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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-18-37

JESSICA TAYLOR APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	OPINION DELIVERED: APRIL 25, 2018 APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. 18JV-14-59] HONORABLE RALPH WILSON, JR., JUDGE AFFIRMED

ROBERT J. GLADWIN, Judge

Jessica Taylor appeals the Crittenden County Circuit Court's October 12, 2017 order terminating her parental rights to her two children, A.T.2 (born June 1, 2015) and J.T. (born December 16, 2016).[1] On appeal, Taylor's only argument is that the trial court erred in basing its termination order solely on a prior termination-of-parental-rights (TPR) order. We affirm.

I. *Facts*

Appellee Arkansas Department of Human Services (DHS) filed a petition for emergency custody and dependency-neglect on June 9, 2015, as to newborn A.T.2 because Taylor had refused to allow DHS to take custody of the child based on its open case

[1]The termination order lists two men as putative fathers of the children, but neither father participated in the case, and they are not the subject of this appeal.

involving A.T.1 (born March 18, 2014). The trial court granted an ex parte order for emergency custody of A.T.2 on June 10, 2015, based on the petition and attached affidavit that described Taylor's having given birth to A.T.2, not informing DHS of the birth despite the open DHS case, and locking herself and the baby in a camper with no utilities to avoid DHS's taking the child into custody.

On June 18, 2015, DHS filed a TPR petition alleging that TPR was in both children's best interest pursuant to two statutory grounds set out in Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)*(a)* & (vii) (Supp. 2017), with the latter ground being alleged in regard to only A.T.2. The trial court set a termination hearing on the TPR petition and scheduled A.T.2's adjudication hearing for the same date. To support the twelve-month ground, DHS alleged that A.T.1 had been taken into DHS custody due to concerns about Taylor's living situation and mental capacity. The child was adjudicated dependent-neglected on June 10, 2014, based on inadequate housing. Taylor was ordered to submit to a psychological evaluation and follow the recommendations, obtain safe and stable housing, obtain stable employment and/or income, complete intensive parenting classes, and submit to random drug screens. At the time DHS filed its TPR petition, Taylor did not have safe housing with functional utilities; A.T.1 was receiving the majority of her nutrition through a feeding tube in her stomach and was receiving speech therapy; Taylor was diagnosed with borderline intellectual functioning; Taylor was denied her application to the housing authority because she did not provide all the needed information; and Taylor did not resubmit an application for housing and refused to attend day classes, choosing to continue her college courses and to live without working utilities. DHS alleged the same

facts to support the other-factors ground, adding that A.T.2 had been born on June 1, 2015, while Taylor was living in the camper with no utilities. DHS emphasized that Taylor had been diagnosed with borderline intellectual functioning and lacked the skills to improve her capacity to be a better parent.

The trial court filed an order terminating Taylor's parental rights to A.T.1 and A.T.2 on March 28, 2016.[2] Taylor appealed, and on October 5, 2016, this court affirmed the TPR order regarding A.T.1 but reversed the termination as to A.T.2. *See Taylor v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 453, 503 S.W.3d 813.

The trial court filed a review order on October 31, 2016, reflecting this court's decision on appeal. The trial court severed A.T.2's case from A.T.1's and found that returning A.T.2 to her mother would not be in the child's best interest. The goal of the case was adoption, and Taylor was granted weekly supervised visitation. Taylor was also ordered to continue to follow the case plan and all prior orders.

DHS filed on January 5, 2017, a petition for emergency custody and dependency-neglect in A.T.2's case and alleged that J.T. had been born on December 16, 2016, during the pendency of the case. The attached affidavit stated that a DHS caseworker went to Taylor's residence on December 19, 2016, to complete a home assessment. The caseworker witnessed dogs in the home, holes in the ceiling where water was leaking into the room where the baby slept, cords "coming from an unknown location from the ceiling," clutter,

[2]On July 6, 2016, the trial court entered a "Nunc Pro Tunc Adjudication Order as to [A.T.2]" that reflects a hearing was held on November 3, 2015, A.T.2 was found to be dependent-neglected due to inadequate housing, and the goal of the case was adoption.

a space heater, and roaches. The trial court filed an ex parte order for emergency custody of J.T. on January 5, 2017.

