

NOT DESIGNATED FOR PUBLICATION
DIVISION III

ARKANSAS COURT OF APPEALS

SAM BIRD, Judge

CA05-944

October 11, 2006

DANA MILAM

APPELLANT

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. J-2004-182]

V.

HON. KEN D. COKER JR., JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AFFIRMED

Appellant Dana Milam appeals from an order of the Pope County Circuit Court entered on May 13, 2005, which terminated her parental rights with respect to her daughter, H.M. Milam presents two points on appeal: (1) that the trial court erred in finding that there was sufficient evidence to terminate her parental rights, and (2) that the trial court erred by finding that appropriate family services or meaningful services were offered. We affirm.

H.M. was born on May 14, 2001, to Dana and Robert Milam. H.M. weighed only two pounds, thirteen ounces at full-term, and was later diagnosed with fetal alcohol syndrome and numerous other problems. On September 19, 2002, DHS filed a petition for emergency custody of H.M. based on allegations that, on September 17, 2002, employees of the Arkansas Department of Human Services (DHS) went to the Milams' home and found dirty conditions, noticed a strong smell of alcohol on Dana Milam's breath, and found very little food in the

house. H.M. was thereafter removed from the Milams' custody. Following a hearing held on September 24, 2002, the trial court found probable cause for H.M. to remain in DHS custody. At an adjudication hearing on October 15, 2002, and pursuant to an order entered on December 23, 2002, H.M. was found to be dependent/neglected and ordered to remain in DHS custody with the goal of reunification.

After a series of review hearings and permanency planning hearings, a hearing was held on May 4, 2004 to determine whether the Milams' parental rights should be terminated.¹ The court found that Dana Milam (hereafter Milam) had made "substantial progress" in correcting the conditions that caused H.M.'s removal and thus continued the goal of reunification in the case.

In a permanency planning order entered on September 7, 2004, the trial court found that Milam had made "significant measurable progress" toward achieving the goals in the case plan and continued the goal of reunification. However, in an order entered on January 6, 2005, the court changed the goal of the case to termination.

At a termination hearing held on March 18, 2005, Janine Watson, a pediatric psychologist at Arkansas Children's Hospital, said that she first began working with H.M. in April 2004 after she was referred by Dr. Patrick Casey. Watson said that, in his referral letter, Dr. Casey noted that H.M. was a child with failure to thrive and suspected fetal alcohol syndrome. At the time, H.M. was in a foster family and they had reported that she did not eat

¹ Robert Milam's parental rights with respect to H.M. were terminated in May 2004 and are not at issue in this appeal.

well. Watson described H.M. as a “very small child” whose weight was “less than a third percentile” and was the weight of an average eleven month old, although H.M. was thirty-three months old at the time. Watson said that, according to Dr. Casey’s report, H.M. had some “mild developmental delay,” but her speech and language skills were within normal limits. Dr. Casey noted in his referral letter that H.M. was also “hypozincemic,” which meant that her zinc level was low.

According to Watson, H.M. was brought in by her foster parents and had facial features consistent with fetal alcohol syndrome, and she no longer presented with developmental delays because her scores for developmental testing were in the average range. Watson said that H.M. presented with eating and behavior problems, which are common in children with fetal alcohol syndrome. Watson described H.M. as fitting the characteristics of a child with fetal alcohol syndrome: a very small, picky eater with no appetite. H.M. also had temper tantrums and fits. She described H.M. as a child who needed a lot of structure, consistency, and routine. She also said that H.M. was “not a child who needs to be unattended for any length of time, not only because of the sensory issues she presents but also because of her impulsivity to where she may act very impulsively without thinking and certainly with a disregard for the consequences.”

