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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-20-717

TIFFANY CRAMER

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered June 2, 2021

APPEAL FROM THE WASHINGTON
COUNTY
CIRCUIT COURT
[NO. 72]V-19-62]

HONORABLE STACEY
ZIMMERMAN, JUDGE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Tiffany Cramer appeals a Washington County Circuit Court order terminating her parental rights to three of her children: MC, CA, and BA. On appeal, she challenges the trial court's best-interest finding as well as its finding of statutory grounds for termination. We find no error and affirm.

I. Facts and Procedural History

We previously had this case before us when Cramer appealed a finding of dependency-neglect as to MC, CA, and BA, which we affirmed. *Cramer v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 571, 589 S.W.3d 491 (*Cramer I*). In *Cramer I*, we provided another recitation of the facts surrounding the dependency-neglect finding and how the children came into the custody of the Arkansas Department of Human Services

(Department). For purposes of this appeal, we provide the following summary of facts explaining how the children came into the custody of the Department.

Cramer is the mother of four children, MC, JA, CA, and BA. Cramer did not have custody of MC. MC was the ward of a guardianship. Cramer's mother, Joanne, served as the guardian. Cramer left JA, CA, and BA in Joanne's home for temporary supervision. During this period of temporary supervision, MC was also in the home. While in Joanne's home, JA ingested a fatal dose of prescription medication.

The Department placed a seventy-two-hour hold on the children followed by an order of emergency custody. In its affidavit attached to the dependency-neglect petition, the Department informed the court of its history with Cramer, the children, and Joanne. Previously, the Department had placed a seventy-two-hour hold on the children when they were found alone in Joanne's home with prescription drugs within reach.¹ As a result, the Department took emergency custody of all four of Cramer's children. Ultimately, the Department returned JA, CA, and BA to Cramer with an understanding that she was not to entrust them to Joanne's care.² After JA, CA, and BA were returned, and despite the Department's warning, Cramer went to Florida and left the children in Joanne's care.

The court conducted an adjudication hearing in which it heard evidence concerning what has been outlined above. In addition, the court was informed that Cramer was on probation for aggravated assault and delivery of methamphetamine and had recently been

¹This event occurred on January 11, 2019.

²Separately, the Department returned MC to Joanne's custody with a protection plan in place.

arrested on drug charges.³ The trial court found the children to be dependent-neglected because of Cramer's decision to return the children to her mother's home after being put on notice that it was not a safe situation.⁴ Cramer appealed arguing that the children had not been placed at a substantial risk of serious harm as a result of neglect or parental unfitness. We disagreed and affirmed the adjudication of dependency-neglect in *Cramer I*.

While the appeal in *Cramer I* was pending, the court monitored the services and the compliance of the parties. After a review hearing, the trial court held that Cramer was only in partial compliance with the case plan. She had not fully participated in individual counseling (missing nine out of fifteen sessions) and had not submitted to a psychological or drug-and-alcohol assessment. Cramer had also pled guilty to drug-related charges and had tested positive at drug screens. While Cramer had exercised visitation, she verbally attacked a Department program assistant (PA) during a visit after the PA had reported that she smelled marijuana. The court concluded that Cramer continued to exhibit poor judgment choices, such as talking to the children about the case during a visit and testing positive for controlled substances and taking clonazepam during pregnancy. Concerning her pregnancy, Cramer identified the putative father for her unborn child but stated that he would not be present

³At the probable-cause hearing, the court was informed that Cramer had tested positive for benzos and THC when the children were first removed.

⁴In its probable-cause order, the court found that Cramer had returned her children to Joanne's house after the Department had instructed her not to do so; that her poor parenting choice had placed her children in a harmful situation, which ultimately resulted in JA's death; and that even though she did not own or reside in the home and was not present when JA became unresponsive, it was still her obligation to protect her children. The court also questioned the judgment of the Department for returning any of the children to Cramer after the first emergency hold.

in the child's life. She informed the court that instead, her current boyfriend, whom she had only been on five or six dates with, had agreed to be a father figure to the child. In light of this evidence, the court found that it could not place the children with Cramer because she lacked stability in her employment or her choices, independent of her grief.

