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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-1406

YOLANDA LYONS APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** April 15, 2009 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NO. JV2007-269] HONORABLE MARK HEWETT, JUDGE AFFIRMED

LARRY D. VAUGHT, Chief Judge

Yolanda Lyons appeals from the termination of her parental rights in A.G. (born August 12, 1999) and E.G. (born May 24, 2001). She argues that the evidence was insufficient to support the termination decision. We affirm.

On April 16 and 17, 2007, the Arkansas Department of Human Services (DHS) investigated reports from A.G.'s elementary school that the child was experiencing asthma attacks and had no medication for his condition. A doctor's visit revealed that A.G. had a very low oxygen level and that his younger sister, E.G., suffered from a fever and strep throat. DHS exercised a seventy-two-hour hold on the children, citing appellant's unstable housing, unemployment, and medical neglect of the children. The circuit court granted emergency custody of the children to DHS on April 20, 2007, and entered a probable-cause order on May 7, 2007.

Following a May 21, 2007 hearing, the circuit court adjudicated the children dependent-neglected. The court established a goal of reunification and ordered appellant to obtain and maintain stable and appropriate housing, employment, and transportation; to complete parenting classes; to undergo a psychological evaluation and a drug-and-alcohol assessment and follow treatment recommendations; to submit to random drug screens; to obtain a valid driver's license; and to visit the children regularly.

On August 2, 2007, Dr. Robert Spray conducted a psychological evaluation of appellant. Dr. Spray diagnosed appellant with a personality disorder and methamphetamine and cannabis abuse in early remission. Dr. Spray recommended that appellant submit to a drug-and-alcohol assessment and random drug tests and that she enter couples therapy with her live-in boyfriend, Richard Miner. Appellant subsequently obtained a substance-abuse evaluation and received a recommendation for outpatient treatment. Appellant would later admit that she was not truthful in her responses to the interviewer.

On October 9, 2007, the circuit court held a review hearing and continued the goal of reunification. The court found that appellant had not fully complied with the case plan and directed appellant to maintain stable and appropriate housing, employment, and transportation; to complete drug treatment and parenting classes; to obtain a driver's license; and to submit to random drug screens.

On January 3, 2008, appellant filed an emergency petition asking the court to help her and Miner obtain drug treatment. The court entered a special review order and found that appellant and Miner were homeless and had a long history of drug abuse. The court ordered

appellant to undergo a second drug-and-alcohol assessment and to provide correct information to the assessor. The court ordered Miner to obtain a drug-and-alcohol assessment, follow treatment recommendations, and submit to random drug screens. The order provided that DHS would bear the cost of appellant's and Miner's assessments and treatment.

On February 23, 2008, appellant entered residential drug treatment after revealing that she drank a fifth of whiskey a day when she could afford it. Miner had entered residential treatment on February 20, 2008, based on his daily use of alcohol and marijuana. On March 1, 2008, appellant and Miner left their treatment facilities prior to completion and, in appellant's case, against medical advice. Within weeks, the circuit court entered a permanency-planning order that changed the goal of the case to termination of parental rights.

At the July 28, 2008 termination hearing, DHS entered documentary evidence that appellant pled guilty to public intoxication on May 22, 2008, and that she tested positive for drugs fourteen times between May 21, 2007, and July 18, 2008. DHS family service worker Stephanie Dougherty testified that appellant's current housing was "safe and liveable" but that appellant had not completed parenting classes or residential drug treatment and that neither appellant nor Miner maintained regular employment during the case. Dougherty said that she believed the children were adoptable, and she recommended termination of appellant's parental rights.

Appellant's former employer, Roger Billingsly, testified that appellant and Miner had worked at B & B Warehouse for almost three weeks in the fall of 2007. Billingsly said that he would have hired appellant again if she had shown up and asked.

Appellant testified that she was capable of working but that B & B Warehouse was her only place of employment during the case. She said that she planned to seek employment as a housekeeper after the hearing, but she later testified that she would not do so because she had an outstanding warrant for failure to pay a fine on her public-intoxication charge. According to appellant, Miner was her sole source of financial support and recently earned $500 per week for two or three weeks' work. Appellant said that she and Miner had been homeless for approximately half of the fifteen-month case. She testified that she acquired HUD housing approximately two-and-one-half months before the termination hearing and that all of her bills were current. However, she acknowledged that the HUD housing was in the name of "Rebecca Lyons" rather than her own name and that she had not told HUD about Miner's purported $500 per week income. Appellant stated that she and Miner were smokers and that they had begun smoking outside the home a few days before the termination hearing in deference to A.G.'s asthma.

