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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-17-522

CRYSTAL HOOKS

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES AND MINOR CHILD

APPELLEES

Opinion Delivered: December 13, 2017

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46JV-15-80]

HONORABLE KIRK DOUGLAS
JOHNSON, JUDGE

AFFIRMED

BART F. VIRDEN, Judge

The Miller County Circuit Court terminated the parental rights of appellant Crystal Hooks to her son, J.H. (DOB: 11-23-2013). She argues that the trial court erred (1) in terminating her parental rights because there was insufficient evidence of grounds and potential harm and (2) in permitting a Texas ICPC (Interstate Compact on the Placement of Children) home study to be introduced into evidence.

I. *Procedural History*

On April 17, 2015, the Arkansas Department of Human Services (DHS) filed a petition for emergency custody and dependency-neglect on J.H. Attached to the petition was the affidavit of Chalonda Williamson, a family-service worker for DHS, in which she attested that on February 13, 2015, DHS had received an allegation of child maltreatment

with regard to J.H. in that the child-abuse hotline had received a report of inadequate shelter for J.H. Specifically, the report indicated that then one-year-old J.H. was living with Hooks in the home of Hooks's mother and stepfather; that the home had no running water and no heat; that there were holes in the floor; that ten or more dogs lived in the home; that the home smelled horrible; and that Hooks's stepfather admitted smoking marijuana in the home. Williamson attested that the matter had been referred to the Differential Response (DR) Unit, which interviewed the family and found that a big tree had fallen onto the back side of the mobile home and that insulation from the ceiling was visible; that a hole in the bathroom floor had been covered with plywood; that a water line had broken; and that the family had no gas and used electric space heaters instead.

The family relocated to Satterfield Lane in Texarkana, Arkansas, on March 13, 2015. On April 9, 2015, a DR specialist visited the new address to assess the safety of the home. The specialist noted that Hooks's mother, Rebecca Lorance, had been hesitant to allow the specialist and family-service worker inside the home; that Rebecca had said that one dog would bite but that she would hold onto that dog; that a couple of the dogs appeared to be "extremely malnourished"; that the home was cluttered to such an extent that they could not walk through the living room; that Hooks appeared with J.H., who was dirty and wearing a diaper that was full of urine and falling off of him; that the laundry room revealed clothes piled everywhere and feces on the floor and on the clothes; that the bedroom from which Hooks had emerged had a mattress on the floor with clothes and trash strewn around it; that, despite Rebecca's assurance, one of the dogs had attacked and

tried to bite one of the workers; and that Hooks reported that the toilet in the home did not work. The affidavit went on to say that the DR referral had been converted back into an investigation.

Williamson assessed the health and safety of J.H. on April 14, 2015, and observed that four or five dogs were outside the trailer home; that the home smelled strongly of dog urine and feces and mildew; that there was no sitting space in the living room, which contained boxes and trash bags; that at least four dogs lived inside the home and that two of them had recently given birth to puppies under the love seat; that Rebecca had said that she was unsure how many dogs they had; that J.H.'s body appeared to be small for his age, his head appeared large, and he made no noise; that the floors of the home appeared weak and sunken; that the carpet was so soiled that the worker was unsure of its original color; that there were wood blocks under the refrigerator but that the refrigerator was full of food; that the worker offered to assist Hooks in securing a shelter to prevent removal of J.H. but that Hooks "did not appear to want to leave the home"; and that Hooks cried and said that they had an open CPS case in Texas for the "same thing" and that her daughter, E.H., now lived with her biological father. Williamson further attested that there was a true finding of neglectful supervision against Hooks in 2010 concerning her then three-year-old daughter while they were living in Texas. Williamson noted that DHS put a seventy-two-hour hold on J.H.

An ex parte order was entered, and the trial court later found probable cause existed for issuance of the order. On June 23, 2015, J.H. was adjudicated dependent-neglected due

to Hooks's failure to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that did not pose a risk to the health or safety of the juvenile. The trial court ordered Hooks to submit to random drug screens, obtain a drug-and-alcohol assessment and complete any recommended treatment, participate in counseling and obtain a psychological evaluation if recommended, complete parenting classes, maintain safe and stable housing, and secure stable employment.

