

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1257

CEKITA MASON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES and
MINOR CHILDREN

APPELLEES

Opinion Delivered March 17, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. JJN2008-1062]

HONORABLE WILEY A. BRANTON,
JR., JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Cekita Mason brings this appeal from the order of the Pulaski County Circuit Court terminating her parental rights to her children, S.S. and M.M. Mason alleges that there was insufficient evidence to support the circuit court's ruling, both as to grounds for termination and as to the termination being in the children's best interest. She also claims that the circuit court relied on factors that were outside the scope of the statutory grounds for termination of parental rights. We see no error and affirm.

The grounds for termination of parental rights must be proven by clear and convincing evidence. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 253, 240 S.W.3d 626, 630 (2006). When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the trial court's finding that the disputed fact was proved

by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* at 253, 240 S.W.3d at 630. 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. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). This court reviews termination of parental rights cases de novo. *Id.* at 212, 40 S.W.3d at 291.

Furthermore, if a court finds by clear and convincing evidence that at least one statutory ground was proven and that it is in the best interest of the children, the circuit court may terminate parental rights. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 1999); *Dinkins*, 344 Ark. at 216, 40 S.W.3d at 293. The most relevant statutory ground for termination—in relation to this case—is that a court of competent jurisdiction, including the juvenile division of circuit court, made a finding that the parent subjected any juvenile to aggravated circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A). Additionally, the circuit court shall consider the likelihood that the juvenile will be adopted if the termination petition is granted and the potential harm caused by continuing contact with the parents. Ark. Code Ann. § 9-27-341(b)(3)(A)(i)–(ii).

The facts leading to the termination of Mason's parental rights are as follows. On May 19, 2008, DHS was informed that fifteen-month-old S.S. was hospitalized with second-degree burns over twenty percent of her body. The burns were isolated to the child's upper-body area. Mason claimed that she left the child alone for ten minutes, sleeping on a floor mattress,

when S.S. suffered the injuries. Mason claimed that upon her return she found the child screaming, while standing in a bath tub full of hot water. The treating physicians, however, concluded that the injuries sustained by the child were inconsistent with the explanation provided by Mason. According to the hospital records, the burns were extraordinarily severe for tap water and there were no burns on the child's feet or legs. As a result, S.S. was taken into foster care, and appellant was arrested and charged with felony child endangerment.

As a result of the burns and Mason's inconsistent explanation of events, S.S. was adjudicated dependent-neglected, and Mason was ordered to undergo a psychological evaluation and follow any resulting treatment recommendations. The circuit court found that Mason was responsible for S.S.'s injuries and concluded that based on the severity of S.S.'s injury, any child in Mason's custody would be at risk of harm. As such, DHS was ordered to also take custody of Mason's child, M.M., who was born after S.S. entered foster care.

Mason's psychological evaluation was completed at the end of July 2008. The psychological examiner, an expert in forensic psychology, diagnosed Mason with neglect and physical abuse of a child. According to the examiner, Mason was "avoidant" and possessed the criteria for a physically abusive parent. The examiner also concluded that Mason was more actively involved with causing S.S.'s injuries than was indicated. Ultimately, the examination concluded with a directive that—in order for Mason to be safely reunited with her children—she must resolve her criminal charges and provide a realistic account of the incident that caused S.S.'s injuries.

Although Mason showed admirable progress in nearly every aspect of her rehabilitation, she failed to offer a credible explanation for the burns to S.S. The trial court repeatedly stressed that the juveniles could not be returned to the home until the matter of how and why S.S. was severely burned was addressed and resolved. The court noted that without a complete understanding of the problem it was impossible to tailor a rehabilitative plan. Despite the warnings and pleas, Mason failed to offer such an explanation, and her rights to her children were terminated on July 21, 2009, approximately fourteen months after S.S.'s removal and twelve months after M.M.'s removal.

Although this case is tragic, it is simple. The trial court found by clear and convincing evidence that Mason caused S.S.'s severe burns; that the children were dependent-neglected; that they have continued out of the custody of Mason for twelve months; and that despite a meaningful effort by DHS to rehabilitate her and correct the conditions that caused removal, those conditions had not been remedied by her. The court also found—based on the extreme severity of the burns inflicted on S.S.—that the children were subjected to aggravated circumstances and that it was improbable that the children could be returned to Mason within a reasonable period of time even with appropriate services being provided.

We further note that the trial court's order terminating Mason's parental rights was extremely thorough and clear. In fact, the court offered a precise and compelling explanation of its aggravated-circumstances finding:

The court digresses a moment to discuss its finding of aggravated circumstances

due to [S.S.'s] injuries. The photographs of the injuries [are] more extensive than the testimony of the ADHS caseworker portrays. [S.S.'s] injuries are to her upper extremities, upper body, and head, including the top of the head. One might infer when looking at the photographs that the injuries resulted from something coming down upon [S.S.] from above severely burning her, which is not consistent with the mother's explanations of how the injuries occurred . . . per the mother, she was the only person around the child and should be able to provide an explanation as to what happened to her child. If the mother intentionally burned the child, the case would scream for no reunification efforts being made by the court. On the other hand if the mother negligently supervised the child, then perhaps the court could work with the mother toward reunification. A third possibility is that a third party caused the injuries[,] which if that were the case, would be unacceptable as well. The bottom line is that both children have now been out of the home for over a year. Due to the mother's failure to provide an adequate explanation and the resulting uncertainty as to how the injuries were caused, the court cannot determine whether the problem [that] brought the children into foster care has been remedied. The mother has cooperated except for coming clean regarding her child's injuries.

As such, following our de novo review, we hold that each of the trial court's findings relating to Mason (and her children) was supported by clear and convincing evidence. Further, we hold that these findings compel a conclusion that the steep statutory threshold required to terminate Mason's parental rights has been met. As such, we affirm the trial court in all respects.

Affirmed.

KINARD and GRUBER, JJ., agree.