

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION III

CA07-331

September 5, 2007

LARRY ROFKAHR

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[JV-05-324]

V.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES

APPELLEE

HON. MARK HEWETT,
CIRCUIT JUDGE

AFFIRMED

Larry Rofkahr appeals from an order terminating his parental rights. He argues that there was insufficient evidence to support the trial court's termination decision. We disagree and affirm the decision of the trial court.

On May 4, 2005, a petition for emergency custody was filed in Sebastian County Circuit Court asking that the court find Rofkahr's minor child to be dependent-neglected based on environmental neglect. The charges stemmed from the fact that the child was living in a dirty motel room with his parents, who were unemployed, without transportation, and using illegal drugs. On September 5, 2005, the court entered an order finding the child dependent-neglected and placed the juvenile in the custody of Arkansas Department of Health and Human Services.

At this point in the proceeding the goal was reunification; Rofkahr was ordered to do the following: obtain and maintain stable, appropriate housing; obtain and maintain employment with sufficient income to support his family; complete parenting classes; submit to a psychological evaluation; complete any recommended counseling; submit to a drug/alcohol assessment; complete any recommended substance abuse treatment; complete anger-management classes; and obtain transportation. Rofkahr was awarded supervised visitation one time per week at the ADHHS office.

Subsequent review hearings were held on October 6, 2005, March 2, 2006, and August 3, 2006. On November 6, 2006, a termination hearing was conducted. Based on the facts established at that hearing—most importantly that the child had been out of Rofkahr’s custody for over eighteen months and Rofkahr had not yet remedied the conditions that caused his son to be removed in the first place—on January 16, 2007, the court entered an order terminating Rofkahr’s parental rights. It is from this order that Rofkahr appeals.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep’t of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Grounds for termination of parental rights must be proven by clear and convincing evidence. *M.T. v. Ark. Dep’t of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm

conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). 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.*

The goal of Arkansas Code Annotated section 9-27-341 (Supp. 2003) is to provide permanency in a minor child's life in circumstances in which returning the child to the family home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more statutory grounds must be shown by clear and convincing evidence.

Here, there was clear and convincing evidence to show at least one statutory ground to support the termination of Rofkahr's parental rights was satisfied. Arkansas Code Annotated section 9-27-341 (i)(a) states that if a juvenile has been adjudicated dependent-neglected and has continued out of the custody of the parent for twelve months, and despite meaningful efforts by ADHHS to rehabilitate the parent and correct the conditions that

caused removal, the conditions have not been remedied—parental rights may be terminated. Further, according to section (vii)(a), if other conditions arose after the original dependent-neglected petition that demonstrate that a return of the juvenile to the family home is contrary to the child’s health, safety, or welfare and that despite the offer of family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors to rehabilitate the circumstances that prevent the child’s return, then termination is an appropriate remedy.

In this case, there was sufficient evidence to show that Rofkahr failed to correct the conditions that initially caused the removal. Specifically, he continued to use illegal substances throughout the pendency of the case. Further, he was arrested (and incarcerated) prior to completion of parenting classes. He admitted that he began using “hard drugs” once the child was placed in foster care. Although Rofkahr began drug treatment and parenting classes, he failed to complete either class because he was arrested and sent to prison. He did not begin anger-management classes until after he was incarcerated. Further, by the end of the termination proceeding, Rofkahr was in prison and admitted that he would not be able to assume custody of his child until at least March of 2007.

In this case, at the emergency hearing Rofkahr tested positive for amphetamines. After the adjudication, he continued to use illegal drugs and was arrested at least five separate times. Due to this continual incarceration, Rofkahr’s son spent only an abbreviated portion of his life in his father’s care and custody. Based on Rofkahr’s criminal history, the trial court

found that even if Rofkahr were released from prison, based on the history of this case, it is unlikely that he would ever be able to gain custody of his son.

After reviewing this case, we are satisfied that clear and convincing evidence established both a statutory ground for termination and that it was in the child's best interest to terminate Rofkahr's parental rights. As such, the trial court's order terminating Rofkahr's parental rights was not clearly erroneous and is affirmed.

Affirmed.

GLADWIN and GRIFFEN, JJ., agree.