

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-1188

JESSICA PACHECO

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered May 20, 2009

APPEAL FROM THE POPE
COUNTY CIRCUIT COURT,
[NO. JV2007-159]

HONORABLE KEN D. COKER JR.,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant Jessica Pacheco appeals from an order terminating her parental rights in C.P. (born August 31, 2005). Appellant argues that the evidence was insufficient to warrant termination. We affirm.

On May 8, 2007, the Arkansas Department of Human Services (DHS) petitioned the Pope County Circuit Court for emergency custody of C.P. According to a DHS affidavit, appellant visited a hospital emergency room on May 5, 2007, to obtain treatment for injuries she received in a domestic dispute with her boyfriend, James Cantrell. Appellant was accompanied by her daughter, twenty-month-old C.P. During the course of the hospital visit, the staff noticed bruises and broken blood vessels on C.P.'s torso and head. Appellant admitted that Cantrell had squeezed C.P. around the waist to induce a bowel movement and had thrown the child to the floor when she began to cry. Appellant also reported that, after C.P.

had a bowel movement, Cantrell changed the child's diaper, smeared the diaper's contents in the child's face, and hit the child on the back of the head. Additionally, appellant related an incident from March 2007 in which Cantrell wrapped C.P. in a blanket and tied a belt around her so that she would stop crying and go to sleep. The affidavit noted that DHS and the Pope County Sheriff's office spoke with appellant in April 2007 to determine if she or C.P. needed assistance but that appellant denied any abuse by Cantrell.

DHS obtained emergency custody of C.P., and the circuit court adjudicated the child dependent-neglected. The adjudication order established a goal of reunification and directed appellant to submit to a psychological evaluation and follow recommendations, to participate in parenting classes, to obtain and maintain suitable housing and employment, and to have no contact with James Cantrell. A November 2007 review order continued the goal of reunification.

On June 30, 2008, the court found that returning C.P. to appellant would be contrary to the child's welfare, and the court changed the goal of the case to termination of parental rights. At the termination hearing, appellant testified that she did not leave Cantrell when he began abusing C.P. because she was afraid of Cantrell and depended on him for economic support. Appellant acknowledged that she went to the hospital in May 2007 to seek treatment for her own injuries rather than C.P.'s injuries. She further stated that, after the May 2007 incident, she returned to a former romantic partner, Ms. Jessie Jewell, and had no further contact with Cantrell.

Appellant testified that she obeyed court orders by attending parenting classes, visiting C.P., acquiring an apartment, and obtaining a job. Appellant said that she worked twenty-eight to thirty hours a week at Wal-Mart and that her paycheck left her with, at most, approximately \$100 at the end of the month. Appellant also stated that she walked to work because she had no driver's license, due to a delinquent traffic fine. However, appellant said that Ms. Jewell or Ms. Jewell's father occasionally drove her to work. Appellant said that she planned to obtain a second job if the court returned C.P. to her and that, if the job was too far from home, she would seek out a ride. Appellant also testified that she underwent a psychological evaluation in November 2007 but that she had attended only one or two sessions with different counselors.

DHS caseworker Angel Simson testified that she was concerned about appellant's parenting abilities. Simson said that, during visitations, appellant responded to two-year-old C.P.'s behavior by acting like a child herself and that the visits sometimes ended in an uproar. Simson likewise expressed concern about appellant's financial situation, saying that appellant sometimes arrived at visitations without diapers or food because appellant could not afford them. Simson further said that appellant depended on others for financial assistance and that appellant's only support system—particularly when it came to transportation—consisted of Jewell and Jewell's father.

Simson related a statement by appellant that appellant began her relationship with Cantrell in order to escape an unhealthy relationship with Ms. Jewell, who had emotional and anger issues due to childhood abuse. According to Simson, appellant likewise attributed

Cantrell's violent behavior to his abusive childhood, and appellant made excuses for Cantrell based on that history. Simson further stated that Ms. Jewell's father had nine founded reports of severe physical abuse, which included a beating with a metal pipe and slamming a child's head in a door. Simson said that appellant lived at Mr. Jewell's house for a year during the case and that Mr. Jewell had driven appellant to a few visitation appointments. Additionally, Simson testified that, contrary to appellant's claim that Ms. Jewell did not live with her, the caseworker invariably found them at appellant's apartment or at Mr. Jewell's house. Another member of the Jewell family testified that appellant was at the Jewell house nearly every day, in contrast to appellant's testimony that she was not at the Jewell house very often.

