

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-709

DAISY GRAY and DAVID GRAY
APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and R.G.1, R.G.2,
C.G.1, AND C.G.2, MINORS
APPELLEES

OPINION DELIVERED JANUARY 23, 2013

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. JV-2009-256]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Daisy and David Gray appeal the termination of their parental rights to their four children. They argue on appeal that the evidence presented by the Arkansas Department of Human Services (DHS) was not sufficient to justify termination of parental rights. We affirm.

On May 30, 2012, the Crawford County Circuit Court entered an order terminating the Grays' parental rights to their children, R.G.1, age nine, C.G.1, age seven, R.G.2, age five, and C.G.2, age three. The case began on December 29, 2009, after DHS filed a non-emergency, twenty-day petition seeking court involvement due to the Grays' relapse on environmental-neglect issues, which DHS had addressed for two years through a protective-services case. The attached affidavit from an employee of the Department of Children and Family Services alleged that the Grays had not been cooperative with DHS in



learning sign language so that they could communicate with their child. It further alleged that the Grays were not employed, the home had dried dog feces and urine on the floor, and the children's room remained unsafe to the point that the worker was unable to walk through it. The children were adjudicated dependent-neglected but remained in the custody and care of their parents under a goal of family preservation.

The case proceeded for one year, with the children continuing to reside in the home. However, on February 28, 2011, DHS filed a motion for emergency custody, citing environmental issues. The affidavit attached to the petition cited garbage around the outside of the home, a filthy kitchen and bathroom, a broken-screened television that was accessible to the children, very thick smoke in the home due to a faulty fireplace, three exposed crawl spaces, and several people living in trailers or extra rooms. R.G.1, who is deaf, was placed in the temporary custody of her interpreter, and the other children were placed in foster care. On April 28, 2011, the children were adjudicated dependent-neglected on the sole basis of environmental neglect, and the goal of the case remained reunification.

A review order filed August 4, 2011, held that return of custody to the parents was contrary to the children's welfare. A review order filed October 27, 2011, found that continuation of custody with DHS was in the children's best interest to protect their health and safety, and reunification remained the goal. In December 2011, DHS placed C.G.1 in the home on a trial basis. C.G.1 remained in the home for sixty-three days when the CASA worker raised concerns about a septic-tank issue on the outside of the home.



On January 5, 2012, a permanency-planning order was filed, which held that returning the children to the parents' custody was not in the children's best interest. The circuit court determined that it was in the best interest of the children that the goal of the case should be to authorize a plan to return the juveniles to their parents; however, the circuit court found that the Grays were not currently in compliance, and gave them three additional months to come into full compliance with the case plan and court orders. The circuit court authorized DHS to file a petition to terminate parental rights to all four children and found that the permanent goal should be adoption with a concurrent goal of guardianship or permanent custody.

In its petition, DHS alleged that the conditions causing removal, i.e., the environmental neglect, had not been remedied. It sought termination on the additional ground of educational neglect, because the parents did not know the formal language of the deaf-American Sign Language (ASL)—which DHS believed prevented the Grays from being effective parents. The circuit court terminated on both grounds, stating as follows:

4. The Court has considered and reviewed all the evidence submitted and the testimony of the witnesses in this matter, and finds that [DHS] has proven by clear and convincing evidence that: That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by [DHS] to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent; more specifically, the juveniles were removed from the parents for environmental and educational neglect and since and before that time have been offered the following services: homemaker services, random drug screens, parenting without violence classes, transportation, visitation, clothing, cleaning supplies, home visits, sign language classes, and trial home placement. These services did not rehabilitate the parents and correct the conditions that caused removal because the home continues to be environmentally unsafe, the juvenile, [C.G.1], continued to have head lice while on trial placement, and the parents have failed and refused to



learn sign language adequately enough to communicate health, education, and safety concerns with the juvenile [R.G.1].

The Grays filed an appeal claiming that educational neglect was legally inapplicable to the case since it was not a cause of removal, and thus does not fall under the sole statutory ground alleged, and because any deficiencies in the parents' ASL education does not satisfy the definition of educational neglect. Leaving the sole issue of environmental neglect, the Grays assert that being in compliance for the year leading up to the termination hearing, as testified to by DHS's caseworker, belies any finding by the circuit court that parental rights should have been terminated on this basis.

We review termination-of-parental-rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2011); *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). Our inquiry on appeal is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). In resolving the clearly-erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).