On September 29, 2015, a review order was entered finding that DHS had made reasonable efforts to provide the family with services and that Hooks had complied with the case plan. The goal was reunification with a concurrent goal of adoption. Another review order was entered on December 18, 2015, in which the trial court found that DHS had made reasonable efforts to provide services and that Hooks had complied with the case plan. A permanency-planning order was entered on March 29, 2016, in which the trial court again found that Hooks had complied with the case plan. The trial court noted that a trial placement would begin if Hooks's home was approved. The fifteen-month review hearing was continued because the results of an ICPC home study from Texas were pending. On August 31, 2016, the fifteen-month review order was entered in which the trial court found that the goal of reunification would continue because Hooks had been complying with the case plan and court orders, had made significant measurable progress, and had been diligently working toward reunification, which was expected to occur by November 16, 2016. On December 9, 2016, DHS filed a petition to terminate Hooks's parental rights. A review order was entered on December 16, 2016, finding that DHS had

made reasonable efforts to provide family services and that Hooks had complied with the case plan. The trial court, however, scheduled a termination hearing, which was held on February 21, 2017.

II. *Termination Hearing*

Alexis Lampkins, a family-service-worker supervisor at DHS, testified that Hooks had not yet completed counseling; that she had submitted to a psychological evaluation and completed the recommendations; and that she had completed parenting classes. Lampkins testified, however, that Hooks had not had stable housing, that she had not kept DHS informed of her whereabouts, and that she did not have stable employment. She said that Hooks had submitted to a drug-and-alcohol assessment but had not completed the recommended outpatient substance-abuse treatment. Lampkins testified that Hooks had an appointment to start treatment on December 23, 2015, but that Hooks had not shown up and that the appointment had not been rescheduled.

Lampkins said that the results for the random drug testing showed that on April 30, 2015, Hooks was positive for amphetamines, methamphetamine, and THC; that on May 14, 2015, she was positive for methamphetamine and amphetamines; that her May 28, 2015 test was negative; that on June 24, 2015, Hooks was positive for amphetamines, methamphetamine, opiates, cocaine, THC, and methadone; that on July 2, 2015, she

tested positive for amphetamines, methamphetamine, PCP, and methadone; and that on July 23, 2015, her test results were “questionable” but that Hooks admitted having used methamphetamine three days before the drug screen. Hooks tested negative on August 14 and 27, 2015; September 3, 2015; October 1, 8, 15, 23, and 29, 2015; December 17, 2015; January 7, 2016; February 11, 2016; and April 14, 2016. On June 14, 2016, Hooks’s test was positive for THC; that on October 27, 2016, her test was negative; and that on February 2, 2017, she tested positive for methamphetamine and amphetamines.

Lampkins said that J.H. had been diagnosed with dysphasia, that he suffered from developmental delays, and that he required consistent medical care and treatment. She stated that appointments had been set up for Hooks to learn from medical staff how to care for J.H. and that she had not shown up for those appointments on October 4, 2016, December 21, 2016, and February 1, 2017. Lampkins stated that Hooks had difficulty taking instructions and had not followed the recommendation to use Thick-It in J.H.’s bottles and cups, which caused him to aspirate during visits.

Lampkins testified that a caseworker had falsely reported to the court that Hooks had completed certain services when she had not. She further stated that a home study, which had been denied, was not brought to the court’s attention.

Chalonda Williamson, a supervisor at DHS, admitted that the court had received at least four or five false reports about Hooks’s compliance. She said that a caseworker had not been honest with the court and that the caseworker was no longer working at DHS. She stated that an ICPC home study had been conducted by Texas CPS, that it had been

signed in June or July 2016, and that the home study had been denied. Williamson said that she had not been copied on the results of the home study. According to Williamson, the ICPC home study was consistent with what she had observed when she removed J.H. from Hooks's custody. She testified that Hooks had not made any significant changes to remedy the problems that led to J.H.'s removal.

Lisa Forte, an adoption specialist at DHS, testified that J.H. is adoptable, that he is very young and affable, and that his foster parents hope to adopt him.

Crystal Hooks testified that she had lived in six residences in the last three years but that she now lives on Hazel Street. She testified that the home study that had been denied pertained to a home in which she no longer lives. She denied living in filthy conditions and stated that the family no longer has fourteen dogs.

Hooks stated that she had completed parenting classes, submitted to a psychological evaluation, and was still attending counseling. Hooks stated that the doctors had given her all the training about J.H.'s care, and she then described how his Thick-It was to be mixed and how often he needed breathing treatments. Hooks said that she had cut back on her habit of smoking two packs of cigarettes a day and that she "vapes" instead.

