

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-281

LISA LOWERY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered September 12, 2012

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[NO. JV-2010-157]

HONORABLE ROBERT
MCCALLUM, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Lisa Lowery appeals from an order of the Clark County Circuit Court terminating her parental rights to her children, R.L., born March 13, 2006; and M.L., born August 30, 2004.¹ On appeal, Lowery contends that termination was not in the children's best interest, specifically arguing that there was not sufficient evidence of adoptability. She also argues that the Arkansas Department of Human Services (DHS) did not make a meaningful effort to rehabilitate her and to correct the conditions that caused removal, citing Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2011). We affirm the court's order.

This case began in April 2010 as a protective-services case due to a finding of environmental neglect. At that time, it was reported that the children had chronic head lice, that there was trash all over the home, and that the children, then four and five years old,

¹The children's father consented to termination of his parental rights and is not a party to this appeal.



were often being left at home alone for four to five hours. The DHS investigator found the home cluttered with clothes and infested with roaches. When Lowery failed to comply with DHS's requests to attend counseling, complete parenting classes, keep her children clean, and maintain a clean home, DHS exercised a seventy-two-hour hold on the children on October 1, 2010. The court entered an emergency order on October 4, 2010, placing the children in DHS's custody. Lowery waived probable cause and on November 8, 2010, the parties stipulated that the children were dependent-neglected as a result of Lowery's neglect and parental unfitness.

Testimony at the termination hearing indicated that both children had medical issues. M.L. has moyamoya disease in addition to adjustment disorder. R.L. was diagnosed with mood disorder, reactive attachment disorder, and ADHD and attends therapy twice weekly. There was also testimony that Lowery's kitchen had food on the floor, pans with old food all over the counters, roaches, and bugs in the refrigerator. R.L.'s room contained mattresses leaning against a wall. M.L.'s room had a bed on the floor, but it was covered with various items and had no sheets. Lowery testified that she is often tired after work and thus does not pick up after herself. Evidence was also introduced regarding Lowery's relationship with a paroled felon and her "You Tube" account containing sexually suggestive videos.

Although the court found that Lowery had complied with the case plan in some respects—that is, she maintained employment, completed parenting classes, and completed a psychological evaluation—she failed three drug tests (one less than two weeks before the termination hearing), failed to attend outpatient drug-counseling sessions, and, most important



to the court, failed to maintain a clean home. Kristi Robinson, the DHS caseworker, testified that she did not believe either parent was in a position to have custody of the children. She was concerned about Lowery's inability to care for herself, maintain a clean home, and keep appointments, particularly given the children's medical needs. Another DHS worker, Shalisa Dickson, testified that there were times when she had to have Lowery remove the bugs from her purse before she got into Dickson's car. Dickson said that she offered homemaker services twice on an ongoing basis and offered cleaning supplies. She said if the children were returned to Lowery, they would have to live in filth. The director of CASA of Clark County testified that Lowery's home was filthy and unacceptable, and she recommended termination. The children's therapist testified that it would not be in the children's best interest to be returned to Lowery based on her home, her noncompliance with the case plan, and her relationship choices. He said that R.L. required a very specialized and patient caregiver. He said that, particularly in light of the children's issues, it was "imperative that they get some permanency and some stability in their lives." The adoption specialist for DHS, Rebecca Kincannon, testified that both children were adoptable, that one family had inquired about adopting them, and that DHS would recruit families if the family that had inquired did not work out.

In its termination order, the circuit court found that termination of Lowery's parental rights was in the children's best interest, specifically considering the likelihood that the children would be adopted and the potential harm to their health and safety by returning them to Lowery. The court also found three grounds by clear and convincing evidence: (1)



that the children had been adjudicated dependent-neglected and had been out of Lowery's custody for twelve months and, despite a meaningful effort by DHS to rehabilitate Lowery and correct the conditions that caused the removal, those conditions had not been remedied by her; (2) that other factors had arisen subsequent to the filing of the petition demonstrating that return of the children to Lowery's home was contrary to their health, safety, or welfare, and that, despite the offer of appropriate family services, Lowery manifested the incapacity or indifference to remedy these issues; and (3) that Lowery had subjected the children to aggravated circumstances: that is, there is little likelihood that services to the family would result in successful reunification. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a), (vii) & (ix)(a)(3) (Supp. 2011). The court specifically discounted Lowery's argument that DHS did not provide adequate services to her, stating that reasonable efforts did not require DHS to clean her home for her and that cleaning products and skills were offered by Shalisa Dickson but had been refused.

An order terminating parental rights must be based on a finding by clear and convincing evidence that (1) termination of parental rights is in the best interest of the child, considering the likelihood that the child will be adopted if the parent's rights are terminated and the potential harm caused by returning the child to the parent's custody, and (2) at least one ground for termination exists. *Bearden v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 754, at 6-7, 351 S.W.3d 186, 190. We review termination-of-parental-rights cases *de novo*; however, we will not reverse the circuit court's finding of clear and convincing evidence unless that finding is clearly erroneous. *Id.* at 7, 351 S.W.3d at 190.



For her first point on appeal, Lowery argues that there was insufficient evidence of adoptability. She contends that the adoption specialist admitted that DHS might have to recruit a family to adopt the children and that, although she had previously placed children with problems similar to those experienced by R.L., she had not placed a child who suffered from all of those behavior problems together. We reject Lowery's argument. Testimony from a caseworker or an adoption specialist that children are adoptable is sufficient. *Thompson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 124, at 4. In this case, Rebecca Kincannon, an adoption specialist for DHS, testified that both children were adoptable. Indeed, she stated that a family had already inquired about adopting the children. The circuit court, as it was required to do, considered this evidence in determining whether termination was in the children's best interest.

For her second point on appeal, Lowery contends that there was insufficient evidence to show that DHS made a meaningful effort to rehabilitate her and to correct the conditions that caused removal. She cites Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a), the first statutory ground upon which the circuit court's decision was based. In this case, the children were removed because Lowery's house was filthy. Despite the court's continuing order for Lowery to clean her home to make it adequate and appropriate for her children to live in, she failed to comply. We note that she does not challenge either of the other grounds upon which the court's order was based. Only one ground is necessary to terminate parental rights, and we have held that when an appellant fails to attack the court's independent, alternative basis for its ruling, we will not reverse. *Bayron v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 75, at



Cite as 2012 Ark. App. 478

7, 388 S.W.3d 482, 487. Moreover, the court specifically discounted this argument in its order, stating that reasonable efforts did not require DHS to clean the house for Lowery. The court found that cleaning products and skills were offered by a DHS worker but that Lowery refused the products, failed to put the skills into action until late in the case, and failed to maintain the home thereafter. The circuit court did not clearly err, and we affirm its order.

Affirmed.

PITTMAN and HOOFMAN, JJ., agree.

Thomas Wilson, for appellant.

Tabitha McNulty, Office of Chief Counsel for appellee Arkansas Department of Human Services.

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