

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CA09-08

REBECCA DOMINGUEZ

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** May 20, 2009

APPEAL FROM THE BRADLEY  
COUNTY CIRCUIT COURT  
[NO. JV-07-9-5]

HONORABLE TERESA ANN  
FRENCH, JUDGE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

Appellant Rebecca Dominguez appeals from the order of the Bradley County Circuit Court that terminated her parental rights to her daughter, A.D. The circuit court denied termination as to Dominguez's other four children, finding that termination was not in their best interests. Dominguez challenges the sufficiency of the evidence to support the termination of her parental rights. The crux of her arguments is that grounds to support termination were lacking, especially in light of the circuit court's decision not to terminate appellant's rights to her remaining children. We affirm.

The Department of Human Services opened a protective services case in June 2006 because of environmental and medical neglect. At that time, the family consisted of Dominguez and her four children, A.H.; S.H.1; S.H.2; and D.H.; as well as Dominguez's three grandchildren by S.H.1. A.D. was born on December 7, 2006. DHS filed a petition for emergency custody in February 2007, alleging that it had received a report from the state

police that S.H.2, who was twelve years old, was pregnant, and the father was a nineteen-year-old man living in the home. The circuit court granted emergency custody to DHS on February 13, 2007. The court later found probable cause to believe that the children were dependent-neglected.

The court adjudicated the children dependent-neglected because Dominguez had allowed an adult male to move into her home and have sexual intercourse with S.H.2 and because Dominguez failed to protect S.H.1 by allowing her to become pregnant by an adult at the age of twelve. We affirmed the adjudication order in an unpublished opinion. *Dominguez v. Ark. Dep't of Human Servs.*, No. CA07-732 (Ark. App. Nov. 28, 2007).

In review hearings throughout 2007 and into early 2008, the circuit court found that Dominguez had partially complied with various parts of the case plan and the court's orders. The court changed the goal from reunification to termination of Dominguez's parental rights at a fifteen-month review hearing held on May 14, 2008. The court found that the children's health and safety could not be protected if they were returned to their mother because, even though Dominguez had partially complied with the case plan, she had not finished budgeting or obtained her GED, and she lacked transportation.

DHS filed its petition for termination of Dominguez's rights as to all five children. DHS alleged two grounds for termination, including that the children had been adjudicated dependent-neglected and had remained out of Dominguez's home for more than twelve months and that, despite meaningful effort by the department to correct the conditions that had caused removal, those conditions had not been remedied.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* 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. *Id.* 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. *Id.* A heavy burden is placed on the party seeking termination. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). Nevertheless, parental rights will not be enforced to the detriment of the health and well-being of the child. *Id.*

The termination hearing was held on August 11, 2008. Frieda Hicks, the DHS case worker, testified as to the history of the case and the services DHS provided to Dominguez. She explained that Dominguez exercised poor judgment during some of the visitation by allowing the children to use cell phones to call boyfriends and reading letters from boyfriends and prison inmates. According to Hicks, Dominguez was not making progress in counseling because she was blaming DHS for her problems. Hicks acknowledged that Dominguez had completed her GED and submitted a budget, although Hicks could not verify the income contained in the budget. Hicks described Dominguez as partially compliant with the requirement that she obtain housing because Dominguez's house was not large enough to

accommodate Dominguez's five children and five grandchildren. She noted other elements of noncompliance in that Dominguez was also not employed at times during the pendency of the case, did not submit proof of her income to DHS, and failed to consistently keep a clean house. Another concern was that Dominguez had allowed other persons, such as her boyfriend and her niece, to live in the home and was not forthcoming with information concerning the background of others living in the household. She also said that Dominguez did not disclose that S.H.1 was pregnant until after the children were removed.

Rebecca Dominguez testified that, although she was not presently employed, she had been employed providing home care for an individual from September 2007 until her patient's death in February 2008. She also detailed her compliance with the case plan's requirements such as budgeting, obtaining her GED, and attending counseling. Dominguez testified that she had lived in the same four-bedroom house for almost five years and had discussions with DHS as to whether the house was big enough for Dominguez, her five children, and her grandchildren.

On cross-examination, Dominguez explained that she found a larger house and was in the process of moving to Pine Bluff because jobs were more available there. Dominguez realized that she was going to need assistance to obtain the house and was going to get help from Pam Allbright.

Pam Allbright, a former foster mother to S.H.2, confirmed that she was assisting Dominguez in obtaining the house in Pine Bluff. She also said that she and her husband would also be living in the house and could help Dominguez with the children.

