

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 06-164

NOVEMBER 15, 2006

DANIEL BALLARD

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT, [NO. JV-04-80]

V.

HONORABLE MARK HEWETT,
JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AFFIRMED

Appellant Daniel Ballard appeals from an order entered November 7, 2005, that terminated his parental rights to his four children, Heaven (d/o/b 12-18-98), Destiny (d/o/b 4-15-01), Hailey, (d/o/b 3-3-03), and Daniel, Jr., (d/o/b 8-3-04). The order also terminated the parental rights of the children's mother, Roxann Williams, but she is not a party to this appeal. For reversal, Mr. Ballard argues that the trial court erred in finding that there was clear and convincing evidence to support terminating his rights. We affirm.

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Johnson v. Arkansas Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002). Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Wade v.*

Arkansas Dep't of Human Servs., 337 Ark. 353, 990 S.W.2d 509 (1999). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* The facts warranting termination of parental rights must be proven by clear and convincing evidence, and in reviewing the trial court's evaluation of the evidence, we will not reverse unless the court's finding of clear and convincing evidence is clearly erroneous. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000). Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. *Id.* In resolving the clearly erroneous question, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Id.* Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations. *Ullom v. Arkansas Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000).

This case began on February 6, 2004, when appellee Arkansas Department of Human Services (DHS) took an emergency hold on the three oldest children to protect their health and safety. The trial court entered an order of emergency custody on February 9, 2004, on the basis that Mr. Ballard was in jail and that the children's mother had released the children to one of their uncles, who brought Hailey to the hospital with a case of pneumonia. The three oldest children were adjudicated dependent/neglected on April 6, 2004, and both parents were allowed weekly visitation and ordered to maintain stable housing and

employment, submit to a psychological evaluation, complete parenting classes, submit to a drug/alcohol assessment and complete any recommended treatment, and submit to random drug screens. An order for emergency DHS custody was entered with respect to Daniel, Jr., August 6, 2004, three days after his birth. Daniel, Jr., was adjudicated dependent/neglected on November 8, 2004, and has at all times remained in DHS custody.

While the original case plan was reunification with the parents, the trial court entered a permanency planning order on March 16, 2005, that changed the plan to termination of parental rights. In that order, the trial court found that, despite reasonable efforts to provide services by DHS, both parents failed to comply with the court's orders by failing numerous drug screens and failing to complete a drug treatment program. DHS filed a petition to terminate both parents' parental rights on June 15, 2005, and the petition was granted subsequent to a termination hearing held August 5, 2005. In the order terminating appellant's parental rights, the trial court specifically found that DHS proved by clear and convincing evidence that it had an appropriate permanency plan for the juveniles, namely adoption, and that it was in the best interest of the children that appellant's parental rights be terminated. The trial court further found that the juveniles had been out of the home of the parents for more than one year and that, despite meaningful efforts by DHS to rehabilitate the home and correct the conditions that caused removal, those conditions had not been remedied by either parent.

The evidence before the trial court at the termination hearing was as follows. Mr. Ballard testified that he currently lives with a friend in a trailer, and that he has lived there for two months. He stated that he married the mother of his children on February 1, 2005, although they have since separated. Mr. Ballard acknowledged that in the past fifteen months he had lived in at least ten places, including staying “on and off from motel to motel.” Mr. Ballard maintained that while he has not had stable housing, he has held steady employment. He stated that he currently works at OK Foods and has held that job for four weeks.

Mr. Ballard acknowledged that he was ordered to undergo drug treatment, but indicated that he has failed to enter a program because it conflicts with his employment. Mr. Ballard further admitted to positive drug screens, and DHS produced evidence that Mr. Ballard had failed twenty-one out of twenty-eight drug tests as a result of marijuana and methamphetamine use. Despite the positive tests, Mr. Ballard stated that he has his drug problem under control.

Mr. Ballard noted in his testimony that he underwent a psychological examination as ordered by the court, which was conducted on July 31, 2004. In a subsequent report his examiner, Dr. Douglas Brown, indicated that when the children were taken into DHS custody, Mr. Ballard was temporarily in jail as a result of a false charge of child molestation by the children’s mother, and that those charges had been dropped. Dr. Brown noted a history of marijuana and methamphetamine abuse, and incorrectly stated that Mr. Ballard’s

drug problem had been in remission for at least five to six months. While Mr. Ballard told Dr. Brown he had quit using drugs, he had tested positive for both marijuana and methamphetamine just sixteen days before the examination. Dr. Brown ultimately concluded that he saw nothing at that time that would preclude Mr. Ballard from regaining custody of his children.

