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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-161

APRIL LECHNER APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** June 24, 2009 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NO. JV07-223] HONORABLE MARK HEWETT, JUDGE AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant April Lechner appeals from an order terminating her parental rights in three minor children: S.L. (born January 6, 2003), H.L. (born August 2, 2004), and T.L. (born April 15, 2005). She argues that the evidence was insufficient to warrant termination. We disagree and affirm.

In 2006 and early 2007, appellant and the children lived with appellant's mother, Sharon Sanders. Appellant was addicted to drugs and was frequently away from home, either voluntarily or as the result of incarceration. She left many of the child-raising responsibilities to Mrs. Sanders. On March 29, 2007, Mrs. Sanders told DHS that she could no longer care for the children. She reported that appellant continued to use drugs and was "not trying to get her kids back." Based on Mrs. Sanders's statements, DHS filed a petition to obtain emergency custody of the children. The circuit court granted the petition and adjudicated the

children dependent-neglected due to parental unfitness. The adjudication order established a goal of reunification and required appellant to complete parenting classes; to maintain appropriate housing and income; to submit to random drug screens; to complete drug treatment; to undergo a psychological evaluation and complete any recommended counseling; to resolve all pending criminal charges; and to visit the children regularly.

On June 5, 2007, the court placed the children in the temporary custody of their paternal step-grandmother, Sharon Lechner. A subsequent review order continued that custody arrangement and declared that appellant had not complied with the case plan or prior court orders. The court reiterated its previous directives to appellant and ordered her to pay eighty-five dollars per week as child support.

In January 2008, Sharon Lechner told DHS that she could not care for the children due to upcoming back surgery. The court placed the children in DHS custody for several weeks, then returned them to Mrs. Lechner on March 24, 2008. That same day, the court's permanency-planning order changed the goal of the case to termination of parental rights. The court found that:

> [T]he mother has not complied with the caseplan or orders of the Court in that she has not maintained meaningful contact with the Department, has no stable housing or income, has no transportation, has not completed parenting classes or drug treatment, has not visited regularly, has failed drug screens and has not paid child support as ordered (she is $1785 in arrears).

After DHS filed a termination petition, the termination hearing took place on October 31, 2008. Appellant testified that she was currently incarcerated at the Arkansas Department of Correction for theft by receiving. She said that the conviction stemmed from her March

2008 arrest for pawning stolen jewelry to buy drugs. Appellant also testified that she was previously incarcerated for residential burglary, theft of property, and removing a monitor while under house arrest. According to appellant, she was free on bond between early 2007 and March 2008 and could have worked on the case plan. However, she admitted that she failed to complete parenting classes; that she did not undergo a drug-and-alcohol assessment or complete drug treatment; that she did not pay child support; and that she did not obtain appropriate housing, employment, or transportation. Appellant also testified that she tested positive for drugs during the case and that she had not seen her children since Christmas Eve 2007. She said that she missed several visits with her children because she believed that a clean drug screen was a prerequisite for the visits, and she knew that she would test positive. Appellant testified that she did attend the court-ordered psychological evaluation. On cross-examination, she denied showing up intoxicated for the evaluation. However, she admitted to drinking thirteen beers the night before the evaluation, which she did not consider excessive, given that she "can drink like a fish."

Appellant testified further that she was trying to improve her circumstances while in prison. She said that she had completed or enrolled in anger-management classes, substance-abuse treatment, and vocational training. She also said that she planned to take parenting classes. Appellant predicted that she would be released from prison in January 2009 and that she would be "stable enough" within five or six months thereafter to provide for the children. She said that the children's placement with Sharon Lechner was appropriate but that she wanted a chance to rebuild her relationship with the children.

DHS caseworker Gary Watkins testified that he was assigned to the case in January 2008 but that he had not seen appellant until the day of the termination hearing. Watkins stated that DHS referred appellant for a drug-and-alcohol assessment in August 2007 and gave appellant a weekly visitation plan for the children. Watkins also testified that the oldest child, S.L., was so frightened of appellant that she wet her pants upon hearing appellant's name. Sharon Lechner, who still had custody of the children at the time of the hearing, confirmed that S.L. wet her pants after visiting appellant. Mrs. Lechner stated that she preferred to adopt the children rather than be their guardian because she wanted to keep them in a stable home. Mrs. Lechner testified that appellant could appear "clear headed one minute" then "go off the deep end the next." Mrs. Lechner acknowledged that appellant seemed more clear-headed and honest than she had in the past.

Following the hearing, the court entered an order terminating appellant's parental rights. The court found that termination was in the children's best interest; that DHS proved grounds for termination; that, other than submitting to a psychological evaluation, appellant failed to comply with court orders; and that there was little likelihood that granting appellant additional time to improve would result in reunification within a reasonable period from the children's perspective. Appellant appeals from that order.

