DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

CA 06-58

JUNE 14, 2006

APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT
[NO. JV-04-407]

HONORABLE MARK HEWETT, JUDGE

AFFIRMED

MITZI DAWN ADAMS
APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

Appellant Mitzi Dawn Adams appeals the termination of her parental rights to her two daughters, DM and FM, as found by the Sebastian County Circuit Court. DM was born in June 2003, and FM was born in July 2004. DM was removed from appellant's custody on June 30, 2004, when officers came to an apartment in Fort Smith where appellant was living. Appellant was being served an arrest warrant, and she was at that time pregnant with FM. DM was one year old and was taken into custody due to appellant's incarceration and the deplorable environmental conditions of the apartment. The next month, appellant went into labor and gave birth to FM, who was taken into emergency custody at birth due to appellant's positive drug test and FM's exhibition of withdrawal symptoms from amphetamines. The case progressed and appellant ended up in prison for methamphetamine-related convictions.

Approximately fifteen months later, on September 29, 2005, the trial court entered an order terminating her parental rights. It is this order on appeal.

Appellant presents two points in her brief on appeal: (1) that the trial court clearly erred in terminating her parental rights because appellant did not exhibit a studied indifference to her children; and (2) that the trial court clearly erred in terminating her parental rights because the Department of Human Services (DHS) did not provide sufficient reunification services to appellant. DHS filed a brief in opposition to appellant's arguments on appeal, asserting that there is no reversible error. We affirm.

The history of this case is as follows. In July 2004, DHS filed petitions with the circuit court seeking to have DM and newborn FM declared dependent neglected based upon environmental neglect and drug use by their mother.[1] After an adjudication hearing in August 2004, the trial court made a finding of dependency neglect, with the goal of reunification with the mother. The testimony related a history of appellant's mother and brother being involved in drug-related activity, and appellant was living with her mother at the time of her arrest in June 2004, during which a meth lab was found in the apartment. Appellant (age nineteen and unmarried) was ordered to obtain independent living arrangements, to resolve her outstanding legal problems, to undergo a drug and alcohol assessment and any treatment recommended, and to submit to random drug tests. FM and

[1]There was never a paternity finding made in this case, and no biological father ever participated in these proceedings.

DM were in the custody of DHS and placed with appellant's cousins. At a review hearing in January 2005, appellant was found to have not complied in any way with her case plan, with the exception of having been evaluated for drugs and alcohol. At the permanency planning hearing in June 2005, the trial judge again found that appellant was non-compliant and had in fact engaged in continued drug behavior that resulted in her facing more criminal charges. DHS was permitted to change the goal to termination of parental rights so that the girls could be adopted. Appellant was served with notice of DHS's petition to terminate while in prison.

At the September 2005 termination hearing, appellant testified that she was a prisoner and was working toward completion of a drug treatment program in prison so that she could be paroled in the upcoming winter months. She agreed that officers found methamphetamine in her closet in the apartment back in June 2004 and that she had trouble with addiction, but she was finally addressing her problem. She expected to be "paroled out" to her brother, the same young man who was arrested for drugs when she was. Appellant confirmed that her own mother was also charged and was imprisoned in the same facility.

Appellant did not deny that she missed most of her scheduled visits with the girls when she was not imprisoned, but she said she avoided the visits because she did not want to be tested for drugs. She did not dispute that between July 2004 and June 2005, she came to only two out of seventeen visits. She recalled that the last time she visited was in February 2004, at which she tested positive for methamphetamine. She agreed that she was arrested

in late June 2005 for methamphetamine, and that was when she realized she needed to get help. She agreed she had not complied with her case plan but explained that because she had attention deficit disorder, she had difficulty understanding what was expected of her. She listed her present understanding of the things she needed to do–get a job, have a stable place to live, have food for the children, and stay away from drugs. Appellant said she was also taking GED classes and parenting classes in prison. In short, appellant believed that if it weren't for the drugs, she would have been a responsible mother. She said she was ready for the court to allow her a chance to prove she could be a good mother.

Stacy Glass, the family service worker, testified that DHS offered visitation, a psychological examination and a drug/alcohol assessment, and drug screens to appellant. Glass said that appellant never had a job and instead relied on her monthly SSI check, and appellant moved around a lot and lied about where she was living, making it hard to keep contact with her. She said appellant never attended the outpatient treatment for drug addiction that was offered to her, and of the five drug tests she was offered, she took only three and was "clean" only once. Glass said that at the two visits appellant attended (November 2004 and February 2005), appellant was bewildered regarding how to take care of the young girls. Glass said that appellant completed the assessment, which was the only part of the plan she completed. Glass believed that the children were beautiful, doing perfectly, very adoptable, and were living with people who wanted to adopt them. Glass opined that termination was the appropriate goal.

