

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CA10-889

KATHY BILLINGS

APPELLANT

V.

ARKANSAS DEP'T OF HUMAN  
SERVS. and MINOR CHILDREN  
APPELLEES

**Opinion Delivered** February 9, 2011

APPEAL FROM THE CHICOT  
COUNTY CIRCUIT COURT  
[NO. JV2008-118-5A]

HONORABLE TERESA FRENCH,  
JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

On June 14, 2010, the Chicot County Circuit Court entered an order terminating appellant Kathy Billings's parental rights to her daughter K.C.(1) born June 14, 2006, and her son K.C.(2) born February 3, 2008.<sup>1</sup> Billings argues that the evidence did not support the termination of her parental rights. We affirm.

This case originated on December 5, 2007, when appellee Arkansas Department of Human Services (ADHS) received a report from the Child Abuse Hotline alleging environmental neglect and inadequate shelter. Both parents were drug tested, and both tested positive for marijuana and cocaine. The children remained in Billings's custody until October

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<sup>1</sup>The court also terminated the father's parental rights; however, he is not the subject of this appeal.

1, 2008, when they were removed by ADHS. ADHS filed a petition for emergency custody on October 6, 2008. According to the affidavit, Billings continued to test positive for marijuana and cocaine after it was explained to her that continued drug use would result in her children being removed from her custody. Environmental neglect and inadequate shelter were also alleged in the affidavit. An order for emergency custody was entered the same day. Billings agreed that the children were dependent-neglected based upon the allegations contained in ADHS's petition for emergency custody. The adjudication order was entered on December 5, 2008. Billings was ordered, among other things, to 1) follow her case plan, 2) obey the court's orders, 3) complete drug assessment and follow the recommendations, which included inpatient treatment, 4) submit to random drug screens, 5) obtain and maintain adequate housing, and 6) cooperate with the department. ADHS filed a petition for termination of parental rights on February 11, 2010. In the petition, ADHS alleged a number of grounds for termination.

The termination hearing took place on May 11, 2010. Rosetta Brown testified that she was the caseworker assigned to Billings's case. According to Brown, Billings had begun to cooperate with the department, but she continued to use drugs throughout the case. Billings successfully completed inpatient drug treatment at New Beginnings in April 2009. However, after going through the treatment, she began to test positive for marijuana in July 2009. On at least eight different occasions between July 2009 and March 2010, Billings tested positive for marijuana or THC. She also tested positive for amphetamine and opiates at times;

however, it is unclear if she produced prescriptions for these drugs. Brown also testified that Billings was facing criminal charges for “a stolen check.”

On cross-examination, Brown stated that Billings had not tested positive for cocaine since March 2009; that Billings had found adequate housing; that Billings had completed inpatient drug treatment; that Billings had completed parenting classes; and that she had cooperated with the department. However, she also stated that Billings had a problem with marijuana; that ADHS could not keep Billings’s protective services case open forever; that Billings’s marijuana use prevented Brown from recommending return of the children to her; and that Billings allowed someone to influence her to the point where she may be facing jail time. Terry Bell, of ADHS, testified that on one occasion, marijuana was found in Billings’s home.

Billings testified that her children were removed from her because she tested positive for cocaine and because she did not have an adequate place to stay. According to Billings, she no longer has a “cocaine problem.” She also said that she has a place to live. Billings acknowledged that she smokes marijuana; however, she said that stress was to blame for her marijuana usage. Billings testified that she was stressed over her kids and the “check situation.”

Billings testified on cross-examination, “I continued to use drugs because it stressed me out because my kids are not there. And I have a lot of stress. I understand the reason my kids aren’t there is because of my drug use.”

At the conclusion of the hearing, the court granted the petition and terminated Billings’s parental rights. The order was filed on June 14, 2010, and it included findings

attached as exhibit A. In terminating Billings's parental rights, the court found that the children were adoptable and that it was contrary to their best interests to be returned to Billings.<sup>2</sup> The court relied on a number of statutory grounds to terminate Billings's parental rights: (1) that the children had been outside the home of Billings for a year and, despite meaningful efforts by the department to correct the conditions that caused removal, those conditions had not been remedied;<sup>3</sup> (2) that the juveniles had been outside Billings's home for a period of a year, and Billings had willfully failed to provide significant material support in accordance with her means or to maintain meaningful contact with the juveniles;<sup>4</sup> (3) that other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juveniles to the custody of Billings is contrary to their health, safety, or welfare and that, despite the offer of appropriate family services, the mother has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate her circumstances that prevent return of the juveniles to her custody;<sup>5</sup> and (4) that Billings has been found by a court of competent jurisdiction to have subjected any juvenile to aggravated circumstances.<sup>6</sup> This appeal followed.

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<sup>2</sup>Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009).

<sup>3</sup>Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2009).

<sup>4</sup>Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a) (Repl. 2009).

<sup>5</sup>Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2009).

<sup>6</sup>Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A) (Repl. 2009).

We review cases involving the termination of parental rights de novo.<sup>7</sup> The grounds for termination must be proven by clear and convincing evidence.<sup>8</sup> When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses.<sup>9</sup> 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.<sup>10</sup> A heavy burden is placed on the party seeking the termination of parental rights because it is an extreme remedy in derogation of the natural rights of the parents.<sup>11</sup> Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child.<sup>12</sup> Thus, 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.<sup>13</sup>

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<sup>7</sup>*Grant v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 636, 378 S.W.3d 227.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

Billings argues on appeal that there is “absolutely no evidence that the children would be subject to potential harm if returned [to her].” She also contends that since she had stopped using cocaine, her drug of choice, the evidence was insufficient to support a finding of potential harm. These arguments are without merit. Parental drug use was one of the reasons Billings’s children were removed from her custody. Based on the affidavit, Billings’s problem was not just the use of cocaine, marijuana was also an ongoing concern. Although appellant partially complied with the case plan and court orders, she continued to test positive for marijuana. Continuing drug use shows both an indifference to remedying the problems plaguing the family and potential harm to the children.<sup>14</sup>

Evidence presented at the termination hearing revealed that although Billings stopped using cocaine, she could not remain drug-free. She completed inpatient drug treatment only to later test positive for marijuana on a number of occasions. She testified in court that she smoked marijuana because she was under a lot of stress due to having her children removed from her custody, and because she was facing criminal charges stemming from a “check.” This evidence alone supports termination on at least two grounds. Therefore, we cannot say that the trial court erred by terminating Billings’s parental rights. We do not reach Billings’s other alleged errors because only one ground is necessary to terminate parental rights.<sup>15</sup>

Affirmed.

GLADWIN and HOOFFMAN, JJ., agree.

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<sup>14</sup>*Carroll v. Ark. Dep’t of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

<sup>15</sup>Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2009).