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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1129

SYLVIA HOWELL APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** February 25, 2009 APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT, [NO. JV-2005-41] HONORABLE DAVID CLARK, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

This appeal is brought by Sylvia Howell, whose parental rights as the mother of B.H., born on March 29, 2007, were terminated. We affirm the circuit court's decision.

This case began in January 2005, over two years before B.H. was born, when appellant's oldest child, C.P., born March 25, 1999, was truant and a Family-in-Need-of-Services case was filed. On April 18, 2006, the FINS case was dismissed and appellant's four children, C.P., D.H., K.H., and M.H., were placed in DHS's custody. The court set reunification as the goal. A review hearing was held on June 20, 2006. In the resulting order, the circuit court found that appellant had not complied with the case plan and continued reunification as the goal. At a review hearing held on August 22, 2006, the court found that appellant had not maintained contact with DHS and continued the goal of reunification. At

the time of the hearing, appellant was in jail. The court ordered her to maintain contact with the department; to remain drug free; and to have a drug-and-alcohol assessment as soon as she was released from jail.

At the time of a review hearing held on November 28, 2006, appellant was pregnant with B.H. The court continued the goal of reunification and ordered appellant to submit to drug screens and not to use any drugs or alcohol during her pregnancy. Another review hearing was held on January 9, 2007. The court found that appellant had substantially complied with the court orders and continued the goal of reunification. It noted that appellant was six-months pregnant, and that the caseworker believed that the family must be stabilized before reunification could occur.

B.H. was born on March 29, 2007, with cocaine in her system. DHS immediately filed a petition for emergency custody, with the following supporting affidavit:

> On March 29, 2007, a report was called into the Child Abuse Hotline alleging infant child unknown baby girl was born today. The report alleged that infant and her mother Sylvia Howell (DOB: 6-04-1979 ...) tested positive for cocaine. The report stated the child's birth weight was 5 pounds 14 ounces with a gestational age of 39 weeks. The report also stated that Sylvia admitted to doing cocaine and smoking crack back in August when she was in the early stages of her pregnancy but has not done anything lately. The report further stated the child has no health problems, but was irritable when it was born.
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> On 3-30-07, Worker LaTasha Harris arrived at Conway Regional Medical Center to interview Ms. Howell regarding the allegations. Worker Daniel Henry and John Foreman were present during the interview with the consent of Ms. Howell. Worker Harris interview Ms. Howell about the allegations. Ms. Howell reported that it was nothing that I did. Ms. Howell stated she admitted on 3-29-07 early in the morning around 4:00 a.m. Ms. Howell stated she took the pills around 3:00 or 3:30 a.m. Ms. Howell reported "Robbie" gave them to her. Ms. Howell stated "Robbie"

gave the pills to her about an hour or so before she took them and she gave her two pills. Ms. Howell stated "Robbie" gave her the pills a little after midnight and then reported that she was not sure when she gave them to her. Ms. Howell reported after taking the pills, she broke out in a rash all over. Ms. Howell stated she has used drugs before but has not used since she was 3 or 4 months pregnant. Ms. Howell reported she used meth and that was the only drug she wanted to mess with; it was her drug of choice. Ms. Howell also stated she tried crack back in February of 2005. Ms. Howell stated that last August was the last time she used anything. Ms. Howell reported Mr. Foreman was present when she took the pills and about 30 minutes later she started burning, she felt like she was on fire.

Ms. Howell also reported that she met "Robbie" through a mutual friend and that she has only known her for a few months. Ms. Howell reported that "Robbie" doesn't use drugs and if she does she does not let her know about it. Ms. Howell also reported she does not know "Robbie's" last name. Ms. Howell reported the pills she took were about the size of a Tylenol and they did not have writing on them and they were smooth of both sides and there were no numbers on them. Ms. Howell stated that she took the pills for a headache and cramps. Ms. Howell stated that her water broke and she did not know it and that she took the pills mainly for the headache.

