

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-990

VERA HAY

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

Opinion Delivered February 25, 2009

APPEAL FROM THE CLEBURNE  
COUNTY CIRCUIT COURT,  
[NO. JV2005-48]

HONORABLE STEPHEN CHOATE,  
JUDGE

AFFIRMED

**COURTNEY HUDSON HENRY, Judge**

On June 3, 2008, the Cleburne County Circuit Court terminated appellant Vera Hay's parental rights in S.S. (born March 20, 2000), M.H. (born April 14, 2003), and B.M. (born August 18, 2005). Appellant argues that the court clearly erred in finding that termination was in the children's best interest and that grounds for termination existed. We affirm.<sup>1</sup>

Appellee, the Arkansas Department of Human Services (DHS), opened a protective-services case in August 2004 when appellant and her two oldest children, S.S. and M.H., were living in Cleburne County and appellant's husband, Chris Hay, was on active military duty in Virginia. DHS opened the case based on environmental neglect and appellant's failure to schedule medical and dental appointments for herself and her children. In an effort to help

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<sup>1</sup> The court also terminated the parental rights of S.S.'s and B.M.'s biological fathers based on their written consent and terminated the parental rights of M.H.'s legal father based on his lack of contact with the family and unknown whereabouts. Those terminations are not challenged in this appeal.

appellant remedy her conditions, DHS provided her with transportation, referrals, cleaning supplies, cleaning schedules for her home, and other services.

On April 15, 2005, DHS filed a dependency-neglect petition, avowing that efforts to assist appellant were futile due to her non-compliance with the case plan; her inability to follow a cleaning schedule at her home; and her failure to keep medical, dental, and mental-health appointments. The circuit court adjudicated the children dependent-neglected on June 15, 2005, but allowed the children to remain in appellant's custody. Among other things, the court ordered appellant to establish and maintain a safe and stable home environment; to keep medications secured; to maintain a stable source of income; and to obtain and maintain stable employment.

Approximately six and one-half months later, on January 23, 2006, DHS petitioned for emergency custody of S.S. and M.H., as well as B.M., who had been born in August 2005. The accompanying affidavit stated that DHS personnel and a Court Appointed Special Advocate (CASA) visited appellant's home on January 19, 2006, after learning that the children were missing school because they had head lice. The affidavit noted the children's general lack of hygiene and stated that the two-year-old, M.H., was barefoot and wearing shorts while playing outside in the winter. The DHS family-service worker took M.H. and B.M. to the emergency room the next day, and they received treatment for ear infections and tonsillitis. The affidavit also stated that S.S.'s school held a meeting on January 20, 2006, regarding her lack of academic and physical progress, but appellant did not attend the meeting. The circuit court granted emergency custody to DHS on January 23, 2006.

Thereafter, appellant moved from Cleburne County to Van Buren County. The Cleburne County office maintained primary responsibility, while the Van Buren County DHS office assumed a secondary role in the case. The Cleburne County Circuit Court also continued its jurisdiction of the case. The court held a review hearing in March 2006 and found that appellant was not in compliance with the case plan or court orders; that she was unemployed without a stable home; and that she had a live-in boyfriend who tested positive for marijuana. After an August 2006 review hearing, the trial court found appellant to be in partial, though undocumented, compliance with the case plan and court orders.

On January 17, 2007, the court entered a “Permanency Planning Review Order.” The order maintained a goal of reunification only because appellant’s husband, Chris Hay, was complying with the case plan, as well as court orders, and was making significant progress. However, the court found that, one year into the case, appellant had not attended therapy regularly, maintained proper medication management, or maintained stable housing or transportation.

In March 2007, DHS held a special staffing with appellant, her family, CASA staff, and the attorney *ad litem*. Appellant represented that she obtained a home and vehicle; worked for McDonald’s for a few weeks and then worked for her sister; attended counseling; completed parenting classes; kept her home clean and safe; visited her children; and had “no men in [her] life or in [the] children’s lives for over six months.” Appellant also submitted a cleaning schedule for her home and plans for the children’s care and schooling. Following the meeting, DHS and the attorney *ad litem* were satisfied that they could gradually

reintroduce the children to appellant's home beginning in April 2007. DHS witnesses said that they told appellant in no uncertain terms that this was her last chance to prove that she could take care of the children. Around this time, appellant gave birth to a fourth child.<sup>2</sup>