Watson said that she first met Milam in August of 2004 and that Milam seemed “appropriate” and “interested” in H.M.’s therapy. At that time, H.M. began spending Wednesday evenings with her mother, as well as two days during each weekend. In October

2004, Watson noticed a “regression” in H.M.’s behavior, noting that H.M. had not gained any weight since August, that she was vomiting and gagging during meal times, and that she was non-compliant at school. Watson next saw H.M. in January 2005, and noticed that H.M. had not gained any weight since her last visit in October 2004. According to Watson, H.M. was having “ongoing behavioral problems” at school, and there was some “behavioral deterioration” after visits with Milam. Watson said that H.M.’s visits with Milam ceased in mid-February of 2005² and, since that time, H.M. had gained one pound and ten ounces. Watson said that H.M. was eating more consistently and doing much better at home since the visits with her mother were discontinued.

Watson also stated as follows: “[H.M.] is a 24/7 kind of child. She’s a child that even I would be hard pressed to parent given my knowledge of child development, given my knowledge of how to manage children’s behavior, given my excellent patient skills I would find this child a major challenge.” Watson said that Milam appeared to have ongoing issues with alcohol and that it would be best if H.M. were not placed in Milam’s care.

Dr. Watson also testified as follows:

It has taken [Milam] quite some time to do this and I think there is every likelihood that in the future, Ms. Milam will overcome the effects of alcoholism. She will learn how to cope with it. She will learn how to manage those urges. I think it’s going to take her some time and the very sad part about the situation is that [H.M.] doesn’t have that time. She needs the permanency right now. She needs a home and

² It is unclear from the evidence when the visits between Milam and H.M. actually ceased. However, Watson testified that based on her understanding, there had been no visits since approximately February 19, 2005.

a guaranteed future and the sad thing is that despite the very best efforts of her mother, I think we have run out of time.

Brenda Knifong testified that she worked at the MiChild Enrichment Center where H.M. attended school. She said that she saw H.M. daily while she was at school and that she weighed H.M. every week and kept track of H.M.'s weight. Knifong stated that on September 20, 2004, H.M.'s weight was twenty pounds, fourteen ounces; on October 4, 2004, her weight was twenty-one pounds, six ounces; on October 11, 2005, H.M. weighed twenty-one pounds, ten ounces; and on October 18, 2004, H.M.'s weight was twenty-two pounds. On March 1, 2005, H.M. weighed twenty-two pounds, six-and-a-half ounces; on March 7, 2005, she weighed twenty-three pounds, four ounces; and on March 15, 2005, she was twenty-three pounds, ten ounces.

On cross-examination, Knifong admitted that H.M. was ill during the week of February 25, 2005, and that looking at H.M.'s weight gain during the last month without considering her illness in February made it appear that H.M. had experienced significant weight gain. She agreed that, considering H.M.'s weight before her illness in February (which was twenty-two pounds, thirteen ounces), H.M. had only gained about eleven ounces in the five or six weeks since February 15.

Lisa Wesley testified that she was Milam's supervisor at Arkansas Tech University, where Milam was employed as a custodial worker. She said that on January 31, 2005, she sent Milam home due to reports from two other employees that she had alcohol on her breath. When Wesley confronted Milam, Milam said that she had a couple of drinks the night before

but denied drinking that day.

Loretta Page, a DHS employee, testified that Milam “smelled like beer” when she (Page) picked H.M. up from visitation on or about February 19, 2005.

Tracy Darter, a family service worker for DHS, said that she examined H.M. on February 23, 2005, and that she found two light-green, dime-size bruises at the bottom of H.M.’s back, along with a scratch above the bruises that was about two inches long. According to Darter, H.M. explained that she “fell down,” and then said, “My mama spanked me on the bottom.” Darter testified that H.M. also said, “Mommy was pushing me and hitting me and spitting at me.” Darter opined that the bruises and the scratch were “days old, not weeks” but she could not say exactly when they occurred.

Latresa Brown, another DHS employee, testified that she discussed the allegations relating to the bruises and the scratch with Milam, and Milam denied hurting her child.

