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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA10-407

ERICA LUNON APPELLANT V. ARKANSAS DEP'T OF HUMAN SERVICES and MINOR CHILD APPELLEES	**Opinion Delivered** September 29, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION [No. JJN2008-774] HONORABLE WILEY A. BRANTON, JR., JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

The Pulaski County Circuit Court terminated Erica Lunon's parental rights to her daughter, L.A. Lunon appeals the termination. She challenges the sufficiency of the evidence supporting the court's best-interest and statutory-ground findings. We affirm the court's termination decision.

Background

This case began in April 2008 when L.A.'s grandmother brought her to Arkansas Children's Hospital with a swollen left eye and a bloody spot in the white of her eye. L.A. reported that Lunon spanked her with an extension cord while L.A. was in the shower. When L.A. grabbed the extension cord, Lunon started punching her with a closed fist. At some point, L.A. fell to the floor and Lunon began kicking her in the face, which caused

L.A.'s eye injury. L.A. escaped into Lunon's bedroom and Lunon grabbed a wooden stick and threatened to spank her with it. L.A. crawled under the bed, but ultimately went back to the shower, where Lunon spanked her some more. L.A. had injuries all over her body, including bruises and "loop marks" on her right leg at various stages of healing. Lunon admitted to spanking L.A., but denied that she was the cause of her eye injury. She offered several explanations about why L.A. had been out of school for several days and about the eye injury, including that L.A. poked herself in the eye, L.A. injured her eye at school, and L.A. had pink eye.

DHS exercised a seventy-two-hour hold on L.A. and her sister, M.L. The court entered an emergency custody order a few days later, which continued the girls in DHS's custody. In June 2008, the court found the girls dependent-neglected and determined that the allegations in the petition regarding Lunon's abuse of L.A. were true. The court set the case goal as reunification. In February 2009, the court held a permanency-planning hearing. It found that, although Lunon had made "significant measurable progress toward achieving the goals established in the case plan," she "continue[d] to minimize her role in the abuse of [L.A.] and lack[ed] insight regarding [L.A.'s] issues." The court continued reunification as the goal, allowed unsupervised visits between L.A. and Lunon, and established a plan for returning M.L. to Lunon's care.

In July 2009, the court held a second permanency-planning hearing. The court returned M.L. to Lunon's custody, but ordered L.A. to remain in DHS custody because it

found that returning her to Lunon's care at that time was contrary to L.A.'s welfare. Reunification was continued as the case goal. The court held a third permanency-planning hearing in September 2009, at which it authorized DHS to file a termination petition. It noted that L.A. had been out of the home for more than a year and was fearful of returning home. The court further noted that Lunon "continue[d] to blame [L.A.] and justif[ied] having abused [L.A.]" According to the court, "there [was] an issue as to whether the mother ha[d] fully accepted responsibility for her abuse to [L.A.]"

DHS filed its termination petition in November 2009. The court held the termination hearing in December 2009 and ultimately terminated Lunon's parental rights. In doing so, it found that L.A. was adoptable and that returning her to Lunon's care was contrary to her best interests, health and safety, and welfare. It further found that L.A. had been adjudicated dependent-neglected and had been out of Lunon's custody for more than a year, but despite DHS's rehabilitation efforts, Lunon had been unable to fully correct the problems that had originally caused L.A.'s removal from the home.

Analysis

As a predicate to terminating Lunon's parental rights, the court had to find, by clear and convincing evidence, that termination was in L.A.'s best interest and that at least one statutory ground for termination existed. Ark. Code Ann. § 9-27-341(b)(3)(A) & (B) (Repl. 2009). We review termination-of-parental-rights cases *de novo*. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 344, 285 S.W.3d 277, 281 (2008). But we do not reverse the

circuit court's findings unless they are clearly erroneous. *Belue v. Ark. Dep't of Human Servs.*, 104 Ark. App. 139, 143–44, 289 S.W.3d 500, 503 (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." *Belue*, 104 Ark. App. at 144, 289 S.W.3d at 503.