While acknowledging that he had not accomplished all of the goals of the case plan, Mr. Ballard nonetheless maintained that he had been trying. He had been visiting his children and stated that he gets along well with them. He stated that he loves his children very much, had taken care of them by himself in the past, and would have no problems if they were returned to him.

Terry Foley, an admissions counselor at Harbor House drug treatment facility, testified that Mr. Ballard was admitted for inpatient treatment on February 22, 2005, but left the same day and did not return. According to Mr. Foley, Mr. Ballard required treatment as a result of intravenous drug use. Mr. Foley testified that most people with a drug problem start very early in their life, and that Mr. Ballard reported to him that he started smoking marijuana at age thirteen, using methamphetamine at age seventeen, and using intravenous drugs at age twenty-three.

Jonna Newby testified about parenting classes that had been offered to Mr. Ballard. Ms. Newby stated that she tried to set up special hours to accommodate Mr. Ballard's

schedule, but that he failed to show up for any of the sessions and thus did not complete the program.

DHS worker Robbie McKay was assigned to the case involving Mr. Ballard. She testified:

The department has offered foster care, casework, transportation, parenting classes, drug treatment. There are no other services that the department can provide that they have not already provided. They have not asked for any services that we have not provided. The number one issue in this case is for the parents to get drug treatment. They have not maintained negative drug screens. My recommendation is that the court grant termination and allow these children to be adopted.

On appeal from the order terminating his parental rights, Mr. Ballard argues that the evidence did not support the trial court's decision. He cites the following portions of the guidelines for terminating parental rights as set forth in Ark. Code Ann. § 9-27-341 (Supp. 2005):

(b)(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

....

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

. . . .

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile'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 factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Mr. Ballard initially contends that this case must be reversed because there was no finding in the trial court's order regarding the potential harm caused by returning the children to his custody as required by subsection (b)(3)(A)(ii) of the above statute. Mr. Ballard further asserts that there was no evidence that the children would be in any danger of harm if returned to his custody, citing his testimony that he had adequately cared for them in the past in the absence of the children's mother.

Mr. Ballard also argues that the evidence did not support termination pursuant to the grounds set out in subsection (b)(3)(B)(vii)(a). He submits that he was making progress toward the case plan, and that while he was not in complete compliance, DHS failed to establish parental incapacity or indifference to remedy the circumstances.

We hold that the trial court's order was in compliance with the relevant statute and that the trial's decision to terminate Mr. Ballard's parental rights was not clearly erroneous. The trial court specifically found termination to be in the children's best interest, and while the order does not specifically address the potential harm caused by returning the children to their father, we indulge in the presumption that the trial court acted properly and made the

findings necessary to support its order. *See Tillery v. Evans*, 67 Ark. App. 43, 991 S.W.2d 644 (1999). Contrary to appellant's argument, evidence was presented to support a finding that the return of the children to their father's custody would be potentially harmful. As stated in the termination order, Mr. Ballard failed twenty-one of twenty-eight drug screens, which included the most recent test performed less than a month prior to the termination hearing. Mr. Ballard had a drug problem for which he failed to get treatment, he failed to complete parenting classes, and he never established any suitable housing for the return of his children. Given these circumstances, we find no clear error in the trial court's finding that termination was in the children's best interest.

Mr. Ballard's remaining argument is misplaced because in the trial court's order terminating parental rights, the trial court did not rely on Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a), as asserted by appellant. Instead, the trial court based its order on the grounds set out in subsection (b)(3)(B)(i)(a), and Mr. Ballard does not specifically challenge that determination on appeal. Nonetheless, the trial court did not clearly err in ruling that that subsection was satisfied given that the children had been adjudicated dependent/neglected and continued out of appellant's custody for twelve months, and despite meaningful DHS efforts Mr. Ballard failed to remedy the conditions causing removal. In particular, Mr. Ballard failed to maintain stable and suitable housing for the return of his children, and more importantly he exhibited a long-term drug problem, for which he received no treatment, and which was apparently getting worse over time. Because

none of the trial court's findings in support of its decision to terminate appellant's parental rights were clearly erroneous, we affirm its decision.

Affirmed.

NEAL and CRABTREE, JJ., agree.