An order terminating parental rights must be based upon a finding by clear and convincing evidence that termination is in the children'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). In assessing the best interest of the children, the circuit court must consider the

likelihood that the children will be adopted if the termination petition is granted and the potential harm caused by returning the children to the parent's custody. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) and (ii). We do not reverse the circuit court's finding of clear and convincing evidence unless that finding is clearly erroneous. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, ___ S.W.3d ___ (2008). 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.* We review termination orders de novo. *Id.*

Appellant argues first that the circuit court erred in finding that the children were likely to be adopted. She contends that DHS presented no evidence of the children's abilities or disabilities and no testimony that the children were adoptable or had potential matches for adoption. Appellant states that the only proof concerning adoptability came from Sharon Lechner, who testified that she was willing to adopt the children but who had relinquished custody of the children at one point during the case.

Adoptability is but one factor a circuit court must consider in the overall termination decision. *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(i); *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). DHS is not required to prove the children's adoptability by clear and convincing evidence. *McFarland*, *supra*. Rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the children's best interest. *Id.*

We see no error in the court's consideration of the children's likelihood of adoption.

The children lived with Sharon Lechner from June 2007 until October 2008, with the exception of approximately two months in early 2008. Mrs. Lechner testified at the termination hearing that she wanted to adopt the children and provide them with a stable home. She said that she had been the only person who was there for the children during the case and that the two youngest children "don't really know anybody but me right now." According to Mrs. Lechner, S.L. was doing very well in kindergarten and the other two children were "growing like weeds." The court obviously considered Mrs. Lechner's testimony and found that the children were adoptable. This satisfied the statutory requirement.

Appellant argues next that the circuit court erred in finding that the children would be subject to potential harm if they were returned to her. Potential harm is another factor that the circuit court must consider in deciding whether termination is in the children's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A)(ii). Appellant contends that any potential for harm was contradicted by her involvement in drug treatment, anger-management classes, and a vocational program and her intention to begin parenting classes.

As with the likelihood of adoption, the potential harm in returning the children to the parent is but one factor 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 that actual harm would result or to affirmatively identify a potential harm. *Id.* Furthermore, the harm analysis should be conducted in broad terms. *See id.*

The potential harm in this case is clear. Appellant has a history of drug abuse and has

engaged in criminal activity to support her habit. She has been incarcerated numerous times and was in jail at the time of the termination hearing. Though appellant began a substance-abuse program while she was imprisoned in 2008, she never completed a course of treatment, despite having ample time and opportunity during this case to do so. Appellant has also demonstrated a tendency to lose contact with the children for significant periods of time. At the beginning of this case, she often left home and surrendered the children to her mother's care. When her mother could no longer raise the children, appellant continued to use drugs and made no progress toward improving her circumstances. After the children were taken into foster care, appellant missed several visits with the children, knowing that she would test positive for drugs.

Additionally, appellant admitted at the October 2008 termination hearing that she had no appropriate home, employment, or transportation. She predicted that she would be stable enough to regain custody of the children several months into 2009. However, her prediction depended upon her being released from prison, obtaining a home and employment, obtaining transportation, completing parenting classes, completing a substance-abuse program, and remaining drug free. Given appellant's historical inability to accomplish these goals, the circuit court understandably determined that appellant was unlikely to make such extensive progress within a reasonable time frame. *See Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004). Furthermore, at the time of the termination hearing, appellant had only recently begun to address the many issues in her life that contributed to her unfitness as a parent. Evidence that a parent begins to make improvement as termination becomes more

imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

The intent of our termination statute is to provide permanency in a child's life in all instances in which the return of the child to the family home is contrary to the child'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 child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Appellant had over a year and a half to move toward reunification, but she failed to follow virtually every one of the court's directives. Accordingly, we conclude that the circuit court did not err in considering the potential harm caused by returning the children to appellant and in finding that termination was in the children's best interest.

For her final point, appellant argues that DHS did not produce sufficient evidence of grounds for termination. The circuit court found that DHS proved the following ground set forth at Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*) (Repl. 2008):

> That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

Appellant asserts that the condition that caused the children's removal was the inability of her mother, Sharon Sanders, to continue caring for the children. Appellant claims that the situation was not within her control or power to remedy. However, Mrs. Sanders's inability

to care for the children was the direct result of appellant's behavior. It was appellant's addiction to drugs, her frequent absences from home, and her criminal activity that brought the children into Mrs. Sanders's care and prompted Mrs. Sanders to seek help from DHS. Then, as the case progressed, appellant continued to use drugs and did not complete treatment for her addiction. She also could not or would not maintain contact with the children or follow her visitation schedule. Additionally, appellant spent several months of the case behind bars and was arrested on drug-related theft charges one year into the case. Under these circumstances, the circuit court did not clearly err in finding that appellant failed to remedy the conditions that caused removal.

Appellant also argues that DHS did not provide a "meaningful effort" to rehabilitate her, as required by Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*) (Repl. 2008). To the contrary, the record demonstrates that DHS provided numerous services to appellant, including referrals for a psychological evaluation and drug treatment, drug screens, parenting classes, and visitation. Appellant simply failed to take advantage of those services.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.