Terri Bunch, a CASA volunteer assigned to this case, testified that she had observed H.M. with her foster parents and also with Milam. She said that there was a “very strong bond” between H.M. and Milam, and that H.M. was also “very bonded” with her foster father. She said that Milam lived in a two-story, two-bedroom apartment that has been “well maintained.” She also said that she had concerns about Milam’s drinking problems and that she had found beer cans that Milam admitted to having thrown away in September 2004. According to Bunch, Milam first denied that she had thrown the cans away but later admitted that she had a friend over who was drinking the night before, although Milam denied drinking

anything herself.

Bunch also said that she was concerned about the fact that Milam was using her leave time at work for herself instead of saving it for when H.M. was sick. According to Bunch, on the average, Milam missed one day of work per week.

Bunch said that Milam had “some issues” with Brandy Martin, H.M.’s foster mother, and Milam did not want Martin to show her how to take care of H.M. Bunch stated that she had concerns about Milam’s drinking and recommended that her parental rights be terminated so that H.M. could be placed for adoption.

Brandy Martin testified that H.M. had lived with her and her husband for one year and eight months. She explained that H.M. was on a special diet and that it took a lot of “coaxing” and “encouraging” to get H.M. to eat. She also explained that she used a “reward system” in order to get H.M. to eat. She said that H.M. throws “extreme fits” and that H.M. has banged her head against a door, banged her head on the floor, and thrown two-hour crying fits. She also said that H.M. ran into walls, picked at scabs and sores, and had pulled out clumps of her own hair.

Martin explained that when H.M. first came to live with her, she was seventeen pounds and would “gag with every bite that she took.” She also said that H.M. would “throw up just on a daily basis.” She said that H.M. now gagged less frequently and vomited “a couple of times a month at most.” She said that, before the overnight visits with Milam began, H.M. was pretty much “steady” with food and behavior and was not throwing fits at school. According

to Martin, shortly after H.M.'s visits with Milam began, H.M. started throwing fits at school again and started vomiting at school and at home. Martin said that when the visits with Milam stopped, H.M. ate well and behaved well.

Martin explained that H.M. had many appointments during a month with various doctors and therapists and that H.M. did not need to be exposed to cigarette smoke because of her health conditions. She said that H.M. smelled of cigarette smoke "a big portion of the time" after visits with Milam. She also said that she kept a food log of H.M.'s daily food intake, and that she would send food logs and supplements with H.M. during visits with Milam, but Milam kept the logs "only about 70% of the time."

Martin testified that it had been "a battle" to get Milam to follow the food plan. She said that she had discussed the idea of going to Milam's house to help her, but from her understanding, Milam refused. She admitted that there was tension between them, explaining that she first noticed it when H.M. had surgery in August 2004; at that time, she was instructed to talk to Milam about H.M.'s needs and routines and Milam seemed "uncomfortable" with it.

Martin said she asked H.M. about the bruises on her back after the weekend visit with Milam, and H.M. responded that "mommy pushed me." Martin said that H.M. had a bath on the Thursday before the weekend visit, and there were no bruises at that time. When H.M. came back on Saturday, Martin saw the bruises. She described them as purple in color and

“about a penny to a nickel size” on each side of H.M.’s back. She said that there was not a report from H.M.’s school on any incident there.

Monica Cauthon testified that she was an adoption specialist at DHS and that H.M. was adoptable. She said that if the court were to grant the petition to terminate, it would be very likely that H.M. would be adopted.