At the fifteen-month review hearing in early April 2007, the court found that appellant was in compliance with the case plan and court orders; that she had made significant and measurable progress toward achieving the case-plan goals; and that she was diligently working toward reunification. However, at a subsequent review hearing on July 9, 2007, CASA volunteer Zandra Sale<sup>3</sup> testified that appellant had made little progress, and Sale recommended termination of appellant's parental rights. Sale expressed concern that appellant continued to become pregnant by different men, none of whom offered support or contact with the children, and that appellant remained unable to supervise the children or keep a clean, safe home. Sale said that, when she visited appellant's home after the first child began her weekend visits with appellant, Sale saw unsecured medicine bottles and cat feces on the rug in appellant's bedroom. In addition, Sale detected a strong odor of cat urine in the bedroom. Sale said that conditions worsened as appellant's other children were added to the weekend visitation and that appellant and B.M. lacked personal hygiene. Sale also saw trash, clutter, and food crumbs scattered throughout the house; urine and feces in the children's toilet; and dead spiders and insects in the bathtubs, which appeared as though they had not been used.

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<sup>2</sup> Appellant had also been pregnant with twins in mid-2006 but suffered a miscarriage.

<sup>3</sup> This witness is also referred to in the record as Zandra Sell.

Sale took photographs that depicted the unsanitary conditions in the home, which, according to her, deteriorated even further after April 2007. She also took pictures in June 2007 of a much more acceptable house after appellant's family partially cleaned it. Sale additionally testified that appellant had trouble maintaining utility service to her home and had her water disconnected as recently as June 5, 2007. She further stated that, while visiting appellant's home, she saw S.S., age seven, feeding the one-month-old baby while unsupervised and observed appellant leaving four-year-old M.H. and two-year-old B.M. alone in the bathtub for three minutes or more.

Based on CASA's observations and photographs, DHS recommended termination of appellant's parental rights. However, Cindy Hunt and Terri Mosley, two DHS workers from Van Buren County, testified that they had no concerns about the condition of appellant's home. They said they had not seen appellant's house look as bad as depicted in the CASA photographs, though they had made few, if any, visits when all four children were present. Appellant's therapy case manager and the children's foster parents also said they had no concerns about the children being returned to appellant. DHS worker Susan Morrow from Cleburne County said she personally disagreed with the termination recommendation, even though she understood that the children would need permanency at some point. Morrow also stated that appellant could not operate without financial support from her family and that appellant had a history of things going "down hill" when the children returned home.

At the conclusion of the above testimony, the court continued the hearing until August 8, 2007, then entered an order changing the goal of the case to the termination of

parental rights. The court stated that appellant had been under “the watchful eye” of DHS for over three years yet did not exhibit sufficient skills to provide a safe and protective atmosphere for her family. On October 19, 2007, DHS filed a petition to terminate appellant’s parental rights. The termination hearing was held on December 12, 2007.

Cleburne County DHS worker William Stoecker, who had been involved with the case from its onset, testified that appellant’s compliance was “very lacking” and that there had been no substantial time period during which case-plan goals were met and maintained. He mentioned appellant’s inability to keep her house clean, maintain employment, and keep appointments with doctors or counselors. Stoecker also said that he received information from Van Buren County DHS workers that conditions in the home deteriorated when the children were present.

Cleburne County DHS worker Sue Morrow testified that DHS recommended termination of parental rights because appellant could not maintain employment or keep a clean home environment. She also testified that appellant’s attendance at medical appointments was sporadic and that there had been “many visitations” with the children when appellant showed up late or canceled at the last minute. Additionally, Morrow said, appellant did not maintain the children’s hygiene and failed to brush their teeth during overnight visits. Morrow said the overnight visits ceased because of concerns about the children’s hygiene and lack of supervision.

Another Cleburne County DHS worker, Jamie Nesbit, testified that appellant had lost her job at McDonald’s and remained unemployed. He also said that it was very likely that

the children would be adopted. DHS additionally introduced a transcript of the July 2007 hearing, which included Sale's testimony that appellant showed poor judgment in having children with men who were incapable of providing support. A CASA report revealed that one of the men was incarcerated on drug and firearm charges and that another was on the central registry for child maltreatment and serving a sentence for sexual indecency with a child. Sale testified at the termination hearing that both she and DHS had encouraged appellant to "change her ways" but to no avail. Sale added that appellant lost her second job at McDonald's after a few weeks.

Appellant's sister, Laura Barden, and her mother, Vera Copeland, testified that appellant kept a reasonably clean house, though it could become cluttered with children's clothes and toys. Copeland said that appellant kept the children for weekend visitation under less than ideal circumstances because she had given birth to another child in April 2007 and had some dental work done around that time. Barden testified that she hired appellant from September 2006 until August 2007 to help her with errands, chores, and child care for \$560 per month. According to Barden, appellant's hours varied, though the pay stayed the same. Appellant's job ended when Barden became ill and could no longer pay appellant. Barden testified that appellant was currently unemployed and could not pay her bills.

