DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA 05-747

May 17, 2006

APPEAL FROM THE CIRCUIT COURT OF WASHINGTON COUNTY
[NO. JV2003-942-3]

HONORABLE STACEY ZIMMERMAN, JUDGE

AFFIRMED

TAMMY GIRTMAN
APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

Appellant Tammy Girtman is the mother of two minor children, S.O. and J.G. By an order dated February 11, 2005, appellant's parental rights to both children were terminated. It is from this order that she appeals, arguing that there was not sufficient evidence for the trial court to terminate her parental rights. She also argues that there was not clear and convincing evidence that the termination of her parental rights was in the best interest of the children. We find no error and affirm.

This case began on December 4, 2003, when the Arkansas Department of Human Services (DHS) was contacted to perform a safety response on the two children who were attending an elementary school in Springdale, Arkansas. The Arkansas State Police were conducting a sexual-abuse investigation regarding S.O., and a member of the police felt that appellant was not being protective, was continuing to allow the children to be around the offender, and had left the children with a friend. Upon arrival at the school, the DHS investigator met with school officials who told her that appellant was on her way to the school. The investigator also learned from school officials that over the Thanksgiving

holiday the children had been left with four men they did not know, and whom appellant had just recently met. The children had previously been left with Christina Lunsford, who said that the children had been with her for about a week because appellant had abandoned them. Ms. Lunsford also stated that both children had asthma, and that J.G. also had a seizure disorder and a sleep-apnea condition. Although the children needed medication, Ms. Lunsford said that appellant did not leave any medicine when she dropped them off at her house.

When appellant arrived at the school, she was informed that DHS was putting a seventy-two hour hold on the children until a determination about their safety could be made. During this conversation, the Springdale Police arrived at the school and arrested appellant because there were outstanding warrants on her from Rogers, Arkansas. Appellant told the DHS investigator that she did not have a home, and that she was considering moving in with a person named Patricia Weis. The school officials informed the DHS investigator that J.G. had a near drowning accident two years earlier when appellant left him with various men who did not supervise him. J.G.'s seizures began after that incident. They also told the investigator that appellant had not provided any medication for the children, and that both children had headlice.

An order for emergency custody was entered December 8, 2003, and the court set a probable-cause hearing for December 11, 2003. At the probable-cause hearing, there was testimony from the children's foster care worker, Rebecca Estes. Ms. Estes testified that the children had been placed at the Northwest Arkansas Children's Shelter, and that they were adjusting well. She also testified that appellant came to her office on December 5, 2003, and at that time appellant gave Ms. Estes her cell phone number and the cell phone number of her mother. Ms. Estes testified that appellant could not give an address, and that when she tried to reach appellant to inform her of the court date, there was only a message saying the person

was unavailable. When appellant came to the office for visitation with her children on December 9, 2003, she told another DHS employee that her cell phone had been disconnected. Appellant was then given notice of the court date. The court considered appellant's instability with her home situation, appellant's leaving the children "with whomever," and appellant's inability to assure that the children would be protected and safe, and it found that all of those things gave rise to probable cause to take the children into care. An adjudication hearing was set for January 8, 2004. Because appellant appeared at the adjudication hearing and requested that counsel be appointed for her, the hearing was rescheduled for January 23, 2004.

At the hearing on January 23, 2004, the children were found to be dependent neglected, and the court found the allegations of abandonment in the petition to be true and correct. The court established the goal of the case to be reunification and ordered appellant to obtain and maintain stable housing and employment, obtain reliable transportation, submit to random drug screens, complete a psychological evaluation, and resolve her criminal issues. DHS was ordered to assist the mother in getting a psychological evaluation, and to incorporate changes to the case plan and file a new case plan within seven days. The children were placed in foster care, with appellant to have weekly, supervised visitation at the DHS office and a review hearing was scheduled for April 21, 2004.

Ms. Estes, the foster care worker, testified again at the review hearing on April 21, 2004. It was her testimony that she could not complete a referral for a psychological examination until appellant completed a financial affidavit. She testified that she had given appellant three copies of the financial affidavit form, but that appellant had failed to return the completed forms. She further testified that the relatives who formerly expressed interest in the children had decided not to pursue placement. Although appellant had not been in regular contact with her, Ms. Estes testified that appellant had called her and had made an

appointment for her to see her home. When Ms. Estes arrived at the address given by appellant, no one was living at the address.

Appellant testified that she was working as a roofer with a man named "Peanut," and that she did not know his last name. She testified that she had a lease at the property viewed by Ms. Estes, but that she was "scared to stay in the home" because the manager was trying to have sexual relations with her. Appellant testified that she had obtained a vehicle, but that it was not insured and did not have tags. Further, she testified that she had resolved her criminal issues. Appellant testified that she wanted her kids to come home but "not exactly today." She testified that she did not have a refrigerator or a stove.

