

DIVISION II

CA08-707

January 28, 2009

ESSIE SIMPSON GRIDER
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES
APPELLEE

APPEAL FROM THE BRADLEY
COUNTY CIRCUIT COURT,
[JV-06-65-5]

HONORABLE TERESA FRENCH,
JUDGE

AFFIRMED

Appellant, Essie Simpson Grider, appeals from the order terminating her parental rights to her children S.G., born October 15, 1997, and A.G., born March 10, 2004. She contends that there was insufficient evidence to support the terminations. We disagree and affirm.

This case began on September 17, 2006, when the Department of Health and Human Services (DHHS) exercised an emergency hold on S.G. and A.G. In an Agreed Adjudication Order, effective November 29, 2006, the circuit court adjudicated the juveniles dependent-neglected. The court found that the evidence supported an adjudication due to environmental neglect and appellant's admitted substance abuse. The goal of the case was set as reunification, and the court approved the DHHS case plan. Appellant was ordered, in part, to (1) submit to and complete a drug and alcohol assessment and provide a copy of any recommendations for treatment to DHHS and to the

court; (2) submit to random drug screens; (3) provide proof indicating that all outstanding fines had been paid; (4) submit to a psychological evaluation; (5) clean her house so that it was suitable for the children to live in and clean any mattresses and other furniture that had been urinated upon or obtain new ones before the juveniles could return home; (6) obey the case plan and orders of the court; and (7) follow the drug and alcohol assessment and enter a ninety-day inpatient drug rehabilitation program. Additionally, the case plan provided that appellant (1) complete parenting classes and demonstrate improved parenting skills; (2) receive homemaker services weekly and learn housekeeping skills; (3) visit weekly with her children; (4) obtain an accurate diagnosis regarding her medical condition; (5) attend counseling to address mental-health issues; and (6) remain drug free. After appellant completed her inpatient drug treatment, the case plan was updated and she was required to complete outpatient drug counseling.

On February 23, 2007, approximately five months after the juveniles' removal, the court held a review hearing. The children were continued in foster care, and the goal of the case remained reunification with appellant. The court found that DHHS had made reasonable efforts to achieve the goal of reunification but that appellant had only partially complied with the case plan: she had failed one drug screen and had not contacted her doctor about her drug use and need for different pain medication. At this hearing the court issued additional orders, including that appellant (1) seek medical attention for her staph infections; (2) complete inpatient drug treatment; (3) obtain and maintain stable housing and employment; (4) obtain and maintain stable transportation; and (5) comply

with the DHHS case plan and the court's orders. The court noted appellant's statement that she had recently paid all her fines in Bradley County but "does have a recent new charge and owes the fine there and she does have a new charge in Drew County." Prior orders of the court that were not in conflict with the new order remained in effect.

Another review hearing was held on May 21, 2007, approximately eight months after the children's removal. Again, the court found that DHHS had provided reasonable efforts and that appellant had partially complied with the case plan. Prior orders were continued.

On August 24, 2007, the court held another review and found that DHHS had made reasonable efforts to assist appellant with reunification. Appellant again was found to be in partial compliance with the court's orders: she had completed inpatient treatment, failed one drug screen perhaps attributable to cold medicine, tested negative in one drug screen, and "not complied with all the NA/AA meetings as part of her discharge assessment." The court found that appellant had been released from inpatient drug rehabilitation June 18, 2007; had attended her first outpatient counseling session August 8, 2007; and had obtained housing at 144 Bradley Court in Warren, Arkansas, where her nineteen-year-old daughter was living with her. Prior orders of the court were continued. Appellant was also ordered to continue mental-health and substance-abuse counseling, prepare a budget, and attend NA/AA meetings and document attendance.

On September 19, 2007, a year after the children's removal, the court began a permanency-planning hearing. The court continued the goal of reunification and found

that DHHS had made reasonable efforts to finalize a permanency plan. The permanency-planning court report noted that appellant had not had any visits with her children due to her inaccessibility to the agency. The court further found that appellant had partially complied with the case plan and court orders, specifically, by completing inpatient drug treatment, continuing outpatient treatment, and remaining drug free. She was found not in compliance for failing to pay all the costs associated with maintaining a stable, safe home. She also continued to associate with known drug users and still had outstanding fines. All of the prior orders were continued. Appellant was additionally ordered to visit regularly with the juveniles, contact DHHS weekly, allow DHHS into her home at least bi-weekly, attend counseling, not associate with any past and/or present drug users, and obtain stable transportation and insurance in her name. Appellant was ordered to make significant measurable progress within the next thirty days before the court would continue with the goal of reunification. She was ordered to draft a budget with DHHS; provide proof of attendance to NA and AA meetings; document proof of paid fines and dismissal of any outstanding criminal charges; show proof of transportation, including a reinstated driver's license and insurance; attend visitation; and view "The Clock is Ticking" video. Appellant was warned that these issues were to be completed before the completion of the permanency-planning hearing, which would take place in October 2007.

On October 22, 2007, the court changed the goal of the case to termination of parental rights. The court found that appellant had failed to make substantial measurable

progress, had not shown that she was able to care for the children, and was not compliant with the case plan. Although she had established a home and completed inpatient drug treatment and parenting classes, the court noted that she had been unable to comply with the court's orders and repeatedly associated with known drug users. She failed to pay all the costs associated with maintaining a safe, stable home and providing the basic necessities for her children. She did not maintain an environmentally safe home for the children to live in, and it was not safe enough to allow visitation there. She did not produce a budget sufficient to show that she could care for the juveniles financially, and she failed to be truthful with the court when testifying. The court additionally found that appellant failed to comply with her outpatient counseling. The court continued its prior orders and ordered appellant to reimburse DHHS \$400 for her counseling sessions.

