

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-278

GEORGE BYERS,
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES,
APPELLEE

Opinion Delivered September 9, 2009

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. J-07-646-3]

HONORABLE STACEY
ZIMMERMAN, JUDGE

AFFIRMED

KAREN R. BAKER, Judge

George Byers appeals from an order terminating his parental rights to his daughter, A.B., who was born on July 6, 2006. We affirm the circuit court's decision.

The child's mother abandoned her with Byers. DHS placed a seventy-two-hour hold on the baby girl on June 7, 2007, after a daycare worker called the hotline. A week earlier, the daycare's owner had taken photographs of the child, which showed an adult-sized hand print on her face. The daycare worker stated that the child also had a severe diaper rash, with bleeding and scarring, which had been an on-going problem and reported that Byers often brought A.B. to the daycare wearing the same diaper and clothing that she had worn the evening before. In addition, the worker noted that Byers's and the child's clothing often smelled of marijuana. In the affidavit supporting the petition for emergency custody, the DHS worker said that, when she told Byers by telephone that she had placed a seventy-two-hour

hold on A.B., he became extremely abusive and threatening; she called the police department to be present when Byers arrived at the DHS office. After he arrived, he tested positive for THC and admitted that he had pending charges for possession of a controlled substance (marijuana) and paraphernalia. The circuit court entered an order of emergency custody on June 11, 2007.

Byers appeared at the probable-cause hearing on June 15, 2007. The court found probable cause and ordered DHS to refer Byers for counseling. The adjudication hearing was held on July 18, 2007. The circuit court found the child dependent-neglected as a result of abuse, neglect, parental unfitness, and abandonment by the mother. It noted that, since the probable-cause hearing, Byers had used marijuana, had moved three times, and had made statements that he did not want to continue living. The court set the goal as reunification and gave Byers supervised visitation. It ordered him to have a psychological evaluation and to follow the recommendations; to have a drug-and-alcohol assessment and follow the recommendations; to submit to random drug screens twice a month; to attend AA/NA meetings at least twice per week and provide documentation; to complete twelve hours of parenting classes; to obtain and maintain stable housing and employment; to maintain a clean, safe home for himself and the child; and to take appropriate steps to resolve his paternity.

Dr. Martin Faitak, a psychologist, evaluated Byers on August 29, 2007. He reported that Byers had admitted that, when he needed some sleep, he had slapped A.B. because of her continuous crying and wanting to be held. The psychologist reported Byers's employment, relationship, criminal, and drug-use history in some detail, and concluded that Byers met the

criteria for depression, intermittent explosive disorder, and anti-social personality disorder. He said that Byers was weak in his ability to connect, to provide for the physical needs of his child, to socialize, or to deal with problems. He stated that Byers's judgment was suspect, as evidenced by his drug use and his difficulty in maintaining employment and relationships. He recommended that Byers be seen by a psychiatrist to determine if medication would be helpful in stabilizing his mood and improving his thinking. The psychologist stated that, although Byers might be able to visit his daughter, he did not demonstrate enough self-control or knowledge to parent an infant.

A review hearing was held on October 24, 2007. Byers's psychological evaluation was admitted into evidence. The court continued the goal of reunification. It noted that Byers had not established paternity and, although he had made progress, did not yet have suitable housing and had not yet seen a psychiatrist for a medication evaluation. The court directed DHS to help Byers see a psychiatrist and ordered Byers to follow all recommendations.

The DNA test confirmed Byers as A.B.'s father. Another review hearing was held on December 12, 2007. The report proving Byers's paternity was admitted into evidence, as was his certificate of having completed nine hours of parenting classes. The court continued reunification as the goal and continued the child's custody with DHS because Byers had not completed the case plan, was not yet stable, and had not obtained psychiatric services. The court ordered Byers to refrain from using illegal drugs and alcohol, to submit to random drugs screens, to complete twelve hours of parenting classes, and to obtain and maintain stable housing and employment. The court found that Byers had a job but had not finished all of

the parenting classes or seen a psychiatrist. The court ordered him to follow the psychiatrist's recommendations and to continue seeing his counselor. Byers saw a psychiatrist, Dr. Stephen Dollins, for an initial evaluation on March 25, 2008. He diagnosed Byers with intermittent explosive disorder and antisocial personality disorder, and recommended that he start taking a mood stabilizer.