To insure the health and safety of minor child B.H., Worker Harris exercised a 72-hour hold due to the child testing positive for cocaine. A search of CHRIS revealed previous cases on 11-04-02, 9-10-03, and 4-11-06. CHRIS also shows True findings for environmental neglect on C.P. and K.H. dated 10-31-02, and True findings for environmental neglect and inadequate supervision of C.P., K.H., D.H., and M.H. dated 3-08-06. Additionally, there is an on-going dependancy neglect case with Ms. Howell in which it was ordered for Ms. Howell to submit to drug screens and not to use drugs and alcohol during her pregnancy.

The court entered an order for emergency custody of B.H. A probable-cause order was entered on April 3, 2007, stating that appellant would have no visitation because of her continued drug use; ordering appellant to enter inpatient drug rehabilitation; and making the following findings:

Mother is in Criminal Contempt of Court for violating past Court Order and using drugs while pregnant. She shall spend 30 days in the Faulkner County Detention Center and she shall receive a drug and alcohol assessment immediately and the

> Sheriff shall transport if necessary. She may be released. She shall enter the Faulkner County Detention Center today and shall be released early only upon entering and remaining for the full treatment in an in-patient drug treatment facility.

After an adjudication hearing held on June 21, 2007, the court found B.H. to be dependant-neglected as a result of abuse, neglect, and parental unfitness, based upon the following specific findings:

> Medical records were introduced regarding B.H.'s positive drug testing at birth for cocaine. B.H. was born early at thirty-eight weeks and weighed 5 lbs. 14 oz. Mother had minimal pre-natal care, pregnancy was complicated by drug use, and smoking, except for two health department visits. Mother's drug use has been an issue in the dependancy-neglect case of her other children. Mother also tested positive for cocaine. On March 6, 2007, Mother failed to show up for a drug screen but could not provide a sample but offered a sample she had at home. Otherwise, Mother had passed her recent screens before the delivery. Mother told caseworker that she new [sic] about agents (certo) to clean system to pass a drug test and the agent (certo) was on the list of items that were in her position [sic] when she was arrested for shop-lifting. Mother testified that she, with a history of drug abuse, went with a friend, whose name she doesn't know, to a house of a person she doesn't know, and asked for pills for pain and assumed it was Tylenol and then it was cocaine. This was completely unbelievable. Mother testified once that she could not give a sample, once she went ahead and gave a sample before the caseworker showed up. Mother admitted Dr. told her not to take medication when pregnant unless prescribed by a Dr.

The court set adoption as the goal for B.H.

DHS filed a petition for termination of appellant's parental rights to all of the children on July 24, 2007. It asserted that appellant had not followed court orders or the case plan; had not maintained a stable home or employment; had not made herself available for random drug screens; had tested positive for cocaine after B.H.'s birth; did not attend inpatient drug treatment as ordered; did not have a drug-and-alcohol assessment; and had not completed parenting classes.

A permanency-planning hearing was held on October 16, 2007. The court placed permanent legal custody of M.H., D.H., and K.H., with their grandmother, Edna Foreman.[1] The court established relative custody as a permanency goal for C.P. It set adoption and termination as the goal for B.H. The court stated:

> The mother has failed to comply with the case plan and court orders. Specifically, she has failed to maintain employment and housing, failed to complete her parenting classes, she has had dirty drug screens and failed to take drug test, she has been in custody several times for drug possession, she has failed to maintain sufficient contact with DHS. She has made no progress towards alleviating or mitigating the causes of the juvenile(s)' removal from the home. She shall submit to psychological evaluation and follow all recommendations contained therein.