On January 10, 2017, the attorney ad litem filed a motion to terminate reunification services, citing Ark. Code Ann. §§ 9-27-327, -329, and -337. The grounds alleged were that the children had been subjected to aggravated circumstances in that Taylor's parental rights had been involuntarily terminated as to A.T.1 after Taylor had been offered services and could not remedy the condition that caused removal. A hearing was set for February 21, 2017. Also, on January 10, 2017, a probable-cause hearing was held. An order was filed reflecting that the orders remained largely the same for Taylor, and an adjudication hearing was set for February 21, 2017.

There is no account of a hearing on February 21, 2017, in the briefs before this court, but a June 20, 2017 no-reunification-of-services and review order reflects that a hearing was held on March 28, 2017. The trial court found by clear and convincing evidence that Taylor had her parental rights involuntarily terminated as to A.T.1, and it was in A.T.2 and J.T.'s best interest that the ad litem's motion for no-reunification services be granted.[3] The trial court made a finding of aggravated circumstances in that, based on the history and length of the case, there was little likelihood that services would result in successful reunification. The goal of the case was "changed to adoption." A permanency-planning hearing was set for April 20, 2017, an order was filed on that date reflecting that the goal of

[3]The no-reunification-of-services order was file marked on June 20, 2017, reflects a hearing date of March 28, 2017, states that it is "[e]ffective this 21st day of February, 2017," and dated as signed on June 2, 2017. We also note that the June 2 date follows a line-through deletion of a handwritten July date.

the case was adoption, and the court ordered that Taylor continue to have weekly supervised visits with both children. An order adjudicating J.T. dependent-neglected was filed on May 23, 2017, and it reflects that the hearing was held on March 28, 2017, and a TPR hearing was set for June 6, 2017.

DHS filed a petition on June 20, 2017, seeking a TPR order as to both A.T.2 and J.T. The grounds alleged applicable to Taylor were (1) twelve months out of custody and no remedy, Ark. Code Ann. § 9-27-341(b)(3)(B)(i)*(a)*; (2) failure to support, Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)*(a)*; (3) other factors subsequent to the dependency-neglect petition, Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)*(a)*; (4) the parent had been sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life, Ark. Code Ann. § 9-27-341(b)(3)(B)(viii)*(a)*; and (5) parent subjected the child to aggravated circumstances due to the no-reunification-of-services order and the parent was found to have had her parental rights involuntarily terminated as to a child, Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)–(4)*. DHS alleged that the children are adoptable and that they would be subjected to potential harm if returned to Taylor because of inadequate housing and Taylor's inability to provide a safe living environment due to mental instability.

At the TPR hearing held on September 5, 2017, Demetria Willis testified that she was a family-service worker for DHS and was assigned to the case. She said that J.T. had no medical problems and that the two children are adoptable. She recommended that TPR be ordered and the children be placed for adoption. On cross-examination, she testified that Taylor had a job in the recent past as a dog groomer, and Taylor was currently working for Robert Thorne taking care of greyhounds and helping in Thorne's landscaping business.

She said that Taylor was seeing her therapist at Mid-South Health Systems every Monday and also seeing the doctor once a month for medication, which was recommended by the psychological evaluation. Taylor had completed the psychological evaluation and the parenting class and had watched the video "The Clock is Ticking." She said that her report states that Taylor has stable housing and that she exercised her visitation every week. The foster parents of each child testified that they wish to adopt their respective child.

At the conclusion of the above testimony, Taylor's attorney moved for dismissal. Counsel argued that there had been no proof that Taylor was unable to provide a safe parenting or home environment, no proof regarding her mental capacity, and no proof regarding any parent being sentenced under a criminal proceeding. DHS conceded that no proof was presented on the grounds listed in the petition except for aggravated circumstances and the mental-capacity issue as it related to the "other factors" ground. Therefore, the trial court dismissed all the grounds save for two.