Hooks stated that she had not gotten any paperwork about the recommendation from her drug assessment and that she had not known about an appointment to start outpatient treatment. She asked, "Why should I need treatment if I'm not addicted?" She said that she had not done any drugs since she had been told to quit and denied having a drug problem, but she later testified that she started using drugs because her son had been

taken away. When asked about the most recent positive drug screen, Hooks said that she did not know how she had tested positive unless it was from medication she had taken for her “nearly broken” ankle. She stated that, although she had used methamphetamine, she was “not bad on it.”

Hooks testified that she thought she had been doing everything requested of her. She conceded that she had a history with Texas CPS but stated that she could think of only three cases involving her daughter, E.H., who is no longer in her custody. She claimed that she had voluntarily handed over custody to the child’s biological father because she was going to lose custody. She said that, although she had been in the National Guard, she had gotten a “hardship discharge” due to CPS’s involvement with her daughter. She stated that she cared about J.H., as shown by the fact that his pictures were “plastered all over [her] Facebook pages.”

III. *Order Terminating Parental Rights*

On March 7, 2017, the trial court issued a sixteen-page letter opinion and subsequently entered its order terminating Hooks’s parental rights on March 27, 2017. The trial court relied on four grounds: Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2017) (the juvenile has been adjudicated dependent-neglected and has continued out of the custody of the parent for twelve 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); Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a) (the juvenile has lived outside the home of the parent for a period of

twelve months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile); Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that the placement of the juvenile in 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 those issues or rehabilitate the parent's circumstances, which prevent the placement of the juvenile in the custody of the parent); and Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A) & (B) ("aggravated circumstances" means, among other things, that a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification).

The trial court found evidence from the adoption specialist that J.H. is adoptable. The trial court also found potential harm in that Hooks had not maintained stable employment or housing, that she had been sporadic in visiting J.H., that she had not followed recommendations from medical professionals regarding how to care for J.H., and that she had tested positive for methamphetamine in February 2017.

IV. *Standard of Review*

We review termination-of-parental-rights cases de novo. *Williams v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 622. Grounds for termination of parental rights must be proved by clear and convincing evidence, which is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established. *Id.* The

appellate inquiry is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *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. *Id.* In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). On appellate review, this court gives a high degree of deference to the trial court, which is in a far superior position to observe the parties before it. *Id.* 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. *Friend v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 606, 344 S.W.3d 670.

Pursuant to Ark. Code Ann. § 9-27-341(b)(3), an order forever terminating parental rights shall be based on a finding by clear and convincing evidence that it is in the best interest of the juvenile, including consideration of the likelihood that the juvenile will be adopted if the termination petition is granted and 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. Ark. Code Ann. § 9-27-341(b)(3)(A). The order must also find by clear and convincing evidence one or more grounds. Ark. Code Ann. § 9-27-341(b)(3)(B).

The purpose of the termination-of-parental-rights statute, Ark. Code Ann. § 9-27-341(a)(3), is to provide permanency in a juvenile's life in all instances in which the return

of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective. Even full compliance with the case plan is not determinative; the issue is whether the parent has become a stable, safe parent able to care for his or her child. *Shaffer v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 208, 409 S.W.3d 182.

V. Discussion

A. Grounds

Proof of only one statutory ground is sufficient to terminate parental rights. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569. Although Hooks challenges all four grounds found by the trial court, we limit our discussion to the aggravated-circumstances ground. Hooks argues that she was "always in compliance" and that, of the services she did not complete, there is no indication that such services were available or offered to her by DHS.

A finding of aggravated circumstances does not require that DHS prove that meaningful services toward reunification were provided. *Willis v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 559; *Draper v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 112, 389 S.W.3d 56. Besides, Hooks did not appeal from the orders in which the trial court specifically found that DHS had made reasonable efforts to provide services. *Fredrick v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 104, 377 S.W.3d 306; *Edwards v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 739, 379 S.W.3d 609.

The testimony from DHS employees demonstrated that Hooks was not “always in compliance” and that the trial court’s findings in that regard resulted from false reports from a former caseworker. Before DHS had taken custody of J.H., Hooks said that she had experienced the “same thing” with her daughter. She testified that three cases had been opened by CPS in Texas involving her daughter and that she had finally given custody of her daughter to the father because Texas CPS was going to take her. Hooks had not learned her lesson by the time J.H. came along. Although Hooks moved from home to home in an attempt to improve her environmental situation, the trial court could have concluded that all that really changed was her address. While Hooks had received some training on how to take care of J.H., the caseworkers did not think that she had grasped the importance of proper care for J.H.’s conditions as she continued to smoke and do drugs. We cannot say that the trial court clearly erred in finding aggravated circumstances as a ground for termination.