Paula Rice, a DHS caseworker, testified that DHS had provided the following services to Milam: budgeting assistance, homemaking, two counseling referrals, two substance abuse evaluation referrals, two referrals for substance abuse treatment, transportation, specialized fetal alcohol syndrome training, referral for psychological evaluation, and training to learn H.M.’s schedule, feeding, and mealtime plans. She also said that the following services had been provided for H.M.: foster care, extensive medical and therapeutic services, special board rate, transportation, day care services, and concurrent planning services. Rice said that she was “disappointed” because Milam had declined to take advantage of Martin’s offer to come to her home and mentor her with respect to taking care of H.M. She opined that Milam did “minimally well” in following H.M.’s feeding plan; specifically, she said that she had observed Milam allowing H.M. to dictate her own food choices on one occasion and that Milam had failed to provide a food log or “misstated” the food logs on more than one occasion. According to Rice, Milam would also give the food at the wrong time or otherwise incorrectly. Rice also observed cigarette ashes on the floor of Milam’s home and observed Milam smoking in the home. Rice was also concerned about Milam’s “very tight” financial

situation.

Rice also said that she requested that police come to DHS to give Milam a sobriety test because, during a supervised visit at DHS, Milam stumbled several times and was “very tearful” with slurred speech. She said that there was not any evidence of alcohol use since Milam’s DWI in 2003, but Milam’s drinking was one of Rice’s major concerns. Rice stated that Milam had failed to follow the mandates of the case plan by failing to provide documentation of her rent and utilities or documentation of a budget. She said that Milam had not contacted any of H.M.’s doctors other than Dr. Watson, and that Milam had not produced a car or documentation of a car.

Dana Milam testified on her own behalf. She said that she was forty-two years old and had graduated from high school, and that she had almost two years of college. She explained that she had been drinking alcohol since high school and that her drinking became a problem in her early thirties. She said that she received alcohol treatment at an inpatient facility approximately ten years prior to the time of the hearing. She stated that she married Robert Milam in 1999, at which time she was drinking heavily and was an alcoholic, and that he was also a drinker. She said that she went to weekly AA meetings and saw her counselor twice monthly.

Milam said that she had monthly receipts for all rent, electric, and utility bills, but that DHS in Pope County did not request that information. She said that she was employed at Arkansas Tech University and that her net monthly income was approximately \$900; of this,

rent was \$254 per month, electric was about \$55 per month, telephone was \$20 per month, and cable was about \$15 a month. She said that child support in the amount of \$96 was automatically taken out of her paycheck, as was H.M.'s insurance, which was \$132. After \$50 a month for court fines and \$20 for probation fees, she had approximately \$270 a month left over for food, clothing, and miscellaneous expenses.

Milam denied drinking beer from any of the ten cans found by the CASA worker. She explained that a friend had come over and she made "a very bad judgment call." She said that she no longer had any contact with that friend. She denied drinking alcohol on the day that Loretta Page claimed that she smelled beer on Milam. She explained that she had only "slipped once" since November 2003. She said that she obtained a car but had no insurance on the car because she first needed to obtain her driver's license. She claimed that financial pressures had prevented her from doing so.

Milam explained that when DHS first took H.M., she and her husband were living in an extremely run-down trailer with no running water. She also explained that she was initially on "good terms" with H.M.'s foster parents but, after her DWI, they became "negative" toward her and she felt that they were "condescending."

Regarding questions about the bruises on H.M., Milam denied hitting H.M. and said that she had never administered corporal punishment to H.M. She explained that, due to H.M.'s sensory disorder, the bruising could have happened at school or at the Martins' home because H.M. "doesn't always mention when she gets hurt." She described her relationship

with H.M. as “wonderful and loving.” She also said that she understood the nature of H.M.’s afflictions and that she was capable of meeting H.M.’s needs.

On re-cross examination, Milam said that she had two lapses in two years and that she was maintaining her sobriety. She said that she was a “different person” than she was the day that they took H.M. She claimed that she knew the names of some of H.M.’s doctors, but not others and said that it had been a few months since she had spoken with any of them. She said that she had not spoken to teachers since her unsupervised visits with H.M. began, and she was not sure how to go about doing this. She admitted that stress factors brought on the urge to drink. She also admitted to drinking ten beers on the night of January 30.

