ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CA05-1276

September 26, 2007

VIRGINIA TOTTEN WERTS
APPELLANT

APPEAL FROM PULASKI COUNTY CIRCUIT COURT, TENTH DIVISION [NO. JN-2003-462]

V.

HON. JOYCE WILLIAMS WARREN, JUDGE

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

AFFIRMED

This is an appeal from the termination of appellant's parental rights. On appeal, appellant argues that the trial court clearly erred in finding that continuing contact could harm the child and in finding that she manifested incapacity to remedy issues concerning the child that arose subsequent to his removal. We find no error, and we affirm.

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. *Crawford v. Arkansas Department of Human Services*, 330 Ark. 152, 951 S.W.2d 310 (1997). Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2002), 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. *Wright v. Arkansas Department of*

Human Services, 83 Ark. App. 1, 115 S.W.3d 332 (2003). 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. *Crawford v. Arkansas Department of Human Services, supra.*

Here, the record shows that appellant's child, a six-year-old-boy with special needs and behavior problems, was removed because both of his parents were in prison and his caretaker could not continue to keep him. When appellant was released from prison, she participated in reunification efforts, going to counseling and parenting classes, generally remaining employed although at many different jobs, and appears to have terminated her drug use. All of her drug tests were negative. These are laudable accomplishments of which appellant can be proud.

However, when the child was returned to her for thirty days on a trial basis, the results were calamitous, with the child causing an uproar in school on one occasion and missing several days of school. When questioned about her child's absences, appellant stated that she had been the victim of an armed robbery at her home but she did not report this to the police because the robbers threatened to kill her if she did. Appellant's argument, in essence, is that the robbery was a random and unforeseeable event that changed the entire course of the reunification process. We cannot agree.

It is clear that appellant loves her child, that she was making real and sustained efforts and much progress to become a fit parent, but that she was simply unable to do so within a

reasonable period of time. The child had been out of the home for approximately two years when the goal was changed from reuniting the family to termination and adoption. There was expert testimony that appellant is unable to make good and responsible choices that would offer hope of stability for her child. There was evidence that appellant's emotional immaturity led to poor choices that resulted in a criminal conviction and incarceration for a parole violation. There was also evidence that, despite intensive services, appellant did not accept that she was required to work to support her child, that she lost jobs because she could not arrange transportation even when bus passes were offered her, that appellant lies to avoid the consequences of her actions, including several lies that she admitted to telling in her testimony during the course of the proceedings. She relates to her child as a friend rather than a parent and is unable to effectively give him the discipline that he needs. She married a felon twenty years her junior although they were both on parole, kept the marriage a secret because she knew it would be detrimental to her reunification with her child, soon separated from him because he "had returned to his old ways," but nevertheless went to visit him after the thirty-day reunification trial failed. Significantly, there was evidence that the armed robbery at appellants' home was perpetrated by a good friend of appellant's husband. Clearly, even if appellant had rehabilitated herself, she unwisely continued to associate with criminals, and this was patently detrimental to her child.

Appellant appears to be trying her best but is simply too emotionally immature to be a fit parent. The child has been out of her home over two years and reunification efforts have failed despite her best efforts. Under these circumstances, we cannot say that the trial court

clearly erred in finding that continued association with appellant would be detrimental to her child, or in finding that appellant failed to remedy issues detrimental to the child that arose subsequent to removal.

Affirmed.

MILLER, J., agrees.

HART, J., concurs.

Josephine Linker Hart, J., concurring. I agree that this case must be affirmed, but I do not subscribe to the rationale put forward by the majority. Accordingly, I write separately.

Contrary to appellant's argument, the trial judge ordered termination of parental rights because appellant's "impaired judgment threatened D.T.'s health and safety." Given the record before me, I cannot say that the trial judge clearly erred. I disagree with the majority's fact-finding that it was a matter of "emotional immaturity." The record reflects that appellant's life has careened from one crisis to another, all attributable to appellant's poor choices. She has gone from drug abuse to consorting with a convicted felon as a romantic partner whom she ultimately, however briefly, married. In short, appellant's life and lifestyle represented the very antithesis of the holy grail that our juvenile code ostensibly exists to find for the children that are taken into ADHS custody—stability. It is apparent that Appellant does not have the capacity to be the type of parent D.T. needs. *See J.T. v. Arkansas Dept. of Human Services,* 329 Ark. 243, 947 S.W.2d 761 (1997).