DHS filed a motion to terminate reunification services on October 29, 2007. After a hearing on November 13, 2007, the court filed an order denying the petition and stating:

> Since this matter has been opened, the mother has failed to comply with the case plan and court orders. Specifically, she never completed the drug assessment ordered for her; she never completed inpatient drug rehab claiming she needed to work to pay off fines and that Judge Wood was no longer the presiding judge and Ms. Howell did not have to follow those orders; DHS started to offer parenting classes in January of 2007 and Ms. Howell missed several classes and appointments to start the classes and was unable to complete the classes until November 2007; she has failed to maintain stable housing having 5 different residences while this action has been pending and currently is residing at a shelter, and has been held in the detention center on at least 4 different occasions; she has failed to maintain stable employment having 4 different jobs in 2007 and has been unemployed for various times, she has had her current job for approximately one month; despite the efforts of DHS to obtain prenatal care, she failed to get such services for B.H. prior to the child's birth. She has made no progress towards alleviating or mitigating the causes of the juvenile(s)' removal from the home.

[1]The court filed an order on January 29, 2008, placing permanent custody of C.P. with Mrs. Foreman.

The court stated that, if appellant failed to comply with any of the conditions imposed upon her, it would revisit the reunification-services issue. The court ordered appellant to attend a minimum of five NA/AA meetings per week and provide documentation; to comply with all rules and regulations of the drug-court program and Bethlehem House; to complete a psychological evaluation; to complete a drug-and-alcohol assessment or provide an acceptable one to DHS; to comply with the case plan and court orders; to continue to work towards her GED; and to have no contact with C.P.

At a review hearing held on February 19, 2008, the court stated that the goal would remain adoption, with a concurrent plan of reunification. The court permitted appellant to have supervised visitation once per week and stated that:

> The mother has partially complied with the case plan and court orders. Specifically, she has attended counseling, drug court and has been employed and has complied with most of the requirements of the case plan, however, she has failed to complied [sic] with requirements of Bethlehem House, stable housing and notify DHS of changes. She has made some progress towards alleviating or mitigating the causes of the juvenile(s)' removal from the home.

The Court ordered appellant to comply with the case plan and court orders; to provide DHS with documentation of her NA/AA meetings; and to inform DHS of any significant changes in her life within 48 hours.

The court held a permanency-planning hearing on March 18, 2008. A psychological evaluation of appellant and a CASA report were entered into the record and considered by the court. The court found that the permanency goal would be adoption and termination, stating:

> The mother has partially complied with the case planning and court orders. Specifically, she has attended NA/AA meetings and provided that documentation; her employment has been in constant change; she has failed to maintain stable housing; she has been in custody for periods of time during the pendency of this matter; there have been 37 attempts to drug test her and 26 of them were deemed positive either do [sic] to the test results or her not being available to take the test, failed to obtain her GED, failed to notify the caseworker of changes in her life. She has made minimal progress towards alleviating or mitigating the causes of the juvenile(s)' removal from the home.

On May 27, 2008, DHS filed a petition for termination of appellant's parental rights to B.H.[2] DHS alleged grounds of the child's having continued out of appellant's custody for twelve months, and other factors or issues that arose demonstrating that return of B.H. to appellant's custody would be contrary to B.H.'s safety or welfare.

The termination hearing was held on July 1, 2008, which appellant attended with counsel. Danielle Henry, appellant's caseworker; Lewis Campbell, a psychological examiner; Terri Rowlett, appellant's drug-court probation officer; Amber Mason, a friend of appellant; and appellant testified. At the conclusion of the hearing, the court reviewed the previous orders entered in this case and traced Ms. Howell's inconsistent progress:

> As it relates first off, reviewing the Orders that are in place since this child was taken into custody, the Order from 6-21, from October 16th, and from November 3rd, all of last year, showed that she had completely failed to comply with the Court Order and case plans.
>
> In February, she had partial compliance; in March, she had partial compliance. As I reviewed the order, she was deemed to be partially in compliance, because she was attending the NA/AA meetings and providing documentation as directed. That now appears to have dissipated, in that she no longer provides those documents. It does

[2]DHS also petitioned to terminate the parental rights of B.H.'s putative father, Dustin Pearson, who is not a part of this appeal. On July 3, 2008, appellant's husband, Leslie Foreman, filed his consent to termination of his parental rights to B.H.

appear she is more concerned about providing Drug Court with what's going on, rather than the Department of Human Services.