Phil Higdon testified that he was Milam’s therapist and that he had been counseling Milam for a year regarding her alcohol problem. He said that he was aware of at least one relapse, which he described as “typical” for a recovering alcoholic; he also opined that 100% of recovering alcoholics would eventually try alcohol again. He stated that Milam had been “cooperative” as far as the therapy sessions and said that he felt like she had been “open and truthful” with him. He opined that she had made “some good progress” in the last year. According to Higdon, Milam’s relapse occurred in March 2005, when she admittedly “drank about 10 beers.” He admitted on cross-examination that H.M.’s problems would be an “added stressor” to the situation.

The attorney ad litem for H.M. testified that the best thing for H.M. was to terminate Milam’s parental rights and move toward adoption.

On May 13, 2005, the trial court entered an order terminating Milam's parental rights with respect to H.M, which included the following findings by the trial judge: H.M. had been in DHS custody since September 17, 2002, and was adjudicated dependent/neglected on October 15, 2002; Milam had continued to use alcohol and had admitted that she was still an alcoholic; Milam had been arrested and convicted for driving while intoxicated in November 2003; Milam was seen discarding several beer cans from her home in September 2004; Milam admittedly consumed ten beers during an evening in January 2005 and was sent home from work the following day with alcohol on her breath; Milam had not been able to adequately monitor H.M.'s diet or properly insure that H.M. received the nutrition she needed; there was an incident in February 2005 that resulted in "physical injuries" to H.M. while she was in Milam's care during visitation; as recently as February 25, 2005, Milam had alcohol on her breath while H.M. was with her during an unsupervised visitation; caring for a child with H.M.'s problems would constitute "added stressors" for Milam, and Milam had said her urge to drink became stronger when she was under stress; H.M. needed constant supervision; and "[a] mother who is suffering from alcoholism and continues to use alcohol cannot protect [H.M.] from harming herself." Based on all of these factors, the court found that there would be substantial potential harm to the health and safety of H.M. caused by continuing contact between H.M. and Milam. The court further stated as follows:

7. That the Court finds it to be contrary to the juvenile's best interests, health, and safety and welfare to return the juvenile to the parental care and custody of her mother, and further finds that the Department of Human Services has proven by clear and convincing evidence that:

A. The juvenile had previously been adjudged by the Court to be dependent-neglected and that the juvenile currently resides in the care and custody of the Arkansas Department of Human Services pursuant to an order of the Pope County Circuit Court. The juvenile has continued out of the home of the mother for twelve months and, despite a meaningful effort by the Arkansas Department of Human Services to rehabilitate the home and correct the conditions which caused removal, those conditions have not been remedied by the mother.

This juvenile has been in foster care for the last 2 years and 8 months of her 4 year old life waiting for her mother to overcome her alcoholism, and waiting for her mother to learn to properly feed and care for her. The juvenile was only sixteen months old when she entered foster care and has now spent approximately 66% of her life in foster care. Yet the mother has not overcome her alcoholism, and she has not learned to properly feed and care for the juvenile's nutritional needs.

B. That subsequent to the filing of the original petition for Dependency/Neglect, other factors or issues have arisen which demonstrate return of the juvenile to the mother is contrary to the juvenile's health, safety or welfare. That despite the offer of appropriate family services, the mother has manifested incapacity or indifference to remedy the subsequent issues or factors or rehabilitate their circumstances which prevents the return of the juvenile to the mother.

The Court's findings regarding the subsequent issue grounds for termination are based on the new founded report that the mother physically abused the juvenile while in her care approximately 3 months ago.

....

9. That the Court finds that Arkansas Department of Human Services, throughout this matter, has made reasonable efforts to reunite this family, including the following: services for the mother: casework, budgeting, homemaking services, two counseling referrals, two substance abuse referrals, two referrals for substance abuse treatment, transportation services, special fetal alcohol syndrome training, referral for psychological evaluation, training for the juvenile's special needs; and for the juvenile: foster care services, extensive medical and therapeutic services, transportation services, and day care.