A permanency-planning hearing was held on April 9, 2008. Byers's psychiatric evaluation by Dr. Dollins was admitted into evidence. The court continued reunification as the goal and stated that, although Byers had, for the most part, cooperated with DHS, he did not have stable housing, had not completed parenting classes, and was not taking his medication. The court also noted that Byers had been arrested the day before.

A fifteen-month-permanency-planning hearing was held on August 13, 2008, when the court changed the goal to adoption and termination of parental rights. The court found that Byers had not maintained stable housing or employment, completed parenting classes, attended all scheduled visitation, demonstrated that he could properly meet A.B.'s needs, called his DHS caseworker as ordered, or taken his medication consistently, and that he had quit going to counseling and failed drug tests.

On September 5, 2008, DHS filed a petition for termination of both parents' parental rights. A.B.'s mother, Christina Barnes, formally consented to termination. CASA filed a report by Ray Edrington, who reported that, for the past week, Byers had been living at the Ranch-O-Tel Motel in Rogers, which was not appropriate housing for A.B. He stated that Byers had made little progress since the last hearing and had moved into the motel after a

disagreement with his girlfriend.

At the termination hearing held on November 21, 2008, Byers appeared with his attorney. Steve Hodge, a DHS family service worker; Barnes; Byers; Audra Gremes, Byers's girlfriend; and Ray Edrington testified. Hodge and the attorney ad litem recommended that Byers's parental rights be terminated. In terminating Byers's parental rights, the trial court found that he did not continue to see a psychiatrist; did not take his medication as prescribed (although his mental-health issues were ongoing); did not have stable housing (in that his relationships with live-in girlfriends were on-and-off); and did not have stable employment. The court found that the problems that caused A.B. to be removed from Byers's care had not been corrected, and that Byers has untreated intermittent explosive disorder and antisocial tendencies, which would place A.B. in harm's way. Byers filed a timely notice of appeal.

On appeal, Byers does not dispute A.B.'s adoptability. Instead, he argues that the circuit court erred in finding that A.B. would be subject to potential harm if returned to him and in finding that grounds existed to terminate his parental rights. Because the same evidence supports the trial court's findings on both issues, we will address them together.

A heavy burden is placed upon a party seeking to terminate the parental relationship, and the facts warranting termination must be proven by clear and convincing evidence. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008). The question this court must answer is whether the trial court clearly erred in finding that there was clear and convincing evidence of facts warranting the termination of parental rights. *Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008). Termination of

parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Ratliff v. Ark. Dep't of Human Servs.*, 104 Ark. App. 355, 292 S.W.3d 870 (2009) (citing *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007)). However, courts are not to enforce parental rights to the detriment or destruction of the health and well-being of a child. *Id.* Pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(A) (Repl. 2008), an order terminating parental rights must be based on a finding that termination is in the child's best interest, which includes consideration of the likelihood that the juvenile will be adopted and the potential harm caused by returning custody of the child to the parents. The harm referred to in the termination statute is "potential" harm; the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008). In addition, the proof must establish at least one of several statutory grounds. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2008).

The trial court found that A.B. had been adjudicated by the court to be dependent-neglected and had continued out of Byers's custody for twelve months and, despite a meaningful effort by the department to rehabilitate Byers and correct the conditions that caused removal, those conditions had not been remedied. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). There is no dispute that A.B. was in foster care for seventeen months.

Additionally, although Byers had partially complied with the case plan and court orders, there was no evidence that he had corrected the underlying problems that led to A.B.'s abuse and neglect. A parent's rights may be terminated even though he or she is in partial

compliance with the case plan. *Chase v. Arkansas Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Byers specifically argues that he functions better without his mood-stabilizing medication, and asks us to view a girlfriend's willingness to let him babysit her young daughters as evidence of his new ability to control his temper. He also asserts that his housing was stable because he had lived with this woman in a clean, well-organized apartment, with adequate food, for six months and that, each time he moved or changed jobs during this proceeding, he did so to improve his chances of being reunited with A.B. Despite these assertions, the evidence supports the trial court's findings that returning A.B. to Byers held potential harm.

Byers failed to heed the advice of mental health professionals concerning his medication, leaving his mental illness untreated. His work history during this proceeding was characterized by frequent job changes, both voluntary and involuntary, with a total of eight different jobs that did not improve his job situation. We hold the trial court did not err in finding that A.B. would be subject to potential harm if returned to Byers's custody and that grounds existed to terminate his parental rights.

Affirmed.

HENRY and KINARD, JJ., agree.