On January 16 and February 13, 2008, a termination-of-parental-rights hearing was held. As a result of that hearing, the court terminated appellant's parental rights to her two children, finding, in part, that she had failed to remedy the cause of their removal. This appeal followed.

Sufficiency of the Evidence

In this appeal, appellant contends that the evidence was not sufficient to support the circuit court's termination of her parental rights. Specifically, she argues that the circuit court's order was defective because it failed to meet the statutory requirements of Arkansas Code Annotated section 9-27-341 (Repl. 2008). Alternatively, she argues that the circuit court committed clear error by "completely disregarding" DHHS's only expert witness.

An order terminating parental rights must 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:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(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:

. . . .

Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008).

Our standard of review is *de novo*, but we will not reverse a circuit court's findings in a dependency-neglect case unless they are clearly erroneous or clearly against the preponderance of the evidence. *Arkansas Dep't of Health & Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007). 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. *Camarillo-Cox v. Arkansas Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). 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. *Id.*

Appellant asserts that the circuit court produced an order that was defective on its face because it 1) failed to state a finding concerning the likelihood of adoption, 2) made no specific finding regarding any potential harm to the children, and 3) did not outline any statutory grounds for termination. The abstract does not show that these arguments were raised below or that appellant objected to the court's order, *e.g.*, appellant did not file a motion under either Rule 52 or Rule 60 of the Arkansas Rules of Civil Procedure. We have long held that we will not consider arguments raised for the first time on appeal, and we decline to do so here. *Jones, supra*. Moreover, even if we were to address this issue on its merits, we would find no basis for reversal. See *McFarland v. Arkansas Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005).

Appellant argues alternatively that it was clear error for the circuit court "to completely disregard" DHHS's only expert witness, clinical therapist Karen Walker, whom the court accepted as an expert in the field of counseling. The assignment of weight and credibility to expert testimony is within the scope of the court's discretion. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001). Moreover, the appellate court gives a high degree of deference to the trial court because of its far superior position to observe the parties before it and to judge the witnesses' credibility. *Posey v. Arkansas Dep't of Health & Human Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007); *Williams v. Arkansas Dep't of Health & Human Servs.*, 99 Ark. App. 95, 257 S.W.3d 574 (2007). Here, we cannot say that the circuit court erred by failing to give Walker's expert testimony the weight that appellant asserts it deserved.

Appellant complains that the findings in support of termination made only one conclusory reference to Walker's testimony, when the circuit court found that "mother did not attend all of her mental health appointments." Appellant urges this court to review particular portions of Walker's testimony and to conclude on the entire evidence that a mistake has been made.

Appellant notes Walker's statements that appellant was compliant in her attendance at counseling sessions that started in October 2006 and were reopened in August 2007; that appellant did not have a "pattern of non-attendance" in attending seven scheduled appointments after August 17, 2007, and giving satisfactory reasons for missing six; and that Walker's counseling with appellant was not affected by her release for non-compliance with the New Beginnings program in Warren, Arkansas. Appellant also relies upon the following testimony by Walker regarding appellant's progress. Although appellant suffered a relapse and her drug use resulted in infected areas on her hand and arms that Walker saw, those injuries were not observed after August 17, 2007. Appellant made much progress with Walker's counseling program in that her thinking became "a bit" clearer; she no longer had the interference of drugs, which she had used heavily in the past; and "there were impairment issues" in her mental faculties after August 17. Walker testified that she would like to see appellant's progress continue and that, should appellant's children be placed back with her, the adjustment issues they would face were solvable.

Appellant points to evidence in her favor besides Walker's testimony. Appellant completed a parenting program in Warren, Arkansas, and successfully completed inpatient

drug rehabilitation treatment in Gassville. Her counselor in Gassville noted her “remarkable progress,” desire to remain drug free and be a better mother, and request to continue outpatient treatment in Warren, which treatment the counselor also recommended. Appellant complains that the circuit court’s finding in the termination order that she had no stable housing contrasts with the October 22, 2007 finding that she had established a home. She asserts that Walker’s testimony shows appellant’s compliance with mental-health concerns. She notes a lack of proof, except for the positive drug test perhaps attributable to her medication, that she did not refrain from using illegal substances. Concluding that she substantially and materially complied with the case plan and the court’s orders, appellant asks that the order terminating her parental rights be reversed.

We have stated that we defer to the circuit court in determining the weight to which an expert’s testimony is entitled. DHHS correctly notes in the present case that Walker’s testimony about appellant’s mental health did not go to the definitive issues of her drug use and environmental neglect, which were the reasons for the children’s removal and for their adjudication as dependent/neglected.

Completion of the case plan alone does is not determinative in decisions to terminate parental rights; what matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Wright v. Arkansas Dep’t of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Here, Walker characterized appellant’s compliance as “fair” in attending approximately half the

scheduled appointments for her second session of counseling, which began on August 17, 2007. Walker stated that she would not know if appellant had relapsed by using drugs unless appellant admitted to the relapse. It was Walker's opinion that appellant would continue to need counseling services should the children be returned to her, probably for a year to fourteen months. Walker stated that A.G. would have definite adjustment issues and would not be really stable and secure for up to a year. Walker had no opinion on whether to recommend that reunification efforts continue because her therapy with appellant was individual, Walker's information had been received through appellant, and there was not enough information to "look at the whole."

The assignment of weight and credibility to Walker's testimony was within the scope of the circuit court's discretion. There is no merit to appellant's argument that the court clearly erred by completely disregarding testimony of DHHS's only expert witness.

Affirmed.

KINARD and MARSHALL, JJ., agree.