The court conducted a permanency-planning hearing in December 2019 and heard new evidence concerning Cramer's pregnancy. The court learned that Cramer was farther along in her pregnancy than initially thought. She was no longer in a relationship with her previous boyfriend; thus, he would no longer act as the child's father figure. Cramer now claimed a different man was the father of her unborn child. As a result, the court found that Cramer continued to make poor decisions. Concerning compliance, the court noted that Cramer had continued to struggle with parenting the children at her visits and that she had had multiple conflicts with the Department PAs at visits.⁵ Additionally, she had not consistently completed her drug screens, attended counseling, or maintained gainful employment sufficient to support her or her children. Therefore, the court held that Cramer had not made measurable, sustainable, genuine progress in the case, and the court determined that Cramer had not demonstrated that she could keep all the children safe. Despite this, the court declined to change the goal of the case to adoption at that time but set the matter for a fifteen-month permanency-planning hearing.

⁵In October 2019, the court entered an agreed order that increased supervised visits to four hours a week. Cramer, however, never progressed to unsupervised visits throughout the entire course of the proceedings.

After the fifteen-month permanency-planning hearing, the court changed the goal of the case from reunification to adoption. The court noted that Cramer needed frequent direction from the Department during visitation concerning what to do and how to do it. More importantly, the court noted that Cramer was still “blaming DHS for what happened to [JA] and that [Cramer] is still trying to shirk her responsibility to keep these children safe.” Concerning stability, the court found Cramer’s income insufficient to support herself and her children.⁶ The court found that Cramer had not demonstrated the ability to safely and appropriately parent the children, all of whom have mental health and behavioral issues that need close supervision.

Subsequently, the Department filed a petition to terminate parental rights, alleging that termination was in the best interest of the children and alleging two statutory grounds for termination—twelve-month failure to remedy and subsequent other factors.⁷ After receiving evidence over the course of two days, the trial court entered an order terminating Cramer’s parental rights to MC, BA, and CA finding that termination was the in the children’s best interest and that the Department had proved both statutory grounds for termination. Cramer now appeals, alleging that the Department failed to prove by clear and convincing evidence that the statutory grounds for termination existed and that termination was in the children’s best interest.

⁶Cramer reported monthly income of \$886. Once she satisfied her monthly obligations, she only had around \$470 a month to support herself and three children, not including her new baby.

⁷The petition was originally filed in June 2020 but was refiled in September so that the father could be properly served with the petition.

II. *Standard of Review*

Our caselaw recognizes that the termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Fox v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 666, 448 S.W.3d 735. In termination-of-parental-rights matters, the trial court is required to follow a two-step process by finding first that the parent is unfit and second that termination is in the best interest of the child. *T.J. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997); *Smith v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 753, 431 S.W.3d 364. 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. 2020). The second step requires consideration of whether the termination of parental rights is in the children's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A). As a result, the Department bears a heavy burden in seeking to terminate the relationship of parent and child. *Fox, supra*.

We review termination-of-parental-rights cases de novo but will not reverse the trial court's ruling unless the findings are clearly erroneous. *Dade v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 443, 503 S.W.3d 96. 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.* In determining whether a finding is clearly erroneous in matters involving the welfare of young children, we give great weight to the trial court's personal observations. *Jackson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 440, 503 S.W.3d 122.

III. *Analysis*

A. Statutory Grounds

Cramer first challenges the trial court's findings of statutory grounds for termination. She claims that the evidence presented at the hearing showed that she had benefited from the services provided. She highlights the fact that she had given birth to another child during the pendency of the case, which had not been removed, and that there had been no allegation that she had been unable to properly parent or safely maintain that child in her home. She asserts that she had stable employment and housing, had a bond with her children, and was ready to transition the children into her home. She maintains that any failures with services were the result of circumstances beyond her control and asserts that flawless compliance and perfect parenting is not required. While Cramer's argument on its face may seem compelling, it is not the only way to view or interpret the evidence presented to the trial court.

The trial court here was presented with sufficient proof that the twelve-month failure-to-remedy ground in Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(a) was satisfied. The children were removed from Cramer's custody in January 2019 due to her poor judgment. Cramer was aware that her mother, Joanne, had recently placed her children in danger by leaving them unattended with prescription medication within reach. Cramer had also been advised by the Department not to leave the children with Joanne. Instead of heeding the warnings, Cramer exhibited poor judgment, went to Florida, and left the children in Joanne's care, which resulted in JA's death.