In conducting the best-interest analysis, the court considers the following factors: "[t]he likelihood that the juvenile will be adopted if the termination petition is granted"; and "[t]he 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." Ark. Code Ann. § 9-27-341(b)(3)(A). As part of the potential-harm analysis, the court need only consider the potential harm to the child—it is not required "to find that actual harm would result or to affirmatively identify a potential harm." *Lee*, 102 Ark. App. at 344, 285 S.W.3d at 282. Indeed, the potential-harm analysis is to be "conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home." *Id.*

Lunon first challenges the court's finding that L.A. is adoptable. But the testimony on this point, from adoption specialist Monica Spencer, was clear and unequivocal. When asked whether L.A. is adoptable, Spencer replied, "Yes, she is. We feel that every child is adoptable. I am aware of [L.A.'s] significant behaviors, and I would just have to specifically recruit for her, such as the Heart Gallery and the website." On cross-examination, Spencer

was asked whether she had run a match list for L.A. Spencer said that she had and that there were several families that were interested and willing to accept L.A.'s characteristics.

Lunon next challenges the court's potential-harm and statutory-ground findings. In its termination order, the court found that returning L.A. to Lunon's care was contrary to L.A.'s "best interests, health and safety, and welfare." And for the statutory factor, the court found that DHS had proven that L.A. had been adjudicated dependent-neglected, continued out of Lunon's custody for more than a year, and, despite DHS's efforts to rehabilitate Lunon and correct the conditions that caused removal, Lunon had not remedied those problems. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*). The court found that Lunon had not corrected the conditions that caused L.A.'s removal and that returning L.A. to Lunon's care presented a potentially harmful situation because Lunon had only recently fully acknowledged that she had physically abused L.A. Lunon presses that she had complied with her case plan (a fact recognized by the circuit court) and argues that her late acknowledgment of the abuse was not a sufficient basis to terminate her parental rights. Lunon does not challenge any other aspect of the court's statutory-ground finding.

At the termination hearing, Lunon candidly admitted that she physically abused L.A. But her candor about the abuse was new. Vicki Lawrence, Lunon's therapist since July 2008, testified that Lunon had accepted responsibility for abusing L.A. as early as July 2009, but had somewhat vacillated on the nature and extent of the abuse. The court asked Lawrence whether Lunon had ever "stepped up to the plate and [taken] responsibility without

sugarcoating it." Lawrence answered "[n]ot in that manner." Jan Sims, L.A. and Lunon's family therapist, testified that it had only been in the last couple of weeks that Lunon had taken "the first step" toward progress by telling L.A. that "she had abused her and had lost control and was terribly sorry that she had done that." Sims said it was the "first time that really happened."

In *Corley v. Ark. Dep't of Human Servs.*, 46 Ark. App. 265, 268–69, 878 S.W.2d 430, 431–32 (1994), the chancery court terminated Corley's parental rights, despite her significant progress, because of her refusal to accept responsibility for the abuse to her children or to acknowledge the seriousness of the abuse. Our court affirmed the termination. *Id.* The facts of *Mason v. Ark. Dep't of Health & Human Servs.*, 2010 Ark. App. 251 are similar to *Corley*. There again, the mother would not provide an explanation about her child's severe injuries, the circuit court terminated the mother's parental rights, and we affirmed the termination. *Mason*, 2010 Ark. App. 251, at 4–5.

Taking all of this into consideration, the court concluded that Lunon's "eleventh hour" admission about her physical abuse of L.A. was too little too late. Indeed, "[i]mprovement and compliance toward the end of a case plan will not necessarily bar termination of parental rights." *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 333, 255 S.W.3d 505, 508 (2007). The court further found that it was in L.A.'s best interest "to achieve permanency as soon as possible," because L.A. had been in the system for about twenty months at the time of the termination hearing. The court also held

that it was unclear, even if Lunon was given more time, whether remediation would occur. In sum, the court's best-interest and statutory-ground findings are not clearly erroneous. We therefore affirm the circuit court's termination decision.

GLADWIN and GLOVER, JJ., agree.