

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-958

CHARLES BANKS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered January 20, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT,
[NO. J-08-159-3]

HONORABLE STACEY ZIMMERMAN,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Charles Banks appeals from an order terminating his parental rights in A.B. (born February 23, 2008). Banks argues that the evidence was insufficient to support the termination decision. We affirm.

On August 22, 2007, A.B.'s mother, Ann Marie Bevan, had her parental rights terminated in three other children. Bevan had an extensive history of drug abuse and was later incarcerated in the Washington County jail. While there, authorities transported her to a hospital, where she gave birth to A.B. The Arkansas Department of Human Services ("DHS") immediately placed a seventy-two-hour hold on A.B. and sought emergency custody. Bevan identified appellant Charles Banks as the baby's father. At the time, Banks was married to another woman and living in West Virginia.

The circuit court granted emergency custody of A.B. to DHS on February 26, 2008. At a probable-cause hearing on March 5, 2008, Banks appeared by telephone. The court found probable cause for A.B.'s removal and ordered Banks to obtain DNA testing.

On April 17, 2008, the court adjudicated A.B. dependent-neglected. Banks appeared at the hearing by telephone, although he had not yet established paternity. The court found that Bevan had given birth to six children, none of whom were in her custody; that Bevan's parental rights to three of her children had been involuntarily terminated; and that Bevan remained incarcerated. The court continued A.B. in DHS custody and established a goal of reunification. The court ordered Banks, as the putative father, to cooperate with and maintain contact with DHS; to keep DHS informed of his address; to refrain from using illegal drugs or alcohol; to complete twelve hours of parenting classes; to obtain and maintain stable housing and employment; to maintain a clean, safe home; and to resolve the issue of paternity. The court also ordered DHS to conduct an Interstate Compact on the Placement of Children ("ICPC") home study on Banks.

On May 22, 2008, the court terminated reunification services as to Bevan based on her drug use, incarceration, and history with her other children. The court noted that Bevan planned to parole out of prison "hopefully in 9 months, to Charles Banks."

Banks established paternity of A.B. on September 26, 2008. In a subsequent review order the court found that Banks's ICPC home study was denied; that Banks had a history of drug use; that Banks had seen A.B. only once since her birth; that Banks was unstable; that he had helped

Bevan “abscond from the state” while she was on probation; that he still had a relationship with Bevan; that he recently “had 3 warrants in 3 different states”; and that he had three substantiated cases of spousal abuse in Kentucky. The court nevertheless maintained a goal of reunification and allowed Banks one hour per week of supervised visitation with A.B. The court re-stated its previous directives to Banks and additionally ordered him to submit to random drug screens; to follow court orders and the case plan; to pay child support of \$26 per week; to provide proof of employment to DHS; and to contact his DHS caseworker once a week. The court emphasized this last requirement by underlining it and providing the caseworker’s telephone number.

On January 9, 2009, the court entered a permanency-planning order that changed the goal of the case to termination of Banks’s parental rights. The court observed that Banks had not provided proof of his income or paid child support as ordered; that he had no stable employment or housing; that he still had legal issues and warrants from different states; and that he apparently had not ended his relationship with Bevan. The court ordered Banks to complete the twelve hours of parenting classes as previously ordered; to pay child support as previously ordered; to resolve his legal issues; to participate in individual counseling and provide proof of attendance; and to call his DHS caseworker once a week, which the court again emphasized by underlining and providing the caseworker’s telephone number.

Thereafter, DHS filed a petition to terminate Banks’s parental rights. At the termination hearing, DHS caseworker Steven Hodge testified that Banks had not contacted him weekly as

ordered. Hodge also stated that, while Banks had provided documentation that he had contracting jobs and was managing some rental properties, Banks had not produced actual numbers showing his income. As a result, Hodge said, he could not determine whether Banks had sufficient income to support A.B. Hodge also said that Banks told him that his business was often “in the red” and that he spent a lot of money on the business. Hodge testified that Banks had paid \$130 toward the court-ordered child support but that Banks was currently \$780 in arrears. Hodge said that he had no knowledge that Banks had settled his legal issues in Kentucky, Ohio, and Arkansas. According to Hodge’s court report, Banks said that the legal issues still were not resolved.

