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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-629

JASMINE TATUM APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	Opinion Delivered: December 6, 2017 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04JV-15-567] HONORABLE THOMAS SMITH, JUDGE AFFIRMED

MIKE MURPHY, Judge

This is an appeal from an order entered on May 11, 2017, by the Benton County Circuit Court, terminating appellant Jasmine Tatum's parental rights to her minor children. On appeal, she argues that (1) the circuit court erred in changing the goal of the case plan to adoption; (2) there was insufficient evidence presented to establish that grounds supporting termination of her parental rights existed; and (3) terminating her parental rights was not in the best interests of her children. We affirm.

On September 16, 2015, Jasmine Tatum was arrested and incarcerated by the Bentonville police for prostitution, endangering the welfare of a minor, and obstruction of governmental operations. Tatum had three children, who were, at the time, ages eight, five, and two. Allegedly, Tatum had posted an ad on Craigslist, invited a man to her hotel room where she was living with her children, and spent some time with him in the bathroom

while the children sat on the bed and watched television. Tatum then accepted $40 from the man and he left.

The Arkansas Department of Human Services (DHS) took an emergency hold on the children. The case progressed through an emergency-custody order, a probable-cause hearing, and an adjudication hearing. At the adjudication hearing, the court found that the children were at substantial risk of serious harm as a result of neglect and parental unfitness, specifically, inadequate supervision, failure to protect, and threat of harm by Tatum when she was arrested for engaging in prostitution in the presence of the children.

The circuit court established reunification as the case-plan goal. Under the case plan, Tatum was ordered to establish residential stability, obtain and maintain stable employment and transportation, display proper parenting skills, attend individual counseling, submit to a drug-and-alcohol assessment and follow the recommendations, undergo a psychological evaluation and comply with the recommendations, and to resolve all legal issues. DHS was ordered to make a housing referral.

Tatum was found to be in partial compliance at the March 1, 2016 review hearing, and in full compliance at the June 14, 2016 hearing. Custody continued with DHS. On November 2, 2016, DHS filed a petition for termination of parental rights, alleging the grounds of twelve months failure to remedy, subsequent factors, and aggravated circumstances.

Tatum did not appear for the February 9, 2017 permanency-planning hearing. The circuit court found that Tatum was unfit due to her "significant history of use and abuse of

illegal and prescription drugs; significant medical issues that interfere with her fitness to work; lack of employment and housing stability;" and "unsuccessfully treated mental health issues" and that "all of these issues endanger the children." The circuit court further found that Tatum had been unable to resolve her issues, despite the services offered to her, and that Tatum "would need at least a year to a year and a half to rehabilitate to be ready for the children."

A termination hearing was held on March 28, 2017. Testimony and evidence introduced indicated that, during the case, Tatum developed endometriosis, required an ablation, and then a complication arose with the ablation that resulted in infection and a need for a wound-VAC. Tatum's primary-care physician testified that there was little doubt that Tatum was in serious pain from the procedure and complications, and prescribed Tatum pain medication. Tatum, however, sought treatment from several doctors and emergency rooms during that time and obtained over 400 oxycodone pills in a six-month period. Three doctors who had treated Tatum over the year testified that they believed she had a narcotics dependency. Doctor Steven Irwin, an interventional pain physician, also testified. Tatum began seeing him in October 2016 for pain related to her endometriosis. Dr. Irwin testified that, as of February 2017, he was starting to wean Tatum off opioids.

Tatum testified about her housing instability throughout the case. At the beginning of the case, she was living in a hotel with her children. She then got an apartment but had to move out for failing to pay $2400 in rent and fees. From there, she lived in multiple shelters, another hotel for a month, and then moved to Missouri to live with a man she

had met on Craigslist. She also testified that, at the time of the termination hearing, she had failed to resolve her criminal issues, and there was currently a warrant out for her arrest in Florida on an unresolved shoplifting misdemeanor charge.

In an order dated May 11, 2017, the circuit court terminated Tatum's parental rights on all grounds alleged in the petition. Tatum timely appeals.