The attorney ad litem testified that termination was the best option for the children. He stated that appellant had been generally untruthful along the way, and her efforts now were too little, too late.

After hearing arguments of counsel, the trial judge announced his decision to terminate appellant's parental rights. He found that there was clear and convincing evidence that DM and FM had been out of appellant's custody for more than twelve months, and despite DHS's reasonable efforts to assist her in resolving her issues, the problems had not been remedied by appellant. The trial judge listed the services as including visitation, a drug/alcohol assessment, referrals for psychological evaluations, drug screens, advice on housing, and the provision of appellant's choice in foster-care placement. Despite more than a year's opportunity, appellant had not complied with her case plan, had not visited when not incarcerated, had not maintained any type of housing, had failed to attend treatment offered her, had incurred additional criminal charges during the case pendency, and had tested positive for drugs when she would submit to the tests. The judge stated that appellant had done "virtually nothing to try and rectify her problems," and had instead focused on her own desires and interest in drugs. He found that the children were "readily adoptable," and that it was in their best interest to give them a fair opportunity to have a meaningful life by giving them a chance to be adopted. An order followed that formally recited these findings, which is the subject of this appeal.

We review termination-of-parental-rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs*., 344 Ark. 207, 40 S.W.3d 286 (2001). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Grounds for termination of parental rights must be proven by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs*., 58 Ark. App. 302, 952 S.W.2d 177 (1997). 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. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id*. Where there are inconsistences in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Dinkins*, *supra*. 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. *Id*. We have no such firm conviction in this case.

The goal of Arkansas Code Annotated section 9-27-341 (Supp. 2003) is to provide permanency in a minor child's life in circumstances in which returning the child to the family

home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more grounds must be shown by clear and convincing evidence. Arkansas Code Annotated section 9-27-341(b)(2)(A) provides the grounds upon which a termination of parental rights may be established.

Appellant does not dispute that her daughters were out of the home for at least a year, nor does she dispute that she needs assistance to learn how to effectively behave as a parent. Her contention is that the trial judge clearly erred in terminating her parental rights when she was maturing and learning to deal with her addiction problem, and she was prepared to do what was necessary to keep her children in light of her expected release from prison in the ensuing months. We cannot agree.

We are duty-bound to support the trial court's action that gives effect to the legislature's overriding intent, which is to protect the best interest of our state's children in achieving a safe and permanent home. Ark. Code Ann. § 9-27-341(a)(3). While appellant purportedly wanted to transform herself into the parent that her children needed after more than a year passed where the children were out of her custody, she waited too long to institute effort and there was no compelling evidence that she could be that parent within a reasonable time. We are to give effect to the overriding legislative directive to provide permanency for

children where return to the home cannot be accomplished within a reasonable time, viewed from the child's perspective. Evidence that a parent begins to make improvement as termination becomes more imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place. *Compare Camarillo-Cox v. Ark. Dep't of Human Servs.*, __ Ark. __, __ S.W.3d __ (Jan. 20, 2005). We affirm this point.

Appellant also contends that DHS failed to provide reasonable reunification services such that termination of her parental rights is not warranted. Specifically, appellant asserts that DHS failed to ensure that appellant understood the case plan requirements and failed to make a referral for parenting classes. We disagree. Appellant, by her own testimony, understood that her responsibility was to obtain stable housing away from drug-using relatives, obtain employment, refrain from drug-use, complete drug treatment, and visit her children. Her testimony was that she attended only two visits because she did not want to be drug-tested, and she admitted that she moved around quite a bit, making contact between her and DHS difficult. Appellant completed only the drug and alcohol assessment, and she appeared for two of seventeen opportunities for visits; she did nothing further toward meeting the goals or cooperating with DHS. The case worker essentially opined that appellant, a young twenty-year-old, was only interested in her own desires, not the needs of her children. Given any conflicts in the testimony, we would have to defer to the trial court

on that issue. *See Ark. Dep't of Human Servs. v. Couch*, 38 Ark. App. 165, 832 S.W.2d 265 (1992); *In Re Adoption of Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

Additionally, the trial court found at every review hearing that DHS had complied with its duty to provide reunification services, stating so in an August 2004 order following the adjudication hearing and in a June 2005 order following the permanency planning hearing, among other review hearings. Appellant did not appeal either of those two orders, which are final for purposes of appeal. *See* Ark. R. App. P. – Civ. 2(c)(3)(A) and (B) (2005). Consequently, any contention that DHS was not providing relevant and appropriate services to appellant before June 2005 is moot, and by then, appellant was incarcerated and unable to take advantage of any potential service DHS could offer. We affirm on this point as well.

In summary, we affirm the termination of appellant's parental rights to DM and FM.

GLADWIN and BIRD, JJ., agree.