As it relates to stable employment, you know, I don't know if she has stable employment. I think she has continuous employment. I think those are two different things. I think when I look at the items that are entered as far as the pay stubs on what her income is, I don't see that she has a stable employment that can allow her to take care of the children. Stable housing, well, she moved two weeks ago, even though she again failed to notify DHS of that move.

I am going to find clearly at this point in time, that the child is adoptable. I am going to find that based upon the testimony of Ms. Henry, there appears to be no significant bonding going on between the child and the mother during visitation.

Additionally, I am going to find that she failed to exercise any meaningful visitation that would have justified DHS increasing the amount of visitation that was being provided. If the visitation that's going on is not doing any good, adding an additional visitation seems to be a pointless endeavor.

I have no choice but to find that the child has been out of the home continuously for 12 months, and it has been adjudicated dependency neglect. [sic] I do find that DHS has provided meaningful efforts and service, and attempted to rehabilitate the mother. However, despite those, we're still not to the point that the child can be returned, because the situation has not been alleviated.

Additionally, there are other factors besides what initially led to the child being taken into custody, that I see no way that she has shown me the ability that she can make the decisions that are best for the child, that reunification should be an option, or should be on the table. I think when we're at this point, where as of two weeks ago, you move and you don't tell the Department of Human Services? I mean, I can have no faith in what's going to happen in this case. This child deserves stability, and I think the facts, law, and evidence, clearly indicate that the petition filed by the Department should be granted.

And, ma'am I don't like it. You know, everybody will probably tell you, I probably try to fight harder to get to this point than anybody else, because I absolutely hate it. And I don't think you're a bad person. I think that you have other things that are priorities in your life, and not this child. And I'm going to grant the petition.

On July 21, 2008, the circuit court entered the following findings of fact and conclusions of law:

> The Court finds it to be contrary to the juvenile's best interests, health and safety, and welfare to return her to the parental care and custody of their parents and further finds that the Department of Human Services has proven by clear and convincing evidence that the juvenile has previously been adjudicated dependent-neglect [sic] and has been outside of the home in excess of twelve (12) months, DHS has provided meaning [sic] efforts and services to rehabilitate the mother in order that the juvenile could be returned to her, however, the mother has not been able to successfully correct the conditions that led to the juveniles removal. Additionally, during the pendency of this case additional conditions have arisen which show the return of the juvenile to the custody of the mother is contrary to the juvenile's health, safety and welfare; furthermore, despite DHS offering services to correct these factors mother has manifested the incapacity or indifference to remedy those conditions.

Appellant then pursued this appeal.

On appeal, appellant challenges the adequacy of the circuit court's "best-interest" finding and the sufficiency of the evidence as to best interests and grounds for termination. Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Pursuant to Arkansas Code Annotated § 9-27-341(b)(3) (Repl. 2008), the facts warranting termination of parental rights must be proven by clear and convincing evidence. In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant facts were established by clear and convincing evidence. *Id*. Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction regarding the allegation sought to be

established. *Id*. Furthermore, we will defer to the trial court's evaluation of the credibility of the witnesses. *Id*.

Arkansas Code Annotated § 9-27-341(b) provides in relevant part:

> (3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
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> > (A) That it is in the best interest of the juvenile, including consideration of the following factors:
> >
> > > (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
> > >
> > > (ii) The 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; and
> >
> > (B) Of one (1) or more of the following grounds:
> >
> > > (i)(*a*) 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.
> >
> > . . . .
> >
> > > (vii)(*a*) 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.

In determining whether there is clear and convincing evidence that termination is in the child's best interest, the court is to consider whether she is likely to be adopted if the termination petition is granted and the potential harm caused by returning her to the parent. *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(i) (Repl. 2008). Every factor, however, need not be established by clear and convincing evidence. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 25 S.W.3d 762 (2007).