Taylor testified that she lived in a trailer with three bedrooms and two bathrooms, that DHS had not visited since March 2017, and that the home was appropriate for her children. She said that she visited every week and that she was working at Robert Thorne Kennels. She worked fifteen hours each week making $15 an hour. She had been working for Thorne for eight or nine months and had worked solely for the dog groomer before that. She said that she paid the bills on the trailer and that she was seeing a therapist at Mid-South Health System once a month. She said that Dr. Suba told her she could come in every five months for medication management. She said that she was taking the medication as prescribed by Dr. Suba. She said that she had done everything DHS had asked her to do.

Margaret Whorton testified that she is Taylor's landlord and that Taylor was slightly behind in rent but was working to catch it up. She said that she had been inside to chemically "bomb" the trailer and that the home was not quite set up for Taylor's children yet, as there were still boxes.

A TPR order was filed on October 12, 2017, finding that DHS proved by clear and convincing evidence that Taylor had subjected the children to aggravated circumstances. The order reflects that "aggravated circumstances" meant that

> [a] juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification[.]

The order then listed seven facts, including that Taylor had lost both children due to unstable housing and mental instability and that due to her mental instability, she is not able to provide safe parenting or a safe home. Her mental-health diagnoses of borderline intellectual functioning, PTSD, and depression with psychotic features supported that. The order also stated that the motion for no-reunification services had been granted on March 28, 2017, and that Taylor's parental rights had been involuntarily terminated as to a sibling of the two children at issue. The trial court specifically found that Taylor had not obtained stable housing or income and was unable to parent due to her mental-health issues; that further services would not achieve a goal of reunification; and that Ms. Willis was a credible witness. The court also found that the children were likely to be adopted and that they would be subjected to potential harm if returned to their parent. This appeal timely followed.

II. *Applicable Law*

We review termination-of-parental-rights cases de novo. *Bunch v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 374, 523 S.W.3d 913; *Dunn v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 34, 480 S.W.3d 186. 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); *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. *Bunch*, *supra*. The purpose of terminating a parent's rights to her children is to provide permanency in the child's life when returning the juvenile to the family home is contrary to the child's health, safety, or welfare, and it appears that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective. Ark. Code Ann. § 9-27-341(a)(3).

A heavy burden is placed on a party seeking termination because termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. *Grant v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 636, 378 S.W.3d 227. We will not reverse a termination order unless the trial 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). 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. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

In *Conn v. Arkansas Department of Human Services*, 79 Ark. App. 195, 85 S.W.3d 558 (2002), this court reversed an order terminating parental rights that was based solely on the fact that parental rights to another child of the parties' had previously been terminated. At the TPR hearing in *Conn*, no testimony was taken. *Conn,* 79 Ark. App. at 197, 85 S.W.3d at 559. We held that in addition to a finding that parental rights had been terminated as to a sibling, there must be clear and convincing evidence that TPR is in the best interest of the juvenile. *Id*. at 198, 85 S.W.3d at 560; *see also* Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii).

Arkansas Code Annotated section 9-27-341 provides in pertinent part as follows:

> (b)(3)(B)(ix)*(a)* The parent is found by a court of competent jurisdiction, including the juvenile division of the circuit court, to:
>
> . . . .
>
> *(3)(A)* Have subjected any juvenile to aggravated circumstances.
>
> *(B)* "Aggravated circumstances" means:
>
> *(i)* A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;
>
> *(ii)* A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or
>
> *(iii*) A child or a sibling has been neglected or abused to the extent that the abuse or neglect could endanger the life of the child;
>
> *(4)* Have had his or her parental rights involuntarily terminated as to a child[.]