At the close of the hearing the court ordered appellant to complete a financial affidavit and provide it to the caseworker at the next visit, to complete a psychological evaluation and follow the recommendations, to cooperate with the Department, to participate in individual counseling, and to maintain stable housing and employment. The court advised appellant that, once she had been to a visit or two with the counselor, some unsupervised visitation would be possible. The court advised appellant not to have visitors while the children were having visitation.

A permanency-planning hearing was held August 18, 2004, and the case goal continued to be reunification. There was testimony from Ryan Foster, a case worker from the Washington County Department of Human Services, that he had seen appellant's home and that it was appropriate. He also testified that the previous month appellant missed two consecutive visits with her children. The children had been brought to the DHS office for the visits, but appellant did not show up. Mr. Foster testified that the children were very, very upset. After missing the two visits, appellant called to set up another visit, but on her way to the visitation she was arrested. Although the charges that caused her arrest were apparently due to someone else using appellant's identity, the result was that she missed

another visit with her children. Mr. Foster testified that he would recommend some unsupervised visits, and that he thought appellant had been cooperating with DHS.

Appellant testified at the hearing that her arrest had been caused by someone stealing her identity, and that those charges had been resolved. She testified that she would like some unsupervised visits, that she had completed a parenting class, and that she had rooms ready for the children. She said that she was still working as a roofer and had been since December. She said that she worked for Bentonville Plastics for two days, but that they were not flexible about her court dates or visitation, so she quit. Appellant testified that she had been dating Isidro Hernandez for two years, but that her children had never met him. She said they were planning to marry, but she wanted her children to get to know him first. Appellant testified that Mr. Hernandez was not the person accused of sexually abusing S.O., and that he was employed working construction. The court questioned appellant about some of her personal relationships and cautioned her about having her children around unsavory characters. The court ordered unsupervised visitation for five hours on Saturday or Sunday, and ordered appellant not to allow anyone else around the children during visitation. The court also directed that paperwork be completed to allow a background check on appellant's boyfriend.

An emergency hearing was held on November 3, 2004, due to a report from Kristel Patton, the Court Appointed Special Advocate (CASA) volunteer. Ms. Patton testified that she was on her way to visit appellant in her home when, on October 31, 2004, she saw appellant, her two children, and an unidentified male riding in appellant's pick up truck. She testified that J.G. was in the man's lap, and it did not appear as if he were restrained. She further testified that the children were doing well in foster care, and that she has been unable to reach appellant because appellant's phone has been disconnected. Ms. Patton said she was "absolutely positive" about her identification of appellant and the children.

There was also testimony at the emergency hearing from J.G.'s teacher, Ms. Julius. She testified that J.G. had started having behavioral problems on Mondays, and that she had documented his behavior. She said he had begun having angry outbursts, and on a recent field trip, he would not stay with the group or follow directions. Ms. Julius testified that J.G. recently pulled her aside and told her that his mom had to change the locks on their house because her boyfriend had stolen clothes and drugs from her. J.G. also told his teacher that his mom's boyfriend was nice to him on the weekend visits.

Donna Shepard, the children's counselor, testified that she was concerned about the children because within the past couple of months their behavior had changed. She said that J.G. had become moody, tearful, and anxious. S.O. told her counselor that she had been asked by appellant to lie about whom she sees when she is there for visitation. S.O. recently confided in Ms. Shepard that a man who used to be her mom's boyfriend raped her. Ms. Shepard testified that the child gave a very specific account about the incident, so she, in turn, called the Child Abuse Hotline. S.O. told Ms. Shepard that the rape took place around Thanksgiving, and that it was done by "Danny" when her mom would leave for work. Ms. Shepard testified that, since the unsupervised visits had started, she could tell the children were being very guarded about what they talked about with her. She said that S.O. had been suffering from stomach aches and anxiety.

Appellant testified that she had not had her "kids around anybody." She said that she never left S.O. at a motel with Danny, but rather that the children were left with Patricia Weis. She said she never lived at the hotel with Danny. Appellant was also questioned about an individual named Brandy believed to be currently living at her house. Appellant said that her friend Brandy was helping her unpack some things in her house, but that Brandy was not staying with her. She further testified that, when she asked Isido Hernandez about the background check, he "didn't want to do that so he has left."

The trial court found appellant not to be credible and found that she had been having the children around other people. The court expressed concern over this given the history of sexual abuse of S.O. The court suspended all visitation until the permanency-planning hearing scheduled for November 10, 2004.

At the permanency-planning hearing, Magevney Strickland, a family service worker for Washington County, testified that when she went to appellant's home on November 2, 2004, appellant had several friends living with her. She said the home was not clean, there were things cluttered in the downstairs area, and the room designated for J.G. had several mattresses on the floor. Ms. Strickland testified that appellant's water had been shut off for two weeks, and that appellant had worked several different jobs through Olsten Staffing. According to Ms. Strickland, appellant was currently working the night shift at Cooper Power. Ms. Strickland testified that she had contacted appellant's counselor, Ms. Housley. After the three counseling sessions necessary to obtain unsupervised visitation, appellant had not returned for additional sessions, although she was ordered to do so.

