

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-734

DONALD THOMPSON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered FEBRUARY 8, 2012

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
EASTERN DISTRICT,
[NO. J209-14-ED]

HONORABLE GERALD K. CROW,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Donald Thompson appeals from an order of the circuit court terminating his parental rights to his children, R.T. and S.T. He argues on appeal that there was insufficient evidence presented that termination was in the children's best interest because there was no evidence to indicate that the children are adoptable. We affirm.

On February 8, 2009, the Arkansas Department of Human Services (DHS) took R.T. and S.T. into custody because the children's mother, who is not a party to this appeal, was arrested on felony charges and the children had no other caretaker. Appellant was in prison at the time the children were taken into custody. On April 8, 2009, the circuit court entered an order in which it found that the children were dependent-neglected due to unsafe environmental conditions in the home and outstanding criminal warrants against the mother. The goal of the case was set as reunification with the mother. In a review order entered on



September 3, 2009, appellant was ordered to undergo a drug and alcohol assessment and complete parenting classes within 120 days of his release from prison. A permanency-planning order entered on February 5, 2010, states that appellant had been working on the case plan since his release. The same order states that there was no evidence that appellant took any steps during his incarceration to maintain contact with the children or provide them with support, despite having income from rental property. The circuit court changed the goal of the case from reunification to termination of parental rights and adoption.

On March 10, 2010, DHS filed a petition to terminate appellant's parental rights. The circuit court entered an order on June 21, 2010, continuing the matter for six months. DHS filed a second petition to terminate appellant's parental rights on November 9, 2010. On November 30, 2010, the circuit court entered an order granting DHS's motion to withdraw the petition. In a permanency-planning order entered on December 2, 2010, the circuit court changed the goal of the case back to reunification.

On January 19, 2011, DHS filed a third petition to terminate appellant's parental rights. This petition went to a hearing on March 25, 2011. At the hearing, Ruth Anne Murphy, a family service worker with DHS, testified that she was the initial caseworker in this case. Murphy also testified that the children were adoptable and that she believed the current foster parents would be interested in adopting them. On April 28, 2011, the circuit court entered an order terminating appellant's parental rights. In the order, the circuit court states that DHS provided testimony that the children were adoptable and that it considered the likelihood that



the children would be adopted in finding that termination would be in the children's best interests. This timely appeal followed.

An order forever terminating parental rights must be based on clear and convincing evidence that termination is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). In determining whether termination is in the child's best interest, the circuit court must consider the likelihood that the child will be adopted if the termination petition is granted and 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)(i) and (ii) (Repl. 2009). Additionally, DHS must prove at least one statutory ground for termination by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2009). We do not reverse a termination order unless the circuit court's findings were clearly erroneous. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

Appellant does not argue that DHS failed to prove a ground for termination by clear and convincing evidence. Appellant also does not challenge the evidence presented regarding the potential harm to the children if returned to his custody. Appellant's sole argument on appeal is that the circuit court's finding that termination is in the children's best interest is clearly erroneous because of a "complete lack" of evidence that the children are adoptable. In making the argument, appellant states that the circuit court found that the children's current foster family has expressed an interest in adopting them, while the caseworker testified that she believed the foster family was interested in adopting the children. What appellant fails



to mention is the fact that, prior to making the statement regarding the foster family's intentions, the caseworker testified that the children are adoptable. This court has previously held that testimony from a caseworker or an adoption specialist that children were adoptable is sufficient. See *Dority v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 295; see also *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004).

Appellant attempts to liken this case to *Grant v. Arkansas Department of Human Services*, 2010 Ark. App. 636, 378 S.W.3d 227, in which this court held that a statement by a caseworker that all children are adoptable was not sufficient evidence regarding adoptability. However, in the case at bar, the caseworker testified that *these* children were adoptable. Appellant also attempts to liken this case to *Haynes v. Arkansas Department of Human Services*, 2010 Ark. App. 28, in which this court reversed a termination order in which the court stated that it considered the adoptability of the children when no evidence regarding the issue was presented at the termination hearing. In this case, there was testimony that the children were adoptable. Additionally, appellant cites several other cases in which either the foster family or another family expressed interest in adopting the children and points out that there was no such testimony in this case. This court has held that adoptability is but one factor that is considered when making a best-interest determination. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). We have also held that there is no requirement that every factor must be established by clear and convincing evidence; rather, after consideration of all the factors, the evidence must be clear and convincing that the termination is in the best interest of the children. *Id.*



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In this case, the caseworker, who worked on the case for over a year after its inception, testified that these children were adoptable. The circuit court, as it is required to do, considered this evidence in determining whether termination was in the children's best interest. As such, appellant's argument is wholly without merit, and the order of termination of parental rights is affirmed.

Affirmed.

HART and GLADWIN, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha Baertels McNulty, Office of Chief Counsel, for appellee.