leeker provided mental-health services to the family after Moore stopped in October 2007. She was able to integrate appellant into therapy sessions with the children in either December 2007 or January 2008; M.Z. was happy to see appellant, but J.Z. kept his distance. Leeker recommended that the children not be returned to appellant based on several factors: the children's responses, the children's needs, and appellant's inability to make appropriate choices and judgments for the children. Leeker questioned whether appellant knew what it really took to protect the children from harm. Based on her interactions with the family, she concluded that reunification would not be possible for at least three months. She stated that both she and DHS had offered appellant everything that they could to reunify the family and that appellant had never complained that DHS was not offering appropriate services.

Appellant stated that she was three or four months pregnant and “somewhat” in a relationship with the father, who was married to another person. She had recently moved into a three-bedroom trailer; during the case, she had lived in six separate residences. She was not employed on the day of the hearing. The last job she had was at a restaurant as a dishwasher and cook, where she worked for a couple of weeks before she was taken off work after a dog bit her. She testified about many jobs she had during the case; most jobs were at fast-food restaurants. Her sole sources of income were SSI payments and food stamps; she felt confident that she would be able to take care of her expenses with that income or find help if she got into financial trouble. Appellant testified that she had received instruction on nutritional issues with her children from both the WIC office and the health department. She also confirmed that she had completed two parenting classes; she acknowledged that she scored the same on the pretest and the posttest.

Pat Blades, supervisor for the Baxter County Division of Children and Family Services, was the worker who removed the children from appellant’s care, and she was the primary case worker since that time. She related that the services DHS offered to appellant were referrals to parenting and anger-management classes, psychological evaluations, and counseling. Blades confirmed that during the case, she received a call asking why she was unable to do home visits, and she replied that home visits were difficult because appellant failed to apprise DHS of her housing situation. Blades had not spoken to appellant since the previous court hearing. Appellant had not requested any additional services since the permanency-planning hearing.

During each staffing, someone read the case plans and the orders of the court to appellant. On this testimony, Blades recommended that appellant's parental rights be terminated.

Appellant, when again called to testify, stated that she had a difficult time staying in one place because she was unable to keep a job and because she was around people who were not good, causing her to be evicted from a few places. She stated that she kept DHS apprised of how to contact her. She said that she had complied with portions of the case plan. Specifically, she testified that she no longer relied on her parents for financial support, was attending counseling, and had attended substance-abuse counseling. She remarked that she wanted the opportunity to have more visits with her children to build a "security bond" and to show them that she loved them and would protect them.

Following the attorneys' arguments, the trial court found that DHS proved by clear and convincing evidence that appellant's rights should be terminated. The court expressed surprise that appellant waited to make an issue about her limitations until the termination hearing. The court found that DHS's efforts had not fallen short of the burden of reasonable efforts in order to accommodate any disability appellant may have. The court concluded that appellant was unable to provide basic needs for herself or the children and that there was a complete lack of consistency in her life. The trial court also found that there had been other issues that arose subsequent to the filing of the original petition, including appellant subjecting and allowing the children to be subjected to physical abuse. The circuit court incorporated its findings into an order entered June 2, 2008, and appellant filed a timely appeal.

Analysis

Appellant presents two points on appeal. First, she contends that the circuit court should have dismissed DHS's petition to terminate her parental rights because DHS failed to comply with the provisions of the ADA. On this point, she argues that she is disabled and entitled to reasonable accommodation. Second, appellant asserts that DHS failed to prove a statutory ground to support the termination. She identifies two of the grounds DHS relied upon to support the termination and correctly notes that one ground requires "a meaningful effort . . . to rehabilitate the parent and correct the conditions that caused removal," while the other requires an "offer of appropriate family services." She argues that, without compliance with the ADA, DHS failed to prove either ground.

An order terminating parental rights must be based upon a finding by clear and convincing evidence that termination of a parent's rights is in the best interest of the children, considering the likelihood that the children will be adopted if the parent's rights are terminated and the potential harm caused by returning the children to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). The court must also find one of the grounds outlined in § 9-27-341(b)(3)(B). Only one ground is necessary. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). Here, the three statutory grounds pled by DHS and found to exist by the circuit court are as follows:

(i)(a) That 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.

. . . .

(vi)(a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or step-parent or step-parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies[.]

Appellant only challenges the grounds for termination; therefore, this court need not consider whether the trial court erred in finding that termination was in the children's best interests.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Benedict v. Ark. Dep't of Human Servs.*, 96 Ark. App. 395, 242 S.W.3d 305 (2006). However, courts are not to enforce parental rights to the detriment or destruction of the health and well-being of a child. *Id.* 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. *Id.* Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *Williams v. Ark. Dep't of Human Servs.*, 99 Ark. App. 95, 257 S.W.3d 574 (2007). 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.* Such cases are reviewed de novo on appeal, but appellate courts give a high degree of deference to the circuit court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Id.*

This court affirms the termination of appellant's parental rights without reaching the merits of her argument, as appellant has failed to challenge one of the grounds for termination. Appellant challenges the grounds listed under subsections (b)(3)(B)(i) and (b)(3)(B)(vii) of the termination statute. However, the circuit court also found that the children were adjudicated dependent-neglected as a result of neglect or abuse that could endanger the life of the children and which was perpetrated by the parent. This satisfies the ground listed under subsection (b)(3)(B)(vi), and appellant does not challenge this ground. Failure to appeal from a finding waives an issue for appeal. *See Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006). Because only one ground is necessary to terminate parental rights, this court need not address the other statutory grounds found by the court. *See Albright, supra*

(declining to address the parent's argument under subsection (b)(3)(B)(vi) when the record clearly supported the ground under subsection (b)(3)(B)(ix)). Further, because the ground listed under (b)(3)(B)(vi) does not require proof that DHS provided meaningful services to appellant, appellant's entire argument is rendered moot.

Affirmed.

KINARD and MARSHALL, JJ., agree.