Cite as 2010 Ark. App. 677

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-333

	Opinion Delivered OCTOBER 6, 2010
CRYSTAL ADAY APPELLANT	APPEAL FROM THE SALINE COUNTY CIRCUIT COURT,
V.	[NO. JV-01-224]
	HONORABLE GARY M. ARNOLD,
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	JUDGE,
	AFFIRMED; MOTION GRANTED

KAREN R. BAKER, Judge

Crystal Aday brings a consolidated appeal from orders of the Saline County Circuit Court first terminating reunification services and then terminating her parental rights to her children S.V.(1), born July 21, 1997, S.V.(2), born March 17, 2000, and A.V., born September 25, 2001. The trial court granted a joint petition filed by the Arkansas Department of Human Services (DHS) and the attorney ad litem (AAL) to terminate reunification services to appellant on January 8, 2010. The court amended the order on January 19, 2010, to reflect the court's decision to make the order final and appealable under Ark. R. Civ. P. 54(b), as required by Ark. Sup. Ct. R. 6-9(a)(1)(B). Appellant timely filed a notice of appeal from this order. While the appeal was pending but before the brief was submitted, the trial court granted DHS's petition for termination of parental rights. Appellant timely appealed that

order. Appellant filed a motion to consolidate on May 3, 2010, which was granted. Appellant's counsel has filed a no-merit brief and motion to withdraw pursuant to *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 6-9(i) (2009) of the Rules of the Arkansas Supreme Court and Court of Appeals. The brief contains all adverse rulings from the termination hearings and states that, after a conscientious review of the record, counsel has determined that there are no issues of arguable merit for appeal. Counsel's motion and brief were mailed to appellant, informing her of her right to file pro se points on appeal, and the green card was returned. Appellant has filed no pro se points for appeal. We grant counsel's motion to withdraw and affirm the orders terminating appellant's reunification services and parental rights.

We turn first to the question whether clear and convincing evidence supports the circuit court's decision to terminate appellant's parental rights. *See Linker-Flores v. Ark. Dep't of Human Servs. (II)*, 364 Ark. 224, 217 S.W.3d 107 (2005). 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 welfare of the child. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 331, 255 S.W.3d 505, 507 (2007). An order terminating parental rights must be based on a finding by clear and convincing evidence that (1) termination is in the best interest of the juvenile, including consideration of the likelihood of adoption and the potential harm caused by returning custody of the child to the parents, and (2) at least one statutory ground for termination exists.

Dowdy v. Ark. Dep't of Human Servs., 2009 Ark. App. 180, 314 S.W.3d 722; Ark. Code Ann. § 9-27-341(b)(3)(A) & (B) (Repl. 2009). 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*, 98 Ark. App. at 331, 255 S.W.3d at 507. When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry 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.* We review termination orders de novo. *Id.*

Arkansas Code Annotated section 9-27-341(b)(3) states that an order terminating parental rights shall be based upon a finding by clear and convincing evidence that it is in the best interest of the juvenile, including consideration of the likelihood of adoption and the potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent. The order terminating parental rights also must be based on a showing of clear and convincing evidence as to one or more of the grounds for termination listed in section 9-27-341(b)(3)(B).

The trial court's orders terminating reunification services and terminating parental rights were supported by almost identical testimonial and documentary evidence, and we address them simultaneously. The trial court's order after the no-reunification hearing indicates that it considered the children's best interests by evaluating evidence that DHS

presented concerning the likelihood of adoption and the potential harm in returning the children to the custody of their parents. An adoption specialist testified that the children were likely to be adopted, and that the relatives with whom they were placed wanted to adopt all three of them. The evidence proved that allowing the children to remain in a prolonged period of uncertainty and impermanence with a mother who was making no progress in following a case plan was harmful to them. Based on our de novo review of the record, we find that the trial court's finding that termination is in the children's best interests is supported by clear and convincing evidence and find no clear error.