Appellant first argues that the trial court's statement in the termination order, that return of B.H. to appellant was contrary to the child's best interests, was inadequate, according to Ark. Code Ann. § 9-27-341(b)(3)(A). She asserts that the trial court was required to make a written finding that it was in the child's best interests to terminate parental rights and that the court's order did not satisfy this requirement. We disagree. Arkansas Code Annotated § 9-27-341(b)(3) requires the termination decision to be "based upon a finding by clear and convincing evidence" that termination "is in the child's best interest," and that the child's likelihood of adoption and the potential harm of return to the parent be considered. The statute does not, however, state that the "best-interest" finding must be in writing. Although the trial court did not specifically state from the bench that termination would be in B.H.'s best interest, it said at the conclusion of the hearing that the child was adoptable. Together, the court's written order and its finding from the bench satisfied the statute.

We note that DHS presented more than sufficient evidence that B.H. was adoptable and that her return to appellant would subject her to a high level of potential harm. Danielle

Henry, the family-service worker, testified that B.H.'s foster parents were more than willing to adopt her and that adoption was very likely. Additionally, the evidence supporting grounds for termination, discussed below, demonstrated that B.H.'s return to appellant would subject her to potential harm.

Appellant next argues that the trial court erred in finding grounds for termination. She first asserts that she remedied the condition, drug use, that caused B.H.'s removal from her custody. Appellant also contends that there was insufficient evidence to support the "other factors" ground. We hold that DHS established both grounds for termination set forth in its petition. There is no question that appellant did achieve partial compliance near the very end of the proceeding. Nevertheless, a parent's rights may be terminated even though she is in partial compliance with the case plan. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004). Even full completion of a case plan is not determinative of defeating a petition to terminate parental rights. *Wright v. Ark. Dep't of Human Servs.*, *supra*. What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id*. Improvement and compliance toward the end of a case plan will not necessarily bar termination of parental rights. *See Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Appellant made good progress with her drug problem after she entered the drug-court program in October 2007. However, she had abused drugs for nine years before that. Also,

her progress for the nine months before the termination hearing should not be taken out of the context of this entire proceeding, which has been ongoing since January 2005. Appellant's drug use was not the only condition that caused B.H.'s removal from her custody. When B.H. was born, appellant's other children were in the custody of DHS; at the termination hearing, they were not with appellant, but were in the custody of their grandmother. Appellant did not obtain her GED. She never established stable housing. Ms. Henry testified that appellant's most recent apartment, where a dog and cat lived, smelled of animal feces and was not suitable for a toddler. Although appellant obtained employment, she was working at two part-time jobs which, together, could not support her and B.H. Ms. Henry stated that appellant had not maintained adequate contact with DHS and had failed to keep it updated on changes in her life. She also said that appellant had not supplied DHS with documentation of her attendance at NA/AA meetings after May 11, 2008. Ms. Henry stated that appellant had failed to obtain prenatal care before B.H. was born, as the court had ordered, and had taken no steps to avoid further pregnancies. Ms. Henry also said that appellant's participation in visitation with B.H. was problematic; appellant often left early and had little interaction with the child. Additionally, there was evidence that appellant had been arrested several times; the last occasion before the hearing was in July 2007, for theft of property and possession of drug paraphernalia. These facts, as well as Mr. Campbell's diagnosis of appellant's borderline personality disorder, and his testimony that she has a high probability of returning to drugs,

support Ms. Henry's description of appellant as having bad judgment and her doubts about appellant's ability to ever provide a stable home for B.H.

"Other factors" also arose during the proceeding. We have no hesitation in holding that appellant's premature discharge from Bethlehem House in December 2007, for having sex with three other people at the same time, in the back yard, satisfied this ground for termination.

A stable home is one of a child's most basic needs. *Latham v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 25, 256 S.W.3d 543 (2007). Even with more time and reunification services, there is no reason to believe that Ms. Howell could ever provide a stable home for B.H., especially within a reasonable time from the child's perspective. B.H. has been in only one foster home since birth, and she will be two years old next month. It is, therefore, time to give her a permanent, stable home. We find no error in the trial court's termination of appellant's parental rights.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.