In cases where the issue is one of termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship because termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Ullom v. Ark. Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000). Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Crawford v. Ark. Dep't of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997). Parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. *J.T.*, *supra*. On appellate review, this court gives a high degree of deference to the trial court, which is in a far superior position to observe the parties before it. *Dinkins*, *supra*; *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W.3d 273 (2000).

The Grays first contend that the circuit court's reliance on educational neglect was error because the children were removed only for environmental neglect. The sole statutory ground relied on by the circuit court in its termination order was Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(a), which allows for termination if the parents failed to correct "the conditions that caused removal." They contend that educational neglect did not cause removal; that was a subsequent condition, which was not relied on or alleged. See Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). The Grays contend that under *Jones v. Arkansas Department of Human Services*, 2011 Ark. App. 632, educational neglect or any issue regarding



R.G.1's deafness may not be cited as a ground for termination because the grounds may not be altered to fit the facts of the case.

The Grays also claim that, even if educational neglect was a relevant ground for termination, the circuit court still erred when referring to the parents' failure to learn ASL as "educational neglect." The Grays contend that educational neglect is not based on a parent's lack of education, but on a parent's failure to provide his or her child with the necessary education required by law. Ark. Code Ann. § 9-27-303(36)(A)(ii) (Supp. 2011). The Grays also argue that there are varying forms of effective communication between a hearing parent and a deaf child that do not include ASL. The Grays testified that they were able to communicate with their daughter, and they argue that there was no evidence offered to the contrary. The Grays assert that there was no evidence that R.G.1's health, safety, or welfare was at risk because her parents did not learn ASL during the case.

Next, the Grays argue that environmental neglect occurs when conditions in the home are a threat to the physical health or safety of the child, citing *Lowrey v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 478; *Davis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 419; *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 526; *Jessup v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 463. They claim that no case can be found in which parental rights were terminated solely on the basis of environmental neglect. They argue that environmental neglect was the only ground on which termination was granted as to the three hearing children, and that the evidence did not demonstrate "a house of horrors" incompatible with sustaining a healthy and safe existence.



The Grays argue that even after the children were placed in foster care, the circuit court authorized DHS to increase visitation up to and including a trial home placement. C.G.1 was sent home on a trial placement on December 22, 2011, and remained there even as the circuit court changed the goal to adoption and set the case for a termination hearing. The Grays contend that the caseworker testified at the termination hearing that she recommended termination even though she made it clear that the inside of the home was clean and had met minimum DHS standards for the entire year she had been on the case. She testified that she had been planning to recommend that custody be returned to the parents when CASA raised its concerns about the septic system. The Grays maintain that they met the DHS standards and the juvenile code for a year prior to the termination hearing and that the circuit court's order must be reversed.

The Grays are procedurally barred from making their argument that it was error to call their inability to adequately communicate with R.G.1 educational neglect because they failed to object at trial regarding this issue. Absent a contemporaneous objection, this court is precluded from addressing the point on appeal. See *Lamontagne v. Ark. Dep't of Human Servs.*, 2010 Ark. 190, 366 S.W.3d 351 (refusing to address a legal argument regarding employment as a ground for termination where the issue was not raised to the circuit court).

In addressing the environmental issues, DHS and the ad litem assert that the evidence before the trial court was clear and convincing. In February 2011, a DHS visit to the Grays' home found a garbage-strewn yard, a filthy kitchen, a filthy bathroom, and a house filled with thick smoke. In March 2011, the children entered foster care. In November 2011, the



toilet was still filthy, and in December 2011, raw sewage flowed into the backyard. On February 25, 2012, there was open sewage water under the bathroom and under C.G.1's room. The sewage was also on the side of the house where the children ran through it. There was concern that Mr. Gray was tracking the sewage into the house and that bacteria and germs from the sewage water were being brought into the house. In March 2012, the septic tank was not fixed properly and still leaked raw sewage. A few weeks before the termination hearing, the smoke-causing fireplace was boarded. One day before the termination hearing the septic tank was covered, but there was insect infestation including flies and roaches; the house still had mold; the toilet was still dirty; and there was still trash strewn in the yard. On April 5, 2012, the day of the termination hearing, the septic tank had not been repaired, but Mrs. Gray testified that they were in the process of getting it done.

Accordingly, we hold that the trial court's termination of parental rights was not clearly erroneous.

Affirmed.

GLOVER and VAUGHT, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

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

Chrestman Group, PLLC, by: *Keith L. Chrestman*, attorney ad litem for minor children.