Hodge testified further that DHS had recently denied a home study on Banks’s mother, with whom Banks had apparently lived at some point. Hodge also said that Banks had provided proof of attending only one counseling session; that Banks had visited A.B. only six times since her birth; and that the two visits Hodge observed did not go well. According to Hodge, A.B. cried during the majority of those visits and had “no bond” with Banks. Hodge testified that A.B. was “extremely adoptable” and that there were families who had shown an interest in adopting her.

Banks, who appeared by telephone due to car trouble, testified that his income was “very open” and that he received approximately \$1300 per month from his work as a property manager, not counting his income as a maintenance worker. He stated that he had already received over \$4500 in income for the current month. However, he explained that the money

was not all his and that some of it went back into his business for expenses. He also said that he used some of the money to pay off a vehicle and to help his mother. Banks told the court that he had not provided DHS with written documentation of his earnings because he was “struggling with my paperwork.” Banks denied having any criminal warrant problems and said that he possessed documentation that the warrants had been resolved. However, he produced no documentation at the hearing. Banks also stated that he had attended five counseling sessions, although he did not provide proof of attendance.

DHS introduced a CASA report regarding A.B.’s foster care. The report stated that A.B. was doing well in her foster placement and that she had bonded with her foster parents and their daughter.

Following the hearing, the circuit court terminated Banks’s parental rights in A.B. The court found that DHS had an appropriate permanency plan of adoption and that termination was in A.B.’s best interest, considering her likelihood of adoption and the potential harm in returning her to Banks. The court’s order stated grounds for termination, including that the child had been out of the parent’s home for twelve months and the parent had failed to provide significant material support for or to maintain meaningful contact with the child; and that other factors or issues arose subsequent to the filing of the original dependency-neglect petition that demonstrated returning the child to the parent was contrary to her health, safety, and welfare and that, despite DHS’s offer of appropriate family services, the parent manifested an incapacity or indifference to remedying the subsequent issues or factors. *See* Ark. Code Ann. § 9-27-

341(b)(3)(B)(ii)(a) and (vii)(a) (Supp. 2009). Banks now appeals from the termination order, arguing that the evidence was insufficient to support the court's findings of potential harm and grounds for termination.

Our termination statute requires clear and convincing proof that termination is in the child's best interest, plus clear and convincing proof of at least one of the enumerated grounds for termination. Ark. Code Ann. § 9-27-341(b)(3)(A) and (B) (Supp. 2009). We will not reverse the circuit court's findings unless they are clearly erroneous. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008). 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.* We review termination orders de novo. *Id.*

Banks argues first that there was no evidence of potential harm in placing A.B. in his custody. In conducting the best-interest analysis, a circuit court must consider the potential harm in returning the child to the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(ii).¹ This potential-harm inquiry is but one of many factors that a court may consider in deciding the best-interest question, and the focus is on the "potential" harm to the health and safety of a child that might result from continued contact with the parent. *See Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722. The court is not required to find that actual harm would result or

¹ The court must also consider the likelihood that the child will be adopted. Ark. Code Ann. § 9-27-341(b)(3)(A)(i). Banks does not contest the circuit court's consideration of this factor.

to affirmatively identify a potential harm. *Id.* Furthermore, the potential-harm analysis should be conducted in broad terms. *Id.*

The circuit court in this case did not clearly err in considering the potential-harm factor or in finding that termination was in A.B.'s best interest. Banks lacked stable housing, as evidenced by the fact that the ICPC home studies on his and his mother's residences were denied. Further, Banks provided no proof of a stable income despite several court orders to do so. He also had paid only a fraction of the court-ordered \$26-per-week child support and had amassed a significant arrearage on this modest amount, despite his claim of having substantial earnings. Banks's lack of stable housing and income and his failure to pay child support as ordered are contrary to A.B.'s best interest. See *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005); *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). Moreover, the circuit court may well have concluded that Banks's history of drug use and violence and his possible failure to sever ties with the dangerously unstable Bevan constituted a potential harm in placing A.B. in his custody. For these reasons, we find no reversible error on this point.

Banks argues next that there was insufficient evidence of grounds for termination. We disagree. Banks's failure to pay court-ordered child support, despite the apparent means to do so, constitutes a ground for termination. Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a). Additionally, Banks's failure to comply with court orders, in particular the court's repeated directions that he maintain weekly contact with DHS and provide proof of income, demonstrate that factors arose

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during the case that evidenced his indifference or incapacity to rehabilitate his circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). Banks's inability to acquire approved housing, his continued association with Bevan well into the case, and his lack of proof of counseling attendance, also constitute evidence of this ground.

Based on the foregoing, we affirm the termination order.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.