III. *Argument*

Taylor argues that the trial court erred in basing the TPR order solely on the existence of a prior TPR. First, she argues that the remaining grounds, after the trial court

had dismissed all others, were that other factors or issues arose subsequent to the filing of the original petition and that aggravated circumstances existed. Taylor contends that the subsequent factor referred to her lacking the "mental capacity to parent the children safely." Taylor claims that the aggravated circumstances were that her parental rights were terminated as to a sibling of A.T.2 and J.T.

Taylor argues that there was no testimony at the hearing regarding her mental instability. She contends that because her mental instability was a factor in the prior termination, it cannot have arisen subsequent to the filing of the petition. She also claims that even if it had arisen subsequent to the date of the petition, DHS conceded that Taylor had done everything asked of her, and thus the requisite finding that the parent manifest the incapacity or indifference to remedy the subsequent factor is clearly erroneous.

Taylor also argues that DHS conceded that it was relying on the record to show her instability and inability to parent. DHS relied on the "inadequate supervision" finding in the prior TPR order. Taylor contends that there was no evidence of inadequate supervision as to J.T. or A.T.2 in the current petition, and inadequate supervision was not the basis of any removal or findings during the pendency of the DHS case involving J.T. Taylor maintains that the evidence at the hearing was that all of the issues had been resolved, save for the mental-health issues, which still existed but were being appropriately treated. Therefore, she argues that the trial court did not consider her current situation, which demonstrated that the concerns raised in the first TPR order were no longer at issue.

Taylor claims that her case is similar to *Conn*, *supra*, in which no evidence was presented at the termination hearing, much less evidence to support that termination was in

the child's best interest, and the trial court relied solely on a prior involuntary termination. *Conn*, 79 Ark. App. at 198, 85 S.W.3d at 560. Taylor argues that the evidence presented at the hearing was that she had done everything asked of her regarding her case plan and mental-health treatment. She argues that DHS presented no proof that her mental instability was not corrected.

DHS and the ad litem jointly argue that the TPR order should be affirmed, and we agree. Clear and convincing evidence supports that the trial court previously terminated Taylor's parental rights to A.T.1. *See Taylor*, *supra*; Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(4)*. Even though only one ground is needed to affirm, clear and convincing evidence also supports that the trial court's prior finding of aggravated circumstances in its no-reunification-services order also supports the aggravated-circumstances ground. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i)*. In that order, which Taylor did not appeal, there is a finding that there was little likelihood that services would result in successful reunification due to the history and length of the case. The trial court did not rely on either the other-factors or subsequent-factors ground, so Taylor's argument is inconsequential and overlooks the adjudication order finding J.T. dependent-neglected due to environmental neglect and inadequate supervision due to Taylor's mental state.

DHS and the ad litem distinguish *Conn*, *supra*. They argue that the court in *Conn* found that where there was clear and convincing evidence that appellants' parental rights had been involuntarily terminated as to a sibling, grounds were established. Further, in *Conn*, no testimony was taken at the hearing; but in the instant case, the caseworker and

others testified credibly regarding adoptability and circumstances creating a risk of potential harm to the children.

In the instant case, clear and convincing evidence supports the best-interest finding because the same evidence that supports the aggravated-circumstances ground also supports the potential-harm prong of the trial court's best-interest finding. *Miller v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 396, 525 S.W.3d 48. The trial court recited previous orders reflecting findings of borderline intellectual functioning, PTSD, and major depression with psychotic features. The testimony indicated that Taylor's housing and income were not stable. Her trailer was not set up for children at the time of the final hearing, and her income did not cover all of her expenses. These factors may be considered when determining potential harm, which is not a ground but rather an element in the best-interest analysis. *Barnes v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 618, 508 S.W.3d 917. Finally, throughout the case, Taylor never appealed any finding that it would be contrary to the children's welfare to be placed in her custody because of her circumstances. Therefore, these findings are conclusively established for purposes of appeal. *Contreras v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 604, 474 S.W.3d 510.

Affirmed.

GRUBER, C.J., and ABRAMSON, J., agree.

Lisa-Marie Norris, for appellant.

Mary Goff, Office of Chief Counsel, for appellee.

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