

DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, Judge

CA06-11

NOVEMBER 1, 2006

JODI MILLER

APPEAL FROM THE MADISON COUNTY
CIRCUIT COURT
[J-04-49]

APPELLANT

HONORABLE MARY ANN GUNN, JUDGE

v.

ARKANSAS DEPT. OF HUMAN
SERVICES

AFFIRMED

APPELLEE

Appellant Jodi Miller appeals the termination of her parental rights alleging that the trial court erred in finding that there was sufficient evidence to terminate her parental rights of appellant. We find no error and affirm.

Appellant is the mother of S.M., born December 21, 2003, and J.M., born April 3, 2001. On April 10, 2004, the Arkansas Department of Health and Human Services (DHS) exercised a seventy-two-hour hold on S.M. while she was in Arkansas Children's Hospital and very soon thereafter exercised a seventy-two-hour hold on J.M. and removed him from the home of appellant. A Petition for Emergency Custody alleged S.M. was being treated at Northwest Medical Center of Washington County for seizure complications, and tests showed chronic and acute subdural hematomas. The affidavit included allegations that S.M. had received her injuries because she was shaken by one of her parents.

A probable cause hearing was held on April 14, 2004. By agreement of the parties, the

original Petition and Order for Emergency Custody was amended to add J.M., and on April 13, 2004, DHS placed a seventy-two-hour hold on J.M.

An adjudication hearing was held on June 16, 2004. The Court adjudicated S.M. and J.M. dependent-neglected and continued custody with DHS. The goal of the case ordered reunification with appellant.

A hearing was held on August 17, 2004, and was continued until September 7, 2004, in Logan County. At the hearing held on September 7, 2004, the case was transferred to Madison County. A review hearing was held on October 1, 2004. S.M. and J.M. continued in the custody of DHS. The goal of the case was ordered to be reunification. It was determined at that point that the children would most likely be moved very soon to a foster home with someone who was also a relative of theirs.

A permanency planning hearing was held on February 4, 2005. The goal of the case was changed to termination of parental rights with a goal of adoption. S.M. and J.M. remained in the custody of DHS.

A petition of terminate was filed on June 2, 2005. Termination hearings were held on June 25, and June 27, 2005. At the conclusion of the hearings the parental rights of appellant were terminated. An order terminating parental rights and granting DHS the power to consent to adoption was filed July 29, 2005. A notice of appeal was timely filed.

In rendering its decision from the bench, the trial court found by clear and convincing evidence that the youngest child, S.M., was injured while in the custody of her parents at the hand of her father and suffered subdural hematomas and retina damage inflicted over a period of time. Testimony of Dr. Gibson supported the finding of shaken baby syndrome and excluded other medical reasons for the acute and chronic subdural hematoma injuries he diagnosed on the child.

Detective Caley testified that the father, whose termination of rights was not appealed, was caring for the child when she was injured preceding her hospitalization and the entry of the emergency custody order. Although the father made no admissions during the initial interview, during an interview on July 16, he told the detective that he was very frustrated with S.M. because of all the crying and the vomiting and the behavior and that he held the child by her torso area with both hands, bouncing her up and down hard enough so that he said her chin hit her chest. The father stated that he did that for three to five minutes, and that it just made her cry harder.

The evidence supports the judge's finding that the baby girl, S.M., suffered from shaken baby syndrome. The father's confession of roughly bouncing the child while she was crying and while he was frustrated further supports the conclusion that he was the person responsible for the harm. Although the mother made no admissions to the detective, she provided different and contradictory explanations as to how the injuries occurred, including placing blame on the older sibling, J.M. Testimony of caseworkers stated that both parents were quick to anger at DHS workers despite the anger management classes.

It is undisputed that the male child, J.M., exhibited signs of abuse by the time he was in later placement in foster care. The factual determination as to the cause of his condition, Reactive Attachment Disorder, was the issue the court addressed, and the testimony of the therapist, Lynn Washington, who was working with J.M., supports the trial court's conclusion that the underlying cause of his condition was caused by acts of both parents while the child was between the ages of one and three. Ms. Washington explained that the condition develops between the ages of one and three, and that while the condition was not helped by moving within the foster care system, his placements and removals within the system to accommodate the parents' change in residence between jurisdictions was not the cause of the disorder.

The trial court further found that the best interests of the children were served by termination in that the children were progressing, that the likelihood of adoption was great, and that evidence of the mother's ability to implement the parenting and anger management skills presented in counseling and classes was lacking.

In arguing that the trial court erred, appellant asserts that she complied with the majority of the case plan's requirements. Regarding the concerns for J.M.'s behavioral problems, she asserted that his condition developed while in foster care and not as the result of abuse or mistreatment by her or her husband. She urges this court to examine the discrepancies in the testimony of caseworkers and counselors to resolve those discrepancies in her favor.

Our standard of review prevents us from doing so. 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 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.

Under the facts of this case, we cannot say the judge's findings were clearly erroneous. The father admitted to actions leading to the cause of the hospitalization of S.M. The physician's testimony regarding the acute and chronic nature of S.M.'s injuries supports the finding of shaken baby syndrome. The testimony of the therapist treating J.M. supports the trial court's conclusion that the child's disorder was caused by actions of the parents over the course of the child's first three years of life. The caseworker's testimony regarding the mother's continued anger issues as well as a lack of evidence showing progress in the areas of concern supports the trial court's determination that the conditions that caused the removal had not been remedied. Discrepancies in the testimony were for the trial court to resolve. *See Rodriguez, supra.*

Accordingly, we find no error and affirm.

HART and VAUGHT, JJ., agree.