

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1278

AMBER DORITY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and A.P., MINOR
APPELLEES

Opinion Delivered APRIL 20, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. JV-09-74]

HONORABLE MARK HEWETT,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Amber Dority appeals from the termination of her parental rights to her ten-year-old daughter, A.P. Dority’s only argument on appeal is a challenge to the trial court’s “best-interest” finding as to A.P.’s adoptability. Because there was sufficient evidence on the question of adoptability presented, we affirm.

On January 29, 2009, DHS took custody of A.P. on a 72-hour hold after the Sebastian County Division of Children and Family Services received a hotline report of the sexual abuse of A.P. by underage juvenile aggressors, along with a report of a failure to protect¹ by Dority

¹Dority’s psychologist’s report indicates that, after being informed that A.P. had been sexually abused by her cousins, Dority allowed A.P. to have contact with those same cousins and that further abuse allegedly occurred.

and her husband, John.² An order for emergency custody was entered by the trial court on February 2, 2009.

On March 30, 2009, the trial court conducted an adjudication hearing and found A.P. dependent/neglected. In its order, the trial court directed Dority and John to obtain/maintain stable and appropriate housing, income, and transportation; complete parenting classes; submit to a psychological evaluation and complete any treatment recommended; complete a drug-and-alcohol assessment and complete any treatment recommended; and cooperate with A.P.'s therapeutic foster care program and counselors. John was also directed to maintain stable and appropriate employment.

A review hearing was held on August 25, 2009. The trial court noted that Dority and John were, by and large, complying with the case plan and prior court orders. The court directed them to obtain/maintain stable and appropriate housing, income sufficient to support the family, and transportation. They were further ordered to complete classes with Larry Gantt; complete marriage counseling; submit to random drug screens at the request of the department, and cooperate with A.P.'s therapist. Dority was further ordered to complete individual counseling and comply with her medication management.

Another review hearing was held on November 16, 2009. The trial court found that Dority had partially complied with the case plan in that she had maintained her housing; had income through SSI and food stamps and was seeking employment; had completed parenting

² John Dority is not the biological father of A.P.

classes; and had submitted to a psychological evaluation. At the time of the hearing, she was attending counseling and had filed for a divorce from John. As Dority had indicated that she wanted John to remain in A.P.'s life, the court directed that John complete an anger management course; undergo another drug-and-alcohol assessment and complete any treatment recommended; complete classes with Larry Gantt; and continue to comply with the court's previous orders. The court also ordered that Dority's current boyfriend make himself available to work a case plan, if Dority's new boyfriend expected to be a part of her life. The court then directed Dority to maintain her housing, income, and transportation; complete counseling and classes with Larry Gantt; visit A.P. regularly; and cooperate with A.P.'s treatment team.

On January 25, 2010, the trial court held a permanency-planning review hearing. The court found that, while Dority had partially complied with the case plans and orders of the court, she had significantly regressed during the review period. The court acknowledged that Dority had submitted to a drug-and-alcohol assessment and a psychological assessment as ordered. She had also completed parenting classes, maintained reliable transportation, and visited regularly; however, she had lost her housing, had no stable employment or income, and had not attended individual or marital counseling or classes for non-offending parents. The court noted that she and John had separated several times during the review period and had engaged in domestic violence. The court further noted that, while John and Dority were currently back together, John did not have housing, employment, or income. He had not

attended anger management classes, marriage counseling, or non-offending parenting classes as ordered, and his drinking problem remained untreated. The court further noted that Dority's on-again/off-again boyfriend was incarcerated and Dority, herself, was facing new criminal charges. The trial court found that while A.P. had special needs and required a highly structured, stable environment, Dority's lifestyle was completely unstable.

A petition to terminate parental rights was filed by DHS on April 9, 2010. A hearing on the petition was held on June 25, 2010, after which the trial court entered an order terminating the parental rights of Dority as to A.P. Dority timely filed an appeal.

Dority's sole point on appeal is a challenge to the trial court's determination regarding A.P.'s adoptability, which is a part of the "best-interest" analysis. More specifically, she claims that the trial court erred in finding that termination of her parental rights was in A.P.'s best interest because there was insufficient evidence regarding the likelihood that A.P. would be adopted.

We review cases involving the termination of parental rights *de novo*. *Welch v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 798, ___ S.W.3d ___. The grounds for termination must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.*

The termination of parental rights is a two-step process that requires the circuit court to find that the parent is unfit and that termination is in the best interest of the child. *Id.* The first step requires proof of one or more of the statutory grounds for termination. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2009). The second step requires consideration of whether the termination of parental rights is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). This includes consideration of the likelihood that the juvenile will be adopted and the potential harm caused by returning custody of the child to the parent. *Id.* The court, however, does not have to determine that every factor considered be established by clear and convincing evidence. *Welch, supra.* Instead, after considering all of the factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *Id.*

Because Dority has not challenged the court's termination decision as to the grounds for termination, we need not address those findings. *Welch, supra.* Rather, the only issue before us is whether there was sufficient evidence of adoptability to support termination. Dority argues that the only evidence regarding the adoptability of A.P. came from case worker Robbie McKay, who based her opinion on her sixteen-year experience as a case worker who had "seen children adopted." Dority argues that, while McKay did testify that A.P. had maintained her foster placement for a year, the placement was in a therapeutic foster home. McKay also conceded that A.P. had "some pretty special needs" and that someone would have to be recruited to adopt her.

Dority notes that McKay's testimony is in stark contrast to the testimony of therapeutic foster care caseworker Willie Wallace. Wallace indicated that A.P. had severe emotional and behavioral problems. Wallace testified that A.P. exhibited "disruptive behavior, no respect for authority in the school setting, sometimes in the community," had problems following rules at the foster home, and had issues with self stimulation at home, school, and in public. Wallace stated that A.P. would need one-on-one structure for a long time because she did not follow instruction well and constantly needed to be redirected. Additionally, A.P.'s social interaction with peers and adults needed to be monitored at all times because she interacted with strangers in an inappropriate manner. Given Wallace's testimony, Dority argues that McKay's weak and generalized assertion that A.P. was adoptable was not sufficient. If A.P. cannot find permanency through adoption, Dority contends the termination order cannot stand.

Dority, however, mischaracterizes the trial court's statutory obligation regarding adoptability in its best-interest analysis: the trial court must simply consider the likelihood that the children will be adopted—that factor need not, however, be established by clear and convincing evidence. The trial court in this case heard all the evidence regarding A.P.'s issues, and, after expressly considering the factors mandated by the statute, found that termination of Dority's parental rights was in A.P.'s best interest. This finding was not clearly erroneous.

Here, Robbie McKay testified that A.P. was adoptable even though DHS would have to recruit someone who could handle her needs. Thus, there was some evidence presented that A.P. was adoptable. While Dority argues that this evidence is weak given the extent of

A.P.'s special needs, the evidence is sufficient. See *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004) (finding sufficient the caseworker's testimony that, although the children had issues to work through, both were adoptable); cf. *Haynes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 28, ___ S.W.3d ___ (reversing order of termination where no evidence of adoptability of the children was introduced at the hearing).

Moreover, the potential-harm aspect of the best-interest analysis so favors termination that the limited evidence on adoptability makes no legal difference. See *Haynes, supra*. The evidence presented at the hearing highlighted Dority's volatile and abusive relationships and her unstable living and financial situation and clearly demonstrated the potential harm that returning A.P., who clearly needs a structured and stable environment, would cause to her. As such, the trial court's decision to terminate Dority's parental rights was not clearly erroneous.

Affirmed.

WYNNE and BROWN, JJ., agree.