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

DIVISION I

CA 06-346

NOVEMBER 8, 2006

NAOMI BECK and DAVID BECK APPELLANTS	APPEAL FROM THE IZARD COUNTY CIRCUIT COURT
V.	[NO. JV-2004-37]
	HONORABLE STEPHEN CHOATE, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	AFFIRMED

This is an appeal by appellant Naomi Beck regarding the termination of her parental rights to her two sons, J.B. and D.B., entered by the Izard County Circuit Court on December 8, 2005. She argues that the order terminating her parental rights should be reversed because one finding in the termination order is clearly erroneous. Her sole argument on appeal is that the trial court clearly erred in finding clear and convincing evidence that appellee Arkansas Department of Human Services ("DHS") provided reasonable efforts to reunite the family. Specifically, appellant contends that the trial court erred because DHS was slow in completing a requested home study on the maternal grandparents, and further that the maternal grandparents' home should have been considered an appropriate placement for the boys. We disagree with her argument and affirm.

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 v. Ark. Dep't of Human Servs*., *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 are not left with such a conviction in this instance.

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, and appellant does not contest that the children had been out of her home for more than twelve months and that she had not remedied the conditions causing removal. The issue surrounds DHS's provision of "reasonable efforts" to reunify the family.

Pursuant to Ark. Code Ann. § 9-27-303(46)(A)(i), the Juvenile Code defines what is meant by "reasonable efforts" on the part of DHS:

> "Reasonable efforts" means efforts to preserve the family prior to the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a family made after a child is placed out of home to make it possible for him or her to safely return home.

Arkansas Code Annotated section 9-27-303(25)(B) explains that:

> Family services are provided in order to: (i) Prevent a juvenile from being removed from a parent, guardian, or custodian; (ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed; or (iii) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile[.]

Arkansas Code Annotated section 9-27-303(25)(A) defines what "family services" means:

> [R]elevant services provided to a juvenile or his or her family, including, but not limited to: (i) Child care; (ii) Homemaker services; (iii) Crisis counseling; (iv) Cash

assistance; (v) Transportation; (vi) Family therapy; (vii) Physical, psychiatric, or psychological evaluation; (viii) Counseling; or (ix) Treatment.

Appellant contends that DHS failed in its duty to provide reasonable efforts to reunite this family in that it failed to promptly complete a home study on appellant's parents' home in Missouri and that the trial court clearly erred in finding that her parents were not a suitable placement for her sons. We cannot agree.

In this case, J.B. and D.B. were brought into foster care due to sexual abuse perpetrated on the older boy, J.B., by his stepfather (the natural father of D.B.). D.B.'s father's parental rights were terminated by agreement; no putative father participated in the case regarding J.B. Appellant had been diagnosed with multiple personality disorder and had tested positive for methamphetamine and cocaine on more than one occasion. A maternal grandparent home study was discussed at the probable cause hearing in June 2004. Appellant's parents lived in Missouri. A home study was not ordered at that time, but the issue arose again in a review hearing conducted in December 2004, wherein appellant testified that she had asked early on for her parents' home to be studied as a possible placement. In the permanency planning hearing conducted in May 2005, appellant's attorney objected to the hearing taking place in the absence of a completed home study on the maternal grandparents. DHS admitted that an internal error had delayed the interstate home study. The trial judge granted appellant relief by halting the proceedings until the home study was completed. The home study report was prepared in early October 2005.

The children were out of the home for seventeen months prior to termination of appellant's parental rights. A combination permanency planning and termination of parental rights hearing was conducted on November 15, 2005. Appellant did not appear in court that day; she had purportedly fled to Oklahoma in recent months. The maternal grandparents' home study was entered into evidence. The home study conducted by a Missouri case worker noted no problem with the grandparental home as a potential placement. The report stated that there were telephone interviews and visits to their apartment in Thayer, Missouri. It revealed no prior criminal record for either, their work history, their marital history, basic family dynamics and health history, and three personal references. The recommendation of the case worker was that "I do not see why these children should not be placed in the care, custody and control of their maternal grandparents, Paul and Arlene Whittington."

The maternal grandmother and grandfather testified at this hearing. The grandmother was a heavy, diabetic woman with anxiety and depression issues. The grandfather had vaso-vagal syncope and was on disability. Their testimony revealed that the grandparents were aware that some kind of abuse was going on with J.B. but did not intervene right away. The grandfather testified that he was inclined to believe their daughter regarding allegations that there was a conspiracy with local law enforcement officials that resulted in her being forced to do drugs, and that she had fled the state because she feared being killed by law enforcement personnel. The grandfather also testified that he believed his daughter had not been using drugs on her own since extricating herself from her husband and local law

enforcement. He thought that later drug tests showing multiple positive test results were unreliable. The grandfather stated that he and his wife had a three-bedroom apartment near the local elementary school and that they stood ready to be there for the boys. They had appeared at visitations and loved their grandsons. J.B.'s therapist testified at the hearing expressing concern that the grandparents' tendency to believe their unstable daughter would be detrimental for J.B.

DHS and the children's attorney ad litem were opposed to maternal grandparent placement. Appellant's attorney argued that, while appellant had not done what was necessary to have her children come back into her custody, her parents were a stable force available to provide a home for the children. Her attorney asserted that it was in the children's best interest to be placed with their maternal grandparents. Her attorney added that it was unfair for maternal family members not to be considered where DHS had failed to have the home study completed earlier in the proceedings.

The trial judge concluded without difficulty that appellant's parental rights should be terminated, particularly where appellant had absented herself from the state making the provision of services to her virtually impossible. The trial judge determined that the more difficult issue was regarding relative placement. He ultimately concluded that the maternal grandparents were not a suitable placement. The judge noted that both the grandmother and grandfather had significant health issues revealed in their testimony that were not fully discussed in the Missouri home study, and he also noted that this was important to consider

given the grandparents' ages. The judge found that the grandparents were aware of abuse of J.B. but did not take effective efforts to stop the abuse, in addition to the fact that they tended to believe their daughter's improbable claims. The judge decided that this rendered questionable their ability to protect the children from the detrimental impact of their mother. In addition, the judge was concerned about J.B.'s ongoing mental health issues, which the foster parents had experienced and addressed in their home; the foster parents were a possible adoptive placement. Considering the foregoing, the trial judge agreed with DHS that the Missouri home study should not be approved. In sum, the judge found that DHS had made reasonable efforts throughout the proceedings to reunite the family. The judge stated in closing that the decision on maternal relative placement could be "a horrible mistake...but it may be the very best thing." An appeal followed the order terminating appellant's parental rights.

Appellant correctly states that Ark. Code Ann. § 9-27-355(c)(1) mandates that "[a] relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the juvenile's best interest to be placed with the relative caregiver[.]" We agree that the home study was not completed in a timely manner. However, the issue is moot because the home study was given consideration by the trial court in concluding that it was not in the children's best interest to place the children in their grandparent's custody. An overriding concern of the Juvenile Code is to serve the best interest of the children in

achieving a safe and permanent home. *See Trout v. Ark. Dep't of Human Servs.*, __ Ark. __, __ S.W.3d __ (Nov. 4, 2004). We are not convinced that the trial court clearly erred in finding that the maternal grandparent placement was not in the children's best interest. Importantly, appellant does not contest that she was not entitled to have her children returned to her. Consequently, we affirm the trial court's finding that DHS made reasonable efforts to reunite the children with their parent prior to termination of her parental rights.

Affirmed.

NEAL and CRABTREE, JJ., agree.