Psychological examiner Lewis Campbell testified that he diagnosed appellant as having a personality disorder with narcissistic and histrionic features. Campbell stated that it was typical for an adult with that type of disorder to be blind to her child's needs as long as the adult's own needs were being met. According to Campbell, appellant's disorder required at least six months of psychotherapy and, without treatment, the scenario of a romantic partner's violence against C.P. could reoccur.

Jessie Jewell testified that she had helped appellant raise C.P. since the child was two months old. Jewell's medical records showed that she had a history of serious mental problems, including hallucinations, extreme anger, and attempted suicide, which Jewell told her counselors that she tried "about every three years." Jewell said that, although appellant had her own apartment, the two were essentially living together.

CASA volunteer Cheryl Altemus testified that she recommended a continuation of reunification efforts rather than termination of appellant's parental rights, as long as appellant avoided contact with Mr. Jewell. Altemus cited appellant's move toward self-sufficiency in obtaining a job and a suitable apartment.

After the hearing, the circuit court entered an order terminating appellant's parental rights. The court found that termination was in C.P.'s best interest and that DHS proved grounds for termination. The court relied primarily on evidence that appellant had received little, if any, psychological treatment and that appellant was economically and emotionally dependent on the Jewells, who had a number of troubling problems that were potentially harmful to C.P.

An order forever terminating parental rights must be based upon a finding by clear and convincing evidence that termination is in the child's best interest and that at least one statutory ground for termination exists. Ark. Code Ann. § 9-27-341(b)(3)(A) and (B) (Repl. 2008). When assessing the child's best interest, the circuit court must consider 1) the likelihood that the child 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 parent's custody. Ark. Code Ann. § 9-27-341(b)(3)(A). On appeal, our inquiry is whether the circuit court's termination decision was clearly erroneous. *See Belue v. Ark. Dep't of Human Servs.*, 104 Ark. App. 139, ___ S.W.3d ___ (2008).

Appellant argues first that the circuit court erred in finding that termination was in C.P.'s best interest. Appellant does not challenge the likelihood of C.P.'s adoptability but

contends that DHS failed to prove potential harm in returning C.P. to her. The potential-harm inquiry is but one of many factors the circuit court must consider in its best-interest analysis. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, ___ S.W.3d ___ (2008). The court is not required to find actual harm or to affirmatively identify a potential harm. *See id.* Rather, the harm analysis should be conducted in broad terms. *Id.*

As appellant correctly points out, she made progress during the case by obtaining a job, renting an apartment, and having no known contact with James Cantrell. We also note that, while appellant's income is meager and she must rely on others for transportation, those factors do not necessarily warrant termination of parental rights. *See, e.g., Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, ___ S.W.3d ___ (2008). However, in the present case, we cannot say that the circuit court clearly erred in finding that termination was in C.P.'s best interest. Appellant willingly allowed herself and her child to endure horrific treatment in the name of economic security. Appellant testified that she did not leave James Cantrell, who badly abused C.P., because she was afraid of Cantrell and economically dependent on him—so much so that she declined to report Cantrell's actions to helpful authorities and, on the day that she took C.P. to the hospital, sought treatment for her own injuries rather than the child's. In these circumstances, appellant's insufficient income and her dependence on others constitute not just economic issues but safety issues with potentially harmful consequences. This is especially true where the persons on whom appellant solely relies for support and companionship have their own issues that portend harm to C.P.

Certainly no child should be regularly exposed to Mr. Jewell and his numerous, founded reports of abuse, nor to Ms. Jewell's anger, hallucinations, and regular suicide attempts.

Of equal if not greater importance is appellant's lack of serious effort in obtaining psychological counseling. Appellant testified that, during the case, she saw two counselors for one or two sessions each. According to appellant's psychological examiner, a patient with appellant's personality disorder would require at least six months of therapy to overcome the disorder. The examiner also stated that, in the absence of therapy, appellant could find herself and her child in another abusive relationship. Yet, after receiving her psychological assessment, appellant attended only a handful of counseling sessions. The failure to consistently attend counseling sessions to address the issues resulting in the child's removal is a factor that demonstrates parental indifference and will support termination of a parent's rights. *See Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008).

For these reasons, we conclude that the circuit court did not clearly err in finding that termination was in C.P.'s best interest. The same proof supports the court's finding that DHS proved the following ground for termination:

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.

Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). Accordingly, we affirm the circuit court's termination order.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.