Appellant also testified that she had not completed parenting classes, that she had not acquired a driver's license, and that she had recently missed visits with the children due to positive drug tests. Appellant acknowledged taking drugs and drinking alcohol in the past, but she claimed that she had stopped doing both. She could not explain her positive drug screens, the most recent of which was ten days before the termination hearing. Appellant admitted that she did not complete drug treatment. She said that she left her treatment facility because Miner had left his and because "there was incidents that happened there that I didn't feel was no different than being on the streets." According to appellant, neither she nor Miner were

participating in outpatient treatment or AA/NA meetings. Appellant testified that she was in no position to regain custody of the children but that she was "hoping next month to have myself in a decent situation to get my kids returned to me."

Following the hearing, the circuit court entered an order terminating appellant's parental rights. The court found that the children were adoptable and that returning them to appellant would present a risk of physical and psychological harm to them. The court also found grounds for termination and cited, among other factors, appellant's positive drug screens; her failure to complete drug treatment; her unstable housing and employment; her continuing to smoke even though her son has asthma; and her failure to complete parenting classes. Appellant appeals the termination order.

This court reviews termination proceedings de novo. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). 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. *Meriweather v. Ark. Dep't of Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007). An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence: 1) that termination is in the child's best interest, including consideration of the likelihood of the child's adoption and the potential harm in returning the child to the parent, and 2) that one or more statutory grounds exists. Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008). 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. *Meriweather*, *supra*. When

the burden of proving a disputed fact is by clear and convincing evidence, the inquiry on appeal is whether the trial court's finding that the disputed fact was proven 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.*

Appellant argues first that the circuit court erred in finding that termination was in the children's best interest. She contends that DHS produced inadequate evidence to support the court's finding that the children were adoptable and to support the court's finding that the children would be subject to potential harm if they returned to appellant's custody. We see no basis for reversal. Appellant's claim that DHS should have procured testimony regarding the children's adoptability from an adoption specialist rather than caseworker Stephanie Dougherty is not well taken. Neither our statutes nor our case law require testimony from an adoption specialist. Moreover, appellant did not object to the caseworker's qualifications below. We do not address arguments raised for the first time on appeal. *See Ark. Dep't of Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007). In any event, the likelihood of a child's adoption and the potential harm in returning a child to a parent are simply factors that the circuit court must consider in assessing the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). DHS is not required to offer clear and convincing proof of these factors. *See Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, __ S.W.3d ___ (2008); *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). The guiding principle is that, after consideration of all factors, there must be clear and

convincing evidence that termination is in the child's best interest. *Hall*, *supra*; *McFarland*, *supra*.

Given all of the factors in this case, the circuit court did not clearly err in finding that termination was in the children's best interest. Appellant tested positive for drugs throughout the case and as late as ten days before the termination hearing. Appellant was also convicted of public intoxication shortly after DHS filed its petition to terminate her parental rights. Yet appellant did not complete substance-abuse treatment. She spent just a few days in a residential facility before leaving it against medical advice. At the time of the hearing, appellant was neither participating in a treatment program nor attending AA or NA. Our courts have recognized that a parent's continuing drug use and failure to remedy a substance-abuse problem are important factors in reviewing a termination order. *See Long v. Ark. Dep't of Human Servs.*, 369 Ark. 74, 250 S.W.3d 560 (2007); *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Appellant also remained unemployed throughout most of the case, having worked less than three weeks in fifteen months. She relied on Mr. Miner for support, but Miner had an unstable job history, unresolved substance-abuse issues, and a significant criminal record. Additionally, appellant admitted that she was unable to have the children returned to her at the time of the termination hearing. She testified that she hoped to be ready in another month, but the court was not required to give appellant more time based on the mere hope that she could remedy her situation. The intent of our termination statute 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. Ark. Code Ann. § 9-27-341(a)(3) (Repl. 2008). Appellant points out that she obtained HUD housing two-and-one-half months before the termination hearing. However, a parent's eleventh hour improvements will not outweigh other evidence demonstrating her failure to comply and remedy her issues. *See Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005); *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Appellant also argues that DHS did not prove grounds for termination. Only one ground is necessary to terminate parental rights. *Albright*, *supra*. Arkansas Code Annotated section 9-27-341(b)(3)(B)(vii)(*a*) (Repl. 2008) sets forth the following ground:

> That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to 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 return of the juvenile to the custody of the parent.

The factors cited earlier in this opinion support this ground for termination. After DHS filed the original dependency-neglect petition, appellant frequently tested positive for drugs, aborted her drug treatment, was chronically unemployed, and did not comply with the case plan and court orders. In particular, appellant's failure to resolve her substance-abuse issues demonstrates an indifference to remedying her circumstances. *Carroll*, *supra*.

Affirmed.

HART and BROWN, JJ., agree.