

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA10-93

LAVONDA WILLIAMS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered May 26, 2010

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. JV-08-188-5]

HONORABLE TERESA ANN
FRENCH, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Lavonda Williams appeals from an order of the Ashley County Circuit Court terminating her parental rights to her two-year-old child, T.W. On appeal, Williams argues that the trial court erred in terminating her parental rights on the grounds that 1) she was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of her child's life; and 2) she abandoned her child. We affirm.

On November 10, 2008, Arkansas Department of Human Services (ADHS) exerted a seventy-two-hour hold on T.W., who was then fourteen months old. At the time, T.W. was the subject of a protective-services case opened in September 2007 pursuant to a report from Arkansas Children's Hospital that he was a "failure to thrive baby" and needed special medical attention. ADHS had been alerted by the Ashley Medical Center Home Health Division when they were unable to locate T.W. to administer eye drops to keep her from going blind. It was

subsequently learned that Williams had left the child with at least three other individuals, and all three admitted that they were unaware of T.W.'s need for continuing medical treatment.

An agreed adjudication order was entered on January 22, 2009. In the order, Williams stipulated to crack-cocaine use and to being currently incarcerated. A case plan was approved with the goal of reunification. Williams was given supervised visitation with T.W.

On June 8, 2009, ADHS petitioned to terminate Williams's parental rights. It alleged that Williams had abandoned her child; that other factors or issues arose subsequent to the filing of the original petition that made the return of T.W. to her custody contrary to the juvenile's best interest; that Williams had manifested the incapacity or indifference to remedy these factors or issues; and she subjected the child to "aggravated circumstances." Further, it alleged that Williams had only visited the child at the adjudication hearing and had not participated in the case plan.

At the August 21, 2009 termination hearing, ADHS submitted a certified copy of Williams's judgment and commitment order, which reflected that on July 14, 2009, Williams pleaded guilty to two counts of possession of a controlled substance with intent to deliver, for which she received two concurrent ten-year sentences. ADHS caseworker Meisha Spencer testified that she was assigned to the case from the beginning and that Williams did not participate in the case plan because ADHS could never locate her. She further testified that the only time Williams visited T.W. was at the adjudication hearing. Spencer also testified that Williams's only contact with ADHS occurred when she called seeking in-patient drug

treatment, which ADHS was never able to provide. Spencer asserted that there had been “no cooperation” on the part of Williams with the case plan and that she “failed to work toward reunification.”

Williams did not dispute that she had made no effort to complete the case plan, and she confirmed that she was currently serving two concurrent ten-year sentences. Williams did, however, testify that if she made “good time,” she would be eligible to go to a 105-day boot camp in October. Her best-case scenario would be a release in January of 2010.

In its November 10, 2009 order granting ADHS’s petition, the trial court based its decision to terminate Williams’s parental rights on the grounds that she abandoned the child and was sentenced in a criminal proceeding for a period of time that would constitute a “substantial period” in the child’s life. It also found credible Spencer’s testimony that Williams did not cooperate with ADHS or “do anything she was ordered to do.” Williams now challenges the grounds for termination on appeal.

We first note our standard of review. The grounds for termination of parental rights must be proven by clear and convincing evidence. *M. T. v. Arkansas Dep’t of Human Servs.*, 58 Ark. App. 302, 305, 952 S.W.2d 177, 179 (1997). 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.* 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. Arkansas 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.*

We first consider Williams's challenge to the grounds based on her receiving a ten-year prison sentence. She notes that Arkansas Code Annotated section 9-27-341(b)(3)(B)(vii) (Repl. 2009) reflects the current amendment to the statute that requires only that she be incarcerated for a "substantial period of the juvenile's life" versus the previously codified definition of "substantial period" as "a sentence, not time actually served, of no less than fifteen years, none of which has been suspended." Ark. Code Ann. § 9-27-341(2)(H)(ii) (Repl. 1998). Citing *Fields v. Arkansas Department of Human Services*, 104 Ark. App. 37, 289 S.W.3d 134 (2008), she contends that it "suggests" that if a parent's release from prison can be predicted with certainty, despite the length of the sentence, that factor should be "considered." We find this argument unpersuasive.

We believe that Williams's reliance on *Fields* is misplaced. In *Fields*, the court of appeals rejected an equivalent "best-case scenario" prediction of release date. Further, like *Fields*, even assuming that the best-case release date becomes reality, Williams faces the problem of not being immediately able to take custody and provide for the child. As noted previously, she had not complied with even a single element of her case plan. Prior to her incarceration, Williams lacked stable housing and employment, and still unresolved is her crack-cocaine addiction. Accordingly, we hold that the trial court did not clearly err in terminating Williams's parental

Cite as 2010 Ark. App. 449

rights based on her receiving a lengthy sentence of incarceration.

Because we affirm the termination of parental rights on one ground, it is unnecessary to address the alternative ground of abandonment. *Dowdy v. Arkansas Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722.

Affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.