Appellant testified that she could not remember what year she moved into her current residence, but she knew that she had moved to the apartment in June. She testified that she had been working for Cooper Power for about a month, and she again denied having the children in her truck with a man. She testified that no one was living with her. Appellant testified that, if the children were returned to her, she would take them to a licensed babysitter while she was at work and that she already had one. Upon further examination, it became apparent that appellant had not made any arrangements for her children's care while she worked the night shift at Cooper Power.

There was testimony at the hearing from Ms. Patton, the CASA volunteer. She testified that appellant was not in compliance with the court orders. She said that appellant was behind in her child support, that she had not taken pay stubs to the DHS case worker,

that she was not following through with her counseling, and that she was having other people around the children during unsupervised visits. She testified that the children were in a good foster home that met all of their needs. Ms. Patton also testified that, after the supervised visits began, the children had become very reserved in what they said about their visits with appellant.

At the close of the hearing the court found that appellant did not have daycare set up for her children, that she had not maintained utilities, that she had not been stable in her choices affecting her children, that she had the children around other people, and that appellant could not provide a stable home for the children. The court held that the children could not be safely returned home and ordered that the goal of the case be changed to termination.

The termination hearing was held on February 10, 2005. Appellant's counselor, Kathleen Housley, was the first to testify. Although Ms. Housley testified that appellant appeared to be making progress, when asked if appellant had the capacity to make appropriate judgments with regard to her children to be a fit parent, she responded that she thought "that's a real difficult question to answer."

There was testimony from the children's counselor, Ms. Shepard. Ms. Shepard testified that J.G. had regressed and had been expressing desires to hurt himself. She said that J.G. wanted to move back with his mother. S.O. told Ms. Shepard that she was relieved that she did not have to lie anymore, and that she did not think it was a good idea to go back with her mom "because it may not be a safe place."

Appellant testified that she was $1,600 behind on her rent, but that she was going to pay that off when she received her income tax refund. She testified that she completed Nurse Assistant training and received a certificate (CNA), but that she was let go from her job at Springdale Health and Rehabilitation after working there three weeks. Since then, she

testified that she had been working for one week as a self-contractor for roofing. When asked if she recognized that she had made some poor judgments in the past, appellant responded that "it depends on what you mean." Appellant said she would handle things differently if the children were returned to her, but she was unable to explain what that meant. She stated that she did not believe the testimony she heard about S.O. being raped in a motel, because she insisted she did not leave her kids in a motel.

After reviewing the evidence and testimony, the court held that it was contrary to the children's best interests, health, safety and welfare to return them to the parental care and custody of appellant. The court terminated the parental rights of the children's fathers and also those of appellant. It is from this order that appellant appeals.

Our standard of review in cases involving termination of parental rights is well-settled. In *Johnson v. Arkansas Department of Human Services*, 78 Ark. App. 112, 82 S.W.3d 183 (2002), the court stated:

> When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. The facts warranting termination of parental rights must be proven by clear and convincing evidence, and in reviewing the trial court's evaluation of the evidence, we will not reverse unless the court's finding of clear and convincing evidence is clearly erroneous. Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. In resolving the clearly erroneous question, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations.

Pursuant to Ark. Code Ann. § 9-27-341(b)(Supp. 2005):

> (3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
> (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.

(b) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be fore twelve (12) consecutive months;

The children in this case were placed in care of DHS in December, 2003, and they were adjudicated dependent neglected during the hearing held January 23, 2004. During each of the hearings in this case, the court made a finding that DHS was making reasonable efforts to deliver reunification. Although efforts were made to rehabilitate appellant and remedy the conditions which caused removal of her children, the court found that "mother continues to be unstable and make poor decisions concerning her children."

The case began when the Arkansas State Police investigated a report that S.O. had been sexually assaulted. There was evidence that appellant routinely left her children with people with whom she was not well acquainted. There was also evidence that, during the time the children were left with others, J.G. almost drowned and S.O. was sexually molested by more than one person. Clearly, appellant's poor judgment regarding her children resulted in their harm. After they were taken from her and given to the care of the DHS, the children began to flourish in the foster home. However, the evidence is clear that, once appellant began having unsupervised visitation with the children, they both suffered behavioral problems. Additionally, appellant disregarded the order of the court by having men around the children during her visitation, and then she directed the children to lie about it. Appellant displayed an inability to maintain a steady job and pay for her rent and utilities. In short, appellant demonstrated that she is incapable of maintaining the kind of stability necessary to provide for her children and keep them from harm's way. The trial court concluded that there was

clear and convincing evidence to support an order terminating appellant's parental rights. We cannot say that this decision was clearly erroneous.

Affirmed.

BIRD and GLOVER, JJ., agree.