The trial court announced its decision on September 27, 2008. In reviewing the events of the case, the court found that Dominguez “had complied, basically” with the case plan. The court also found that the children had been out of the home for more than one year. However, the court concluded that it was not in the best interests of the older children – S.H.1, S.H.2 and D.H. – to terminate Dominguez’s parental rights.<sup>1</sup> The court found that the older children were attached to their mother, that they were progressing well in therapy, and that they could return home. The court found, on the other hand, that A.D., who was three months old when removed from her mother, was not attached to Dominguez and, therefore, it was in her best interest to terminate Dominguez’s rights. The court’s written order was entered on October 20, 2008. This appeal followed.

Dominguez first argues that the circuit court erred in that it terminated her parental rights without making the requisite finding that DHS had proven grounds for termination. We disagree. Although the circuit court’s findings could perhaps have been more clearly expressed, we believe that those findings were sufficient. In its ruling from the bench, the circuit court recounted the history of the case and noted Dominguez’s partial compliance with the case plan and court orders throughout the proceedings. The court also commented that it had questioned some of the judgment calls Dominguez had made. The court then continued:

[Dominguez] had complied, basically. She had learned a lot. She was progressing in counseling. She was working with the Department. There were

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<sup>1</sup>The oldest child, A.H., had already reached her majority by the time DHS filed its petition to terminate.

times that she didn't let them into the home. But [Dominguez] testified that it was because of the work schedule, and she was somewhere else, and that if they called her, she would have come to the home. So there were some back and forth issues. *I mean, certainly, we have all the requirements. The children hadn't even been in the home for a visit. They have been out of the home since the adjudication, which was 4/25/07. The termination hearing was well over a year later.*

(Emphasis added.) This ruling was incorporated by reference into the court's written order.

When viewed in context, we think the circuit court clearly found that the required grounds for termination were present because the department had established that the dependent-neglected child had continued to be out of Dominguez's custody for twelve months and, despite meaningful efforts by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a)* (Repl. 2008).

We also hold that the circuit court's finding is not clearly erroneous. It is undisputed that the children had been adjudicated dependent-neglected and had remained out of Dominguez's care for more than twelve months. The question becomes whether Dominguez had remedied the conditions that caused removal. Compliance with the case plan does not necessarily mean that the reasons for removal have been remedied. *See, e.g., Camarillo-Cox v. Arkansas Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). We have expressly held that partial compliance with the case plan will not bar termination of parental rights where, as here, the parent continues to make bad decisions concerning the children. *Chase v. Arkansas Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004). As we said in *Wright v. Arkansas Department of Human Services*, 83 Ark. App. 1, 115 S.W.3d 332 (2003):

Nor is completion of the case plan determinative. What matters is whether her completion of the case plan achieved the intended result of making her capable of caring for her child. Appellant's continued denial of personal responsibility demonstrates that she manifested indifference or the incapacity to remedy the subsequent issues and properly protect her child.

83 Ark. App. at 7, 115 S.W.3d at 335 (citations omitted). Contrary to Dominguez's argument, the circuit court did not find that she had remedied the conditions that led to removal, but instead simply remarked that she had made some progress toward that goal. Dominguez was unemployed and this was not the first time that she had delayed establishing a suitable home for her children and grandchildren. Indeed, the older children remained in foster care after the termination hearing until after Dominguez's new house in Pine Bluff could be determined to be adequate for the children and grandchildren, and until she could find employment.

This leads us to whether the termination of Dominguez's parental rights was in A.D.'s best interests. In passing, Dominguez appears to argue that the circuit court erred by distinguishing between the children in making its best-interests analysis. The circuit court was correct. As stated by the Florida Court of Appeals in *In re K.A.*, 880 So. 2d 705 (Fla. Ct. App. 2004):

It is worth emphasizing that in cases where the [State] seeks to terminate parental rights to numerous children, the trial court cannot treat the children as an amorphous group in which the best interests of one will meet the interests of all. Rather, the trial court must individually determine whether the termination of parental rights to each child is permitted by the statute, is the least restrictive means to protect that child, and is in that child's manifest best interests.

880 So. 2d at 710.

We hold that the circuit court did not clearly err in finding that termination was in A.D.'s best interest. A.D. was removed from her mother at the age of three months. She was approximately twenty-one months old at the time of the termination hearing, had resided apart from the other siblings, and had known only one home. It would take Dominguez many months to establish a bond with A.D. before A.D. could be allowed to reside in her home. This disruption and further delay cannot be said to be in A.D.'s best interests. *See* Ark. Code Ann. § 9-27-341(a)(3). Furthermore, A.D. had so far been spared the worst of the abuse suffered by her older siblings and was adoptable, giving her an opportunity to have a normal and happy life, an option no longer available to her older siblings because of their age and the consequences of the abuse they suffered. The older children were, sadly, sufficiently experienced with abuse that they could be found to be better able to protect themselves from it than an infant would be and, nearing the age of emancipation, might possibly benefit from maintaining their longstanding relationship with a mother they loved despite her many and manifest failures.

Affirmed.

HENRY, J., agrees.

MARSHALL, J., concurs.