We review termination-of-parental-rights cases de novo. *Threadgill v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 426, 526 S.W.3d 891. At least one statutory ground must exist, in addition to a finding that it is in the child's best interest to terminate parental rights; these must be proved by clear and convincing evidence. *Id.* 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. *Id.* The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* Credibility determinations are left to the fact-finder, here, the circuit court. *Id*. Only one statutory ground is necessary to terminate parental rights. *Id.*

Tatum first argues that the evidence does not support the grounds to terminate her parental rights. Regarding the subsequent-factors ground, she argues that the circuit court erred in finding that DHS provided appropriate family services.

The subsequent-factors ground states

> That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that 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 the subsequent issues or factors or rehabilitate the parent's

> circumstances that prevent the placement of the juvenile in the custody of the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)*(a)* (Supp. 2017).

Specifically, Tatum argues that "DHS did not provide the appropriate service to address her opiate dependency and tolerance." She contends that she sought her own treatment and followed the recommendations of that treatment plan. She further argues that it would be clear error to base termination on her valid prescription-medication use.

DHS contends that Tatum's argument is procedurally barred because she did not appeal from prior orders in which the circuit court found that DHS had made reasonable efforts to provide services. However, not every order in a dependency-neglect case can be immediately appealed. *See Threadgill*, *supra*. Here, the circuit court found that DHS had made reasonable efforts to provide family services in its March 1, 2016 review order; its June 16, 2016 review order; and its February 9, 2017 permanency-planning order. Because none of these orders have Rule 54(b) certificates, and because Tatum raised the argument at the termination hearing, she has not waived her argument now regarding the services offered by DHS now. *See id.*

In reaching the merits of this argument, we hold that the circuit court did not clearly err in finding that DHS had provided appropriate family services to Tatum. The children were initially removed when Tatum was arrested. Subsequently, Tatum developed a prescription-drug-abuse problem. Services offered by DHS included a psychological evaluation, two drug-and-alcohol assessments, transportation, a housing referral, and a

financial-assistance referral. Tatum alleges that DHS did nothing to assist her with her opioid dependency, but Tatum never disclosed this need for treatment with DHS; in fact, she was not even entirely upfront with her own pain-management doctor about the extent of her opiate use.

Further, Tatum did not comply with the requirements of the case plan and the court's repeated orders to attend counseling, maintain housing stability, maintain employment stability, maintain transportation stability, and to resolve all legal issues. We have held there can be no meritorious challenge to the subsequent-factors ground when there was "evidence of appellant's lack of compliance with the case plan and court orders." *Cotton v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 455, at 11–12, 422 S.W.3d 130, 137–38. There is sufficient evidence to support termination under this ground, including the finding that DHS provided appropriate family services.

Tatum next argues that there was insufficient evidence to support the court's best-interest determination. In determining the best interest of the juvenile, a trial court must take into consideration (1) the likelihood that the juvenile will be adopted if the termination petition is granted; and (2) 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. *Myers v. Ark. Dep't of Human Servs.*, 2011 Ark. 182, 380 S.W.3d 906. Potential harm must be viewed in a forward-looking manner and in broad terms. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722.

Tatum does not challenge the adoptability finding. Instead, she asserts that she was complying with her opiate-dependency treatment, had submitted to counseling, had acquired appropriate housing in Missouri, and was working odd jobs to bring in income; therefore, there was no risk of potential harm to the children by returning them to her custody.

We disagree. The circuit court specifically found, and the record supports, that Tatum has an open warrant for her arrest in Florida; has no stable housing or income; sought narcotics medication from over twenty physicians in Arkansas; and that rather than intensifying her efforts at the end of the case, Tatum diminished them by moving from Arkansas to Missouri without disclosing this move to DHS. This is more than sufficient to demonstrate consideration of this factor. Tatum does not demonstrate reversible error on this point.

Finally, in the last two sentences of her argument, Tatum challenges the goal of the case being changed to adoption in the permanency-planning order "for all of the reasons set forth above." Because we affirm the termination of parental rights, we also necessarily hold that it was appropriate for the circuit court to change the goal of the case plan to adoption. *See* Ark. Code Ann. § 9-27-338(c).

Affirmed.

ABRAMSON and BROWN, JJ., agree.

Dusti Standridge, for appellant.

Anna Imbeau and *Jerald A. Sharum*, Office of Chief Counsel, for appellee.

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