Appellant testified that her relationship with the new baby's father lasted only a week and that she had not been involved with any men for over sixteen months. However, she later testified that her husband, Chris Hay, moved home in early 2007 and that they had an argument because Reggie Bridgeman, the alleged father of the miscarried twins, was visiting

her. Appellant said her house was safe for the children even though it was messy. She also said that she intended to continue with her individual counseling. Appellant further testified that she had been employed at McDonald's but lost that job in August 2006. She then went to work for her sister until August 2007. After that, she said, she worked at McDonald's again but lost that job. Appellant said she was currently looking for a job but could not find one. She acknowledged that she was approximately \$6,000 behind on child support and said she still owed about \$2,800 on a fine resulting from a criminal matter.

On June 3, 2008, the circuit court entered an order terminating appellant's parental rights in three of her children. The court recited the history of the case and made findings that appellant was unemployed; that she did not maintain a clean home during visitations; that she did not maintain proper hygiene and dental care for the children; and that her water was disconnected on several occasions. The court further ruled that the children were likely to be adopted and that failure to terminate would result in the children languishing in foster care without achieving permanency. As a ground for termination, the court found that the children were adjudicated dependent-neglected, continued out of the home for more than twelve months, and, despite a meaningful effort by DHS to rehabilitate the home and correct the conditions that caused removal, the conditions were not remedied by appellant. Appellant now appeals from the termination order. She argues that the circuit court clearly erred in finding that termination was in the children's best interest and that grounds for termination existed.



An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence that termination is in the child's best interest, including consideration of the following factors:

- (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
- (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents.

Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). The factors in subsections (i) and (ii) need not be established by clear and convincing evidence. *See McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *Id.* Further, subsection (ii) requires the circuit court to consider the *potential* harm in returning the children to the parent. The court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, \_\_\_ S.W.3d \_\_\_ (2008). Instead, the harm analysis should be conducted in broad terms. *See id.*

Appellant does not dispute that the children are adoptable and need permanency. Rather, appellant contends that the circuit court erred in ruling that DHS submitted clear and convincing evidence that returning the children to her would prove harmful. She argues that she acquired a stable home and reliable transportation, faithfully attended counseling, and enjoys the support of her extended family. However, DHS demonstrated that appellant could not hold a job requiring regular attendance and accountability. The evidence showed that,

when she did attempt to hold such a job, she quickly lost it. Furthermore, the unsanitary nature of appellant's home and her inability to maintain the children's hygiene have remained issues since 2004. Appellant received numerous, intensive services from DHS on these matters, and she produced a plan in early 2007 to remedy her conditions. She was then granted weekend visitations with the understanding that it was time to prove herself because the children had been out of her custody for over a year. Yet, appellant was unable to take advantage of this opportunity. The proof showed that, within weeks after the visitations began, the conditions in the home and the children's and appellant's hygiene rapidly deteriorated to unsafe and unacceptable levels. The visits ended as a result. Testimony also revealed that appellant had trouble maintaining water service and had lost service as recently as June 5, 2007. Under these circumstances, we cannot say that the circuit court clearly erred in ruling that termination was in the children's best interest.

Appellant further challenges the testimony regarding the condition of her home. She argues that Van Buren County DHS workers, who actually saw her home, did not advocate termination of her parental rights. We observe that the Van Buren County workers made only one visit to appellant's home when all four children were present. They did not have the opportunity to observe the deteriorating conditions noted by the CASA volunteer, who visited appellant's home almost every weekend the children were present and provided much of the information and photographic evidence relied upon by the Cleburne County DHS for its termination recommendation. For these reasons, the trial court placed greater weight on

the testimony and recommendations of the Cleburne County DHS workers than the opinions offered by the workers from Van Buren County.

Next, appellant contends that the circuit court erred in ruling that DHS proved grounds for termination by clear and convincing evidence. An order forever terminating parental rights must be based on at least one statutory ground. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2008). The ground relied on by the circuit court in this case is as follows:

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.

Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2008).

The conditions that caused removal were appellant's inability to keep a clean, safe home, maintain the children's hygiene, and properly supervise the children. As shown by the testimony of the CASA volunteer and other DHS witnesses, appellant was unable, more than a year after the children's removal, to correct these problems once the children were reintroduced into the home. We therefore cannot say that the circuit court clearly erred in finding grounds for termination.

Affirmed.

HART and GLADWIN, JJ., agree.