

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-1409

LISA CURRAN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered April 22, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JN 2007-1278]

HONORABLE JOYCE WILLIAMS
WARREN, JUDGE

AFFIRMED

LARRY VAUGHT, Chief Judge

Lisa Curran has appealed from the termination of her parental rights to her daughter, B.C., who was born on October 22, 1998.¹ Curran challenges the sufficiency of the evidence to support termination and asks us to reverse and remand for further reunification services. We affirm the circuit court's decision.

In July 2007, B.C. was taken into custody on the basis of an affidavit alleging that she had been sexually abused by neighbors while living with her grandmother, Darlene Smith, who was selling methadone. The affidavit also stated that Curran was "in and out" of the home and admitted using drugs. A probable-cause hearing was held on July 20, 2007, and the parties stipulated to probable cause. The court ordered DHS to assist Curran in seeking

¹The child's putative father's parental rights were also terminated. He is not part of this appeal.

inpatient drug treatment. An adjudication hearing was held on August 30, 2007. The court found B.C. dependent-neglected as a result of sexual abuse and parental unfitness (drug abuse) based upon the parties' stipulation and the testimony at the hearing. The court made the following findings:

B.C. was sexually molested by a man in Apt. 5D named Jimmy Bodiford. Ms. Curran states she does not really believe that the abuse occurred. Ms. Curran has also admitted to a drug abuse problem and requested help with mental health issues. She admitted failure to supervise and protect her daughter resulting from her drug usage.

The court set the case's goal as reunification and directed Curran to seek inpatient drug treatment "forthwith"; to have a psychological evaluation; to participate in individual and family counseling; to take medications as prescribed; to refrain from using illegal drugs or alcohol, or abusing prescription drugs; to submit to random drug screens; to attend AA/NA meetings at least five times per week and provide documentation; to complete parenting classes; to obtain and maintain stable housing and employment; to maintain a clean, safe home for herself and the child; to attend the child's medical appointments; and to demonstrate the ability to protect the child and keep her safe. It granted supervised visitation with Curran and Darlene Smith once a week.

B.C. underwent a psychiatric assessment at UAMS on October 11, 2007. She was diagnosed as having major depressive disorder; attention deficit disorder; anxiety disorder; developmental language disorder; learning disorder; disruptive disorder; and mild mental retardation. She was also diagnosed as being a victim of sexual abuse and neglect.

A review hearing was held on January 10, 2008. The court found that Curran had not complied with the case plan or court orders and was "in no position to take care of herself."

It made the following findings:

Mother has done almost nothing to comply with the requirements to put herself in a position to have the child returned to her. She has not kept [in] contact with DHS so that DHS can do the random drug screens, talk to mother and convey information about B.C.'s medical appointments, etc. Mother has only been to visit B.C. five times since last hearing and that is violative of the court order that mother visit weekly on supervised basis. Mother is still using drugs. There is no credible evidence that she is participating in mental health therapy or is compliant with any medication management and or regimen. She has no stable home and shows no interest in being compliant with requirements of court and DHS.

...

Mother is not credible. She is blaming DHS for the lack of progress she has made. She has a lot of work to do in a short time period and she shows no genuine (or even false) efforts towards complying with the orders of the court or the case plan.

The court ordered Curran to "do all in her power" to comply with the case plan and court orders.

Curran was jailed on January 16, 2008, and bailed out on March 1, 2008. She went back to jail on March 16, 2008, and was transferred to prison the next month on forgery, theft, and drug charges.

The court held a permanency-planning hearing on May 29, 2008, which Curran attended with her attorney. In the resulting order, the court changed the case's goal to adoption and stated that Curran had failed to comply with the case plan and court orders and had made no progress towards alleviating or mitigating the causes of the child's removal from the home.

DHS filed a petition for termination of Curran's parental rights on the grounds of the child's being out of Curran's custody for twelve months with the conditions that caused removal not being remedied; Curran's failure to maintain meaningful contact with the child; and "other factors" that arose subsequent to the original petition.

The termination hearing, which Curran attended with her attorney, was held on September 10, 2008. In the order terminating Curran's parental rights, the court made the following findings with regard to the "twelve months" ground:

Mother failed to comply with the court orders, case plan, and services offered by DHS. Specifically, there is little that mother has done. She has not visited her daughter as required. She is currently incarcerated and cannot provide an appropriate home and is not an appropriate parent for B.C. Mother has not kept contact with DHS, not had her psychological evaluation, not been in residential drug treatment, not been to AA/NA meetings. She does not have a home. She has not been to parenting classes and has not had a mental health assessment.

As for the "other factors" ground, the court stated:

[T]he dependency/neglect petition was filed on July 13, 2007. After the filing of that petition, these factors/issues arose which demonstrate that return of the juvenile to the custody of the mother is contrary to the juvenile's health, safety or welfare. Mother is currently incarcerated and cannot provide an appropriate home for B.C. DHS offered appropriate family services. Despite the offer of such services, the mother has shown the incapacity to remedy the subsequent factors/issues or rehabilitate the circumstances that prevent return of the juvenile to the custody of the mother.