10. That pursuant to the provisions of Ark. Code Ann. 9-27-341 parental rights of Dana Milam regarding the juvenile, [H.M.,] are hereby terminated

Milam presents two points on appeal: (1) that the trial court erred in finding that there was sufficient evidence to terminate her parental rights, and (2) that the trial court erred by finding that appropriate family services or meaningful services were offered.

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. *Johnson v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002). Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Id.* Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

Cases involving the termination of parental rights are reviewed de novo on appeal. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). The Arkansas Supreme Court has discussed our standard of review in parental-rights termination cases, as follows:

Arkansas Code Annotated section 9-27-341(b)(3) ... requires an order terminating parental rights be based upon clear and convincing evidence. Our law is well settled that when the burden of proving a disputed fact in chancery court is by clear and convincing evidence, the question that must be answered on appeal is whether the [circuit] court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. 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. In resolving the clearly erroneous question, we must give due regard to the opportunity of the [circuit] court to judge the credibility of witnesses. 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.

Rodriguez v. Ark. Dep't of Human Servs., 360 Ark. 180, ___, ___ S.W.3d ___, ___ (Dec. 16, 2004) (citations omitted).

Arkansas Code Annotated subsections 9-27-341(b)(3)(A) & (B) (Supp. 2003) provide that a court may enter an order terminating parental rights if it finds 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 continuing contact with 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.

(b) Provided, however, that the department shall make reasonable accommodations in accordance with the Americans with Disabilities Act, 42

U.S.C. 1201 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of subdivision (b)(3)(B)(vii) of this section, the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies.

I. *Whether the trial court erred in finding that there was sufficient evidence to terminate parental rights*

Milam first contends that the trial court erred when it found grounds for the termination of her parental rights in this case. She asserts that the list of requirements by DHS in this case was “overwhelmingly large” and that such requirements were “next to impossible” given the intensive care needs of H.M. Because Milam failed to obtain a ruling on this matter, we need not address it on appeal. *See Flagstar Bank v. Gibbins*, ___ Ark. ___, ___ S.W.3d ___ (Sept. 14, 2006) (recognizing that a party’s failure to obtain a ruling is a procedural bar to an appellate court’s consideration of the issue on appeal).

Milam also discusses six factors upon which the trial court based its opinion and claims that certain findings by the trial court are not supported by clear and convincing evidence.

a. *Signs of intoxication during visitation*

Milam claims that the trial court’s finding that she showed signs of intoxication during supervised visitation was not supported by clear and convincing evidence because the allegations that she was intoxicated were never substantiated. Furthermore, she points out that her visits with H.M. ceased on February 23, 2005, while the court found that Milam had alcohol on her breath during an unsupervised visit on February 25, 2005.

Here, Paula Rice testified that Milam was overly emotional and off-balance with slurred speech during a supervised visit at DHS. This is clear and convincing evidence to support the trial court's finding that Milam showed signs of intoxication during supervised visits.

As for the trial court's finding that Milam had alcohol on her breath during an unsupervised visit on February 25, 2005, it is unclear from the evidence when the visits actually ceased. Janine Watson testified that based on her understanding, there had been no visits between H.M. and Milam since approximately February 19, 2005. Even if the court's reference to an unsupervised visit on February 25, 2005 was incorrect, there were allegations from Loretta Page that Milam "smelled like beer" during an unsupervised visit on or about February 19, 2005. We believe this is sufficient to support the court's finding.

b. Disposal of beer cans in September 2004

Milam also asserts that, in light of her counselor's testimony that 100% of recovering alcoholics will eventually try alcohol again, her disposal of several empty beer cans in September 2004 does not support the conclusion that she was unable to overcome her alcoholism. However, there was evidence other than the incident involving the beer cans to support this conclusion. Just weeks before the hearing, Milam admittedly drank ten beers during an evening and was sent home from work the next day with alcohol on her breath. In addition, DHS employees observed signs that Milam was intoxicated during visits. We

therefore find that there was clear and convincing evidence to support the trial judge's conclusion that Milam was unable to overcome her alcoholism.