From the time of removal in January 2019 until the termination in October 2020, Cramer was offered numerous services. While Cramer argues that she had completed all referred services, we disagree. She did have stable housing and employment, although she had had multiple employers during the pendency of the case. She did have regular visits with the children, but these visits were not without incident and never progressed beyond supervision. She, however, was never in full compliance with the case plan—she missed twenty-one out of fifty drug screens; belatedly submitted to a court-ordered hair-follicle test; and missed several individual counseling appointments. While Cramer gave reasonable explanations for her missed appointments and drug screenings, the court expressly found her testimony to be not credible.

Despite the services offered, Cramer continued to exercise poor judgment. She verbally attacked Department personnel during visitation. Cramer also had multiple relations with men that resulted in pregnancies. She gave birth to her fifth child, RC, prior to termination, and was again pregnant at the time of the termination. With regard to the last pregnancy, the court stated:

[Cramer's] judgment throughout this case has been extremely poor, especially as the testimony today is that [Cramer] is pregnant AGAIN. The Court notes that [Cramer] initially tried to lie about this pregnancy during today's proceedings and, as a result, this Court does not find [Cramer's] testimony today credible at all.

Given the court's determination of Cramer's credibility, we cannot say that the court clearly erred in finding that the failure-to-remedy ground supported the court's termination decision. Because only one ground must be proved to support termination, *Hernandez*, 2016 Ark. App. 250, at 6, 492 S.W.3d at 123, we need not address Cramer's arguments regarding the subsequent-factors ground.

B. Best Interest

Cramer also challenges the court's best-interest finding, asserting that there was insufficient evidence of potential harm.⁸ She argues that the court did not adequately consider MC's desire to return home with her mother or CA's therapist's testimony that termination would greatly affect him. Admittedly, MC did testify that she wanted to return to Cramer's custody. However, as the Department correctly indicates, MC had never lived solely with Cramer. Furthermore, the court heard evidence that Cramer's interactions with MC during visitation were not entirely appropriate. Cramer allowed MC to "be the boss" and act as a parent.

Cramer is also correct that CA's therapist, Mark Tuttle, testified that termination would have some negative effect on CA, but he also testified that returning CA to Cramer's custody would negatively affect his progress in therapy. Tuttle testified that CA has issues with not being "heard" and expressed some concern about CA's returning to the home where Cramer's attention would be even further divided by the introduction of two infant children. Moreover, the court heard from Tuttle; Melanie Jones, MC's counselor; and the children's foster mother, who all testified regarding the progress the children had made mentally and emotionally since their removal and discussed how they were dealing with their grief over the death of their sister.

After hearing and weighing the evidence, the court in this instance was simply not convinced that Cramer would put her children's safety above her own wishes, given her

⁸Cramer did not challenge the court's adoptability finding.

poor decision-making exhibited throughout the case. Concerning the potential harm of returning custody to Cramer, the court stated:

This Court has no doubt that returning these children back to [Cramer] would be placing them back into a chaotic home environment, where they are again passed around and babysat by various people. The Court notes that, throughout this case, [Cramer] has failed to demonstrate good judgment and has not shown that she can keep the children safe.

Cramer, in effect, asks us to consider and reweigh the evidence differently than the trial court. That is not our role.

Cramer also contends that the trial court did not consider the children's interests individually and instead treated them as some amorphous group. She faults the court for not considering the bond she shares with MC and CA, MC's desire to be returned to her care, or how BA and CA would be negatively affected if the parental bond was severed. She is correct that the court must consider the children individually when determining whether termination is in each child's best interest. *Allen-Grace v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 286, 577 S.W.3d 397. Here, the trial court did not provide an in-depth analysis of these arguments in the termination order. Nevertheless, the trial court expressly held that termination was in the best interest of the children because of Cramer's continued poor decision-making and her inability to keep the children safe. The children's safety is paramount to all the other considerations posited by Cramer. Thus, we find no error.

Finally, Cramer argues that the trial court failed to consider the effect termination would have on the children's close relationship with their cousins. Cramer failed to make this argument below; thus, it is not preserved for appeal. We will not address arguments

raised for the first time on appeal, even in termination cases. *Perry v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 193, at 11, 625 S.W.3d 374, 381.

Affirmed.

GRUBER and BARRETT, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor children.