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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-1350

BRENDA ARMSTRONG APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** April 28, 2010 APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. JV-2008-211] HONORABLE GARY ARNOLD, JUDGE AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order terminating appellant's parental rights to two minor children. Appellant asserts that the evidence is insufficient to support termination. We affirm.

Although termination of parental rights is in derogation of the natural rights of the parents, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child: parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. *Trout v. Arkansas Department of Human Services*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Grounds for termination of parental rights must be proven by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2009). When the burden of proving a disputed fact in a bench trial is by "clear and convincing" evidence, the question we must answer on appeal is whether the trial court's finding that the disputed fact was proved by clear

and convincing evidence is clearly erroneous. *Beeson v. Arkansas Department of Human Services*, 37 Ark. App. 12, 823 S.W.2d 912 (1992). In doing so, we give great deference to the trial court's superior opportunity to observe the parties and judge the credibility of the witnesses. *Trout*, *supra*; *Beeson*, *supra*.

Our review of the record reveals that the removal of the children on November 5, 2008, resulted from a domestic disturbance that resulted in police being called to the residence. The police found a methamphetamine lab in the home; Edward Mitchell stated that he had cooked the methamphetamine two days previously. Both Mitchell and appellant were arrested; appellant resisted arrest to the point that police had to use a stun gun. The arrests left the children, ages three and four, without a caretaker, and they were taken into emergency custody by the Department of Human Services.

The children were adjudicated dependent-neglected on December 19, 2008, on grounds of inadequate supervision and neglect occasioned by appellant's chronic drug use and her exposure of the children to a hazardous environment, *i.e.*, the manufacture of methamphetamine in the home. Appellant refused to comply with the case plan and continued to test positive for drugs up to the time of the review hearing on April 17, 2009. She was found to have mostly complied with the case plan and orders of the court between April 17 and the permanency planning hearing on May 22, 2009. The case plan was then changed to termination of parental rights, with the trial court noting that appellant might be allowed additional time to complete the case plan if she had made significant progress by the

time of the termination hearing. However, after the August 21, 2009, termination hearing was concluded, the trial court found that appellant had not made sufficient progress to warrant affording her additional time to see if she would rehabilitate herself, and the court terminated her parental rights. In his order, the trial judge found as grounds for termination that (1) other issues arose after the filing of the original petition for dependency-neglect that demonstrate that return of the children to the custody of the parent is contrary to the children'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 rehabilitate the parent's circumstances that prevent return of the children to the custody of the parent; and (2) that there was little likelihood that further reunification services would result in reunification of the family. *See* Ark. Code Ann. §§ 9-27-341(b)(3)(B)(vii)*(a)* and 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i)* (Repl. 2009).

On appeal, appellant argues that the trial court erred in finding there was little likelihood that further services would result in reunification because she was making demonstrable progress at the time of the termination hearing. We do not agree. We think that the clearest indication supporting the trial court's determination that there was little likelihood of successful reunification was that, since the case commenced, she began living with and had become financially dependent on a married man, Mr. Winbury, who had physically abused her during the pendency of the case and who was also a drug user.

Appellant argues that she was not given sufficient time to show that Mr. Winbury

could rehabilitate himself. However, she misses the point. Appellant's relationship with Mr. Winbury shows that she continues to lack sound judgment in matters that would affect the children: instead of resolving her problems and deficiencies, she stood ready to subject the children to another adult with similar issues who himself required rehabilitation. This was completely voluntary on appellant's part and indicated that her focus remained on her own wants and desires rather than on the well-being of the children. On this record, we cannot say that the trial court clearly erred in finding that there was little likelihood of reunification within a reasonable amount of time.

Nor can we say that the trial court erred in finding that appellant had manifested indifference or incapacity to remedy the problems that required removal of her children from her home. Although her failure to obtain employment may not have been wholly the result of indifference, it is noteworthy that some of the things that appellant failed to do could have been accomplished quite simply, *e.g.*, completing her psychological examination and fixing the broken door and window in her residence. The trial court could properly infer from this record that appellant lacked the degree of motivation needed to achieve reunification in a time frame that would be reasonable from the children's perspective.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.