*c. Milam's being sent home from work with alcohol on her breath
in January 2005*

Milam further asserts that, although she was sent home from work in January 2005 after admittedly drinking ten beers the night before, her counselor's testimony that she had made "good progress" was inconsistent with the court's conclusion that she could not adequately protect her daughter. As previously discussed, there was ample evidence in this case to show that Milam could not stop drinking; her counselor's opinion that she had made good progress does not completely negate this evidence. There was clear and convincing evidence to support the trial court's conclusion that Milam could not adequately protect H.M.

d. Reports of abuse and neglect in February 2005

Milam additionally claims that the evidence was insufficient for the trial court to conclude that two light green, dime-size bruises and a two-inch scratch on H.M.'s back were the result of Milam's physically abusing her daughter. There was testimony in this case that H.M. said Milam caused the injuries. There was also evidence to show that H.M. was with Milam during a visit when the injuries occurred, and there was no documentation that they occurred at school. Furthermore, Brandy Martin, H.M.'s foster mother, denied that they happened while H.M. was in her care. Although Milam claimed that the bruising could have happened at school or at the Martins' home, the trial court was free to disbelieve this

testimony. We therefore find that there was clear and convincing evidence to support the court's conclusion that the abuse occurred while H.M. was in Milam's care.

e. H.M.'s weight

Milam next claims that, “[w]hile the trial court relied on weight loss or failure of [Milam] to properly feed her daughter, the facts do not support such a conclusion.” We do not agree.

According to the testimony of H.M.'s therapist, Janine Watson, H.M. had difficulty gaining weight when the visits with Milam began in August of 2004. However, once the visits ceased in February of 2005, H.M. gained a significant amount of weight. This, coupled with testimony from DHS employee Paula Rice that Milam did “minimally well” in following H.M.'s feeding plan, constitutes clear and convincing evidence to support the trial court's finding that Milam was unable to properly feed her daughter.

f. Caring for H.M. as a trigger for Milam's drinking

Finally, Milam claims that the testimony did not support the finding that caring for her daughter would cause her to drink alcohol; instead, she claims that “chronic depression” was the “real trigger.” Thus, Milam asserts that the testimony did not support the finding that caring for her daughter would cause her to drink alcohol. Contrary to her assertion, however, her own counselor testified that H.M.'s problems would be an “added stressor” for Milam, and Milam herself admitted that stress factors brought on the urge to drink. We find that there was clear and convincing evidence to support the trial court's finding.

For these reasons, we hold that each of the findings discussed above were supported by clear and convincing evidence and, thus, were not clearly erroneous.

II. *Whether the trial court erred by finding that appropriate family services or meaningful services were offered*

As her next point, Milam contends that the trial court erred by finding that appropriate family services or meaningful services were offered. Citing *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997), Milam argues that DHS was required to provide “reasonable accommodations” to allow meaningful access to reunification services, but did not do so. Specifically, she claims that her “chronic and persistent alcoholism,” together with her daughter’s “chronic disability,” required DHS to provide accommodations “over and above the normal reunification services.”

Milam points out that DHS could have provided additional help in the home with a homemaker, or other skilled care person assigned to assist her. Furthermore, she asserts that there was no discussion of how to address her alcoholism within the framework of reunification except that she needed to stop drinking. She therefore claims that, without having made a meaningful effort to reunify her with her daughter, DHS should not have been allowed to go forward with its petition for termination of parental rights.

Because Milam failed to raise this argument below or obtain a ruling on it, she is precluded from raising it on appeal. *See Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, ___ S.W.3d ___ (2005) (recognizing that, with the notable exception of matters

involving subject-matter jurisdiction, we will not consider issues raised for the first time on appeal, even where the issue is a matter of constitutional magnitude). *See also Flagstar Bank, supra.*

Affirmed.

PITTMAN, C.J., and NEAL, J., agree.