The court explained that the time for Curran to remedy her problems had passed, and stated that, for the first six months of this proceeding, she had failed to comply with the case plan or court orders. The court noted that, during those six months, Curran had not taken advantage of the reunification services that DHS had offered her; after she went to prison, she

could not do so. The court concluded that B.C. could not wait any longer for a safe, loving, permanent home with a parent who could meet her needs.

On appeal, Curran challenges the sufficiency of the evidence supporting the trial court's findings that termination was in B.C.'s best interest; that B.C. would be subject to potential harm if returned to Curran; and that she failed to rehabilitate the home and correct the conditions that caused removal. Curran does not dispute that the child is adoptable, or that, for the first six months of this case, she failed to comply with the case plan or court orders, and was addicted to drugs and alcohol. Instead, she asks us to hold that her actions since she was incarcerated warrant reversing the termination order and directing that she be given more time to demonstrate her parental fitness. Curran testified that, since she was incarcerated, she had been sober for six months; had attended two parenting classes; had participated in daily drug-treatment classes; had taken GED-preparation classes; had taken medication for depression; had attended counseling; and had made employment plans for her release, which could be as early as January 25, 2009. We find her argument without merit.

Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Pursuant to Arkansas Code Annotated § 9-27-341(b)(3) (Repl. 2008), the facts warranting termination of parental rights must be proven by clear and convincing evidence. In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant

facts were established by clear and convincing evidence. *Id.* Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction regarding the allegation sought to be established. *Id.* Furthermore, we will defer to the trial court's evaluation of the credibility of the witnesses. *Id.*

Arkansas Code Annotated § 9-27-341(b) provides in relevant part:

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

....

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

The termination statute does not require DHS to prove by clear and convincing evidence that the child is adoptable and that there would be potential harm in returning her to the parent; rather, the court must consider those factors. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007). After consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. See *Jones-Lee v. Ark. Dep't of Human Servs.*, ___ Ark. App. ___, ___ S.W.3d ___ (Mar. 4, 2009); *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, ___ S.W.3d ___ (2008); *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Additionally, 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.*, *supra*. The harm analysis is to be conducted in broad terms. *Id.*

The same facts are relevant to both the “best interest” and grounds issues. Curran’s testimony gave the trial court no reason to believe that she could, upon her release, give B.C. an appropriate home or keep her out of harm’s way. She admits that she did not even attempt to do anything required of her between July 2007, when the emergency petition was filed, and when she was jailed in January 2008. She stayed in jail until March 1, 2008, and went back to jail on March 16, 2008. On April 21, 2008, she was sent to prison for forgery, theft by receiving, and obtaining drugs by fraud. While she has had the opportunity to begin to address her problems while in prison, one could hardly say that her actions were totally voluntary. Curran admitted that she drank alcohol as recently as March 15, 2008, while she

was out on bail, and that the following time period was the longest that she had ever been sober. Additionally, she had no home or job awaiting her upon her anticipated release date of January 25, 2009, and she would be on parole until December 2009.

Danyetta Pride, the family-service worker, testified that Curran had made no progress and recommended that her parental rights be terminated. She said that B.C. is a special-needs child, who needs permanency and stability, with a parent who is able to meet her needs, in a safe and stable home. She stated that B.C. had told her therapist on several occasions that she wanted to stay with her foster mother. The adoption specialist testified that the foster mother was highly interested in adopting B.C. and that eight families would be interested in a child with her characteristics.

Sheila Witherington, B.C.'s foster mother, testified that B.C. had been in her care for over a year and had made progress. Ms. Witherington stated that B.C. was anxious about the future and was worried that she would be sent home. She also said that, before and after every weekly visitation with her grandmother, B.C. had episodes of anxiety and depression. She testified that, if B.C.'s grandmother showed up, B.C. would be glad, but would still act up afterward; if she did not show up, B.C. would express a "whole lot of anger."

Relying on the dissenting opinion in *Latham v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 25, 256 S.W.3d 543 (2007), Curran argues that the trial court erred in finding that "other factors" had arisen since the original petition was filed, because there was no evidence that the crimes of which she was convicted had occurred since the filing of the original petition. That case does not support Curran's position. The appellant in *Latham* was

taken into custody before the original petition was filed, and he was released before the termination hearing. Curran, however, was jailed, and then incarcerated, after the original petition was filed, and was still in prison when the termination hearing was held.

It is evident that, more than anything, B.C. needs a safe and stable home that she knows will be hers permanently. Permanency is the object of the termination procedure. *Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). In light of these facts, we have no hesitation in holding that the trial court reached the right decision in terminating Curran's parental rights.

Affirmed.

MARSHALL and BAKER, JJ., agree.