B. Best Interest

Hooks does not challenge the trial court’s adoptability finding. She argues that there was no potential harm to J.H. because she was drug free, was employed, had visited J.H., had complied with counseling, and had attended J.H.’s medical appointments when given the opportunity.

In determining potential harm, the trial court may consider past behavior as a predictor of likely potential harm should the child be returned to the parent’s care and custody. *Harbin v. Ark. Dep’t of Human Servs.*, 2014 Ark. App. 715, 451 S.W.3d 231. The

trial court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Id.* The potential-harm evidence must be viewed in a forward-looking manner and considered in broad terms. *Id.*

Hooks was not drug free, as she claims. There was a significant amount of time when she consistently tested negative, but she testified positive for methamphetamine and amphetamines only nineteen days before the termination hearing, knowing full well that her parental rights were on the line. Her continued drug use in and of itself is sufficient to support the trial court's finding of potential harm. *Furnish v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 511, 529 S.W.3d 684. We cannot say that the trial court clearly erred in finding that it was in J.H.'s best interest to terminate Hooks's parental rights.

C. ICPC Home Study

At the termination hearing, Hooks objected to introduction of the Texas ICPC home study without having someone available for cross-examination. The trial court admitted the evidence, ruling that the home study had previously been admitted as an exhibit and was part of the case file.

We will not reverse a trial court's ruling on admissibility of evidence absent a manifest abuse of discretion. *Olivares v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 94. Furthermore, a mere showing that the trial court erroneously admitted evidence will not support a reversal, absent a showing of prejudice. *Id.* Without any showing of prejudice,

any judicial error as to the admissibility of evidence is harmless error and cannot be grounds for disturbing a trial court's order. *Id.* When evidence is improperly admitted but the same evidence is admitted through another source, there is no reversible error. *Id.*

The home study had been denied because of the following risk factors: 1) Hooks's lack of parenting skills posed a safety threat because she did not recognize signs of danger and safety threats or hazards for a child of J.H.'s age; 2) social isolation; 3) criminal history of household members; 4) prior CPS history of household members; 5) lack of financial resources to meet the child's basic needs; 6) inappropriate child-care plans with persons who lack child-care knowledge and parenting skills, and proposed caregivers have medical issues that limit their ability to care for and supervise the child; 7) negative references; 8) inability to provide references; and 9) little to no behavior change from the circumstances that caused the child's removal.

Hooks argues that the trial court erred in introducing the ICPC home study into evidence over her objection. She argues that introduction of the home study prejudiced her case because the trial court referenced the home study in its decision to terminate her rights. Also, she points out that the home study was on a home where she no longer lived.

Hooks does not deny that the home study had been introduced at an earlier hearing. All of the hearings, testimony, and evidence from earlier proceedings are incorporated into the hearing on the termination of parental rights. *Osborne v. Ark. Dep't of Human Servs.*, 98 Ark. App. 129, 252 S.W.3d 138 (2007). Moreover, Hooks waived any objection to the home study when she failed to object during the termination hearing at

the first opportunity. Before DHS sought to admit the home study, both Lampkins and Williamson had testified about the home study that had been denied.

Hooks relies on the result in *Arkansas Department of Human Services v. Huff*, 347 Ark. 553, 65 S.W.3d 880 (2002), in which our supreme court affirmed the trial court's refusal to admit an ICPC home study because it would have been too prejudicial in the absence of someone who could be cross-examined about its contents. In that case, DHS sought to admit the home study based on a hearsay exception, unlike here, where it had been admitted as an exhibit from a prior hearing. We cannot say that the trial court abused its discretion in admitting the home study. In any event, any error in admitting the home study was harmless because there was sufficient evidence to support termination without consideration of the home study.

VI. Conclusion

We cannot say that the trial court clearly erred in terminating Hooks's parental rights to J.H.; therefore, we affirm its decision.

Affirmed.

GRUBER, C.J., and HARRISON, J., agree.

Dusti Standridge, for appellant.

Andrew Firth, Office of Chief Counsel, for appellee.

Chrestman Group, PLLC, by: *Keith L. Chrestman*, attorney ad litem for minor child.

