

Cite as 2009 Ark. App. 618

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-367

JERIKA RIDLEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered September 30, 2009APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[NO. JV-07-175]HONORABLE KEVIN NEIL KING,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Jerika Ridley appeals the termination of her parental rights to her daughters, T.H., born May 10, 2006, and J.C., born September 28, 2007.¹ The only issue on appeal is whether the evidence supports the trial court's finding as to the children's best interests. We hold that it does and affirm.

When the Jackson County Circuit Court adjudicated the children dependent-neglected after a hearing held on November 20, 2007, appellant was seventeen years old. DHS exercised a seventy-two-hour hold on appellant and her children on October 24, 2007, to protect them from "immediate danger of severe maltreatment." The court ordered

¹Although appellant identified Napoleon Haire as T.H.'s father, his paternity was never established. The court terminated his and all unknown putative fathers' parental rights to both children.

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appellant and her children into DHS's custody on October 30, 2007. It entered a probable-cause order on November 6, 2007, and placed appellant and her children in foster care with appellant's aunt. Before the adjudication hearing, appellant got into an argument with her aunt, abandoned her children, and ran away to Texas. In the adjudication order, the court set the goal of reunification with a concurrent goal of permanent custody. One of the responsibilities that the court assigned appellant was to keep DHS informed of her address. Appellant kept her whereabouts secret, however, and DHS did not have her address for eleven months. During that time, appellant did not visit with the children, who remained with her aunt, and did not utilize any of the services offered by DHS. In May 2008, she contacted the case worker but did not reveal where she was.

The court held a review hearing on April 15, 2008, which appellant did not attend, although her attorney was there. Stating that the concurrent goals were reunification and permanent custody, the court found that appellant had not complied with the case plan or the court orders and that she had not contacted or visited her children. It set a no-reunification hearing on May 20, 2008. Although appellant did not attend that hearing, her attorney did. In the permanency-planning order entered June 27, 2008, the court found little likelihood of successful reunification and granted DHS's petition to terminate reunification services, noting that appellant had not complied with the case plan and court orders and that her whereabouts were unknown. It changed the goal to permanent relative custody.

In September 2008, appellant attained the age of eighteen and returned to Arkansas.

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She contacted the case worker the next month and began participating in this proceeding. Appellant failed her first drug test because of marijuana use but passed all of the following drug tests. She attended the review hearing on October 21, 2008, with counsel. In the order, the court stated that the goal would continue as permanent custody with a concurrent goal of termination, noting that appellant had not maintained employment.

DHS filed a petition for termination of appellant's parental rights on November 24, 2008. Appellant completed parenting classes in January 2009. The court held the termination hearing on January 20, 2009. Susan Simmons, the primary case worker, and appellant, who attended with counsel, testified. Appellant said that she was living in Newport and had been employed at Medallion Foods for a few weeks. She admitted that she had been on runaway status until October, and that she had deliberately stayed away until she turned eighteen. She also admitted that, while she was a runaway, she did not visit her children and used marijuana. She confirmed that neither her aunt nor DHS knew how to reach her. Appellant said that she contacted her case worker once when she was in Texas but did not do so again until after she returned. She explained her abandonment of her children by the fact that she was young and "not really thinking right." Appellant assured the court that she had changed into a mature, grown woman who wanted her children back. She admitted that she was pregnant again.

Susan Simmons testified that, although appellant contacted her from Texas, she did not reveal her location. Ms. Simmons acknowledged appellant's participation in this case since October. She said that visitation had gone well and that all but one of her drug screens had

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been negative. Ms. Simmons stated that she did not believe that appellant was a danger to the children during visitation. Nevertheless, she said that she believed that termination was in the best interests of the children, whose foster mother wanted to adopt them. She stated that appellant was gone for eleven months, and given the length of the children's stay with their foster mother in relation to their young ages, they were settled in and felt at home. Ms. Simmons added that appellant had held two different jobs since her return, and had not been consistent in her adult responsibilities, such as earning an income. She also thought that appellant would have enough to deal with when the new baby arrived.

In the resulting order, the court found that termination of appellant's parental rights was in the children's best interests, considering their likelihood of adoption and the potential harm to their health and safety caused by continuing contact with appellant. The court based its decision on the following grounds: their having been out of the home for twelve months without the conditions that caused removal being remedied; appellant's failure to provide significant material support or to maintain meaningful contact with the children during their twelve months in DHS's custody; appellant subjected the children to aggravated circumstances; and that other factors or issues had arisen demonstrating that return of the children would be contrary to their health, safety, or welfare and that, despite the offer of services, appellant manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate her circumstances. Appellant filed a timely notice of appeal.

Termination of parental rights is an extreme remedy and in derogation of the natural

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rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, ___ S.W.3d ___. An order terminating parental rights must be based upon a finding by clear and convincing evidence that (1) termination of parental rights is in the best interest of the child, considering the likelihood that the child will be adopted if the parent's rights are terminated and the potential harm caused by returning the child to the parent's custody, and (2) at least one ground for termination exists. *Ratliff v. Ark. Dep't of Human Servs.*, 104 Ark. App. 355, ___ S.W.3d __ (2009); Ark. Code Ann. § 9-27-341(b)(3)(A) and (B) (Repl. 2008). Although we review termination-of-parental-rights cases de novo, we will not reverse the circuit court's finding of clear and convincing evidence unless that finding is clearly erroneous. *Ratliff, supra*.

Appellant's only argument on appeal is that the evidence does not support one aspect of the trial court's best-interest finding—that returning the children to her held any potential danger for them. She points to her recent efforts to regain custody and contends that Ms. Simmons's testimony, about her visitation posing no danger to the children, supports her position. We disagree. There is a huge difference between visiting the children and being totally responsible for them. The harm referred to in the termination statute is “potential” harm; the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008). The harm analysis is to be conducted in broad terms. *Id.* We give a high degree

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of deference to the trial court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Dowdy*, 2009 Ark. App. 180. Appellant's ability to utterly abandon her children for eleven months because she did not want to be in foster care herself spoke volumes about her willingness to place her own desires ahead of their needs. Despite appellant's last-minute efforts, we cannot say that the trial court erred in terminating her parental rights.

Affirmed.

HART and GRUBER, JJ., agree.