In addition to finding that termination of parental rights was in the best interests of the children, the trial court determined that DHS had met its burden of proving the parents had subjected the children to aggravated circumstances, one of the statutory grounds for termination. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(*a*)(*3*). We therefore limit our discussion to the ground set forth in Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(*a*)(*3*)(*A*) and (*B*)(*i*), which states that the parent subjected the child to aggravated circumstances in that there was little likelihood that services to the family would result in successful reunification. This type of aggravated circumstance occurs where a parent is not following through with offers of assistance, is not completing basic goals of the case plan, and there is a lack of significant progress on the parent's part. *Smith v. Ark. Dep't of Human Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007). In order to establish aggravated circumstances, there must be more than a mere prediction or expectation on the part of the

trial court that reunification services will not result in successful reunification. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

Clear and convincing evidence supports the trial court's order terminating reunification services and terminating parental rights based on its finding that aggravated circumstances existed. At the no-reunification hearing, several witnesses testified to support a finding that termination of reunification services was in the best interests of the children and that there was little likelihood that further reunification services would result in reunification of appellant with her children. Dr. George DeRoeck, the psychological examiner who examined appellant, testified that appellant presented with frank paranoia and mistrust. He opined that given her longstanding history of involvement with DHS, minimal compliance with reunification efforts, and inability to work with DHS to provide care and safety for her children, placement with appellant should not be considered. Dr. DeRoeck believed that any possibility for reunification would only come after appellant received psychiatric treatment and a substance-abuse analysis, and appellant refused such treatment.

The DHS caseworker, Allyson Hass, also testified at the no-reunification hearing. She testified that appellant had refused most of the services offered to her as outlined in the case plan and was generally uncooperative with DHS. Ms. Hass noted that appellant did complete her psychological evaluation and attend a parenting class; however, appellant refused to take a subsequent parenting class after she failed to demonstrate skills she learned in the first class. She stated that appellant revoked DHS's permission to verify whether appellant had followed

the recommendation contained in the evaluation to complete counseling and refused to submit to a drug and alcohol assessment because it required her to sign a referral form provided by DHS, and she refused to sign any documents provided by DHS. Ms. Hass testified that when the case opened, appellant moved and would not provide DHS with an address, stating instead that she was living out of her van. Appellant provided an address in open court, but Ms. Hass could not find the location. Ms. Hass received a letter with yet another address, but when she visited that address, no one was living there. On the day of the no-reunification hearing, Ms. Hass discovered that appellant was living with her mother.

When Ms. Hass testified at the termination hearing, her testimony was almost identical. She stated that appellant had made no improvement since the time of the no-reunification hearing and that the case plan was unchanged since the beginning of the case because no progress was ever made. Ms. Hass stated that appellant had paranoia and trust issues identified through the psychological evaluation that had never been addressed and continued to exist at the time of the hearing.

Appellant also testified at both hearings. She testified that it was DHS's fault that she had not completed the requirements of the case plan. She blamed DHS for her failure to follow the recommendations of the psychological evaluation and for her failure to take further parenting classes, although she admitted that she received a copy of the case plan that set forth the reunification requirements. Appellant testified that she did not need further services because she was a fit and proper parent. She admitted at the termination hearing that she had

revoked her consent for DHS to verify all medically related progress she was making. Appellant stated at both hearings that she would only submit to a drug and alcohol assessment if she could choose the facility and did not have to disclose anything to DHS.

Based on the foregoing, we find that DHS presented clear and convincing evidence that appellant failed to comply with the case plan and court orders, and we see no clear error in the trial court's determination that appellant subjected the children to aggravated circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(*a*)(*3*)(*A*), (*B*)(*i*); *see also Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

In addition to the ruling terminating appellant's parental rights, counsel addresses one other adverse ruling made during the no-reunification hearing. Appellant's counsel objected to a question that the children's attorney ad litem posed to Dr. DeRoeck. Appellant's counsel objected to the question on the basis that it called for speculation. The court instructed counsel to restate the question, which she did, and then overruled the objection. This ruling pertains to the admission of evidence. We will not reverse a trial court's ruling on admission of evidence absent an abuse of discretion; nor will we reverse absent a showing of prejudice. *Eubanks v. State*, 2009 Ark. 170, 303 S.W.3d 450. Dr. DeRoeck was allowed to testify concerning his observations of appellant's paranoid behavior, which is well within his area of expertise. Counsel for appellant states that there was no prejudice to appellant by this ruling, and we agree.

Affirmed; motion to be relieved granted.

GRUBER and HENRY, JJ., agree.