

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

CA06-361

November 1, 2006

LUCIA COX

APPELLANT

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. J-04-238]

HON. MICHAEL MEDLOCK,
JUDGE

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AFFIRMED

This is a mother's appeal from the termination of her parental rights. Her child, E.H., was horrifically injured at eight weeks of age. At the emergency room, the child was diagnosed with shaken-baby syndrome involving blindness and massive, irreversible brain damage. The child's father, who stated that he "discovered" the injuries, was criminally charged. The trial court terminated the mother's parental rights without requiring the Arkansas Department of Human Services to provide reunification services based on finding that the child had been subjected to aggravated circumstances (serious physical injury at the hands of a family member), that the mother was complicit because she failed to protect the child, and that reunification services would likely be unsuccessful. On appeal, appellant

argues that the trial court erred in not requiring ADHS to provide reunification services, and that the evidence is insufficient to support the termination of her parental rights. We affirm.

Although termination of parental rights is an extreme remedy in derogation of the natural rights of the parents, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Crawford v. Department of Human Services*, 330 Ark. 152, 951 S.W.2d 310 (1997). Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2002), the facts warranting termination of parental rights must be proven by clear and convincing evidence. In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant facts were established by clear and convincing evidence. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction regarding the allegation sought to be established. *Id.* Furthermore, we will defer to the trial court's evaluation of the credibility of the witnesses. *Crawford v. Department of Human Services, supra.*

Here, termination of parental rights was based on the trial court's findings that the child was rendered dependent-neglected by life-threatening abuse perpetrated by the child's parents; that the child's injuries were the direct result of appellant's failure to protect the child; that the explanation of the injuries is inconsistent with the actual injuries inflicted on the child; and that termination of parental rights was therefore in the child's best interest. Under Arkansas Code Annotated § 9-27-341(b)(3), termination of parental rights must be

based upon a finding that it is in the best interest of the juvenile and a finding that one or more enumerated grounds for termination of parental rights exists. One such ground is that:

(vi)(a) The court has found the juvenile dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents....

Giving deference to the superior opportunity of the trial judge to assess credibility, we think that the evidence in this case supports such a finding. There was medical evidence to show that the child was regularly subjected to severe physical abuse, that there were multiple episodes, and that, when he was ultimately hospitalized at eight weeks of age, there was evidence of prior intentionally-inflicted physical injuries, including multiple bone fractures, that had not been treated and did not match the histories given by the parents. Appellant admitted that she knew that the father was a violent man, that they “argued a lot,” and that he had beaten and bruised her during their arguments. There was also evidence that appellant noticed bruises on the child on multiple occasions after the child had been left in the father’s care; on one such occasion, she observed bruising on the child’s legs and, after confronting the father, accepted his dubious explanation that the bruises were inflicted when the father was “pushing his legs up to get him to go to the bathroom.” Appellant admittedly took no action to protect the child from the father. Furthermore, after the child was admitted to the

hospital at eight weeks of age with massive brain injuries, appellant falsely told criminal investigators that she never noticed any previous bruising on the child.

A parent has a duty to protect a child, and can be found to be unfit even though she did not directly cause her child's injury. *Todd v. Arkansas Department of Human Services*, 85 Ark. App. 174, 151 S.W.3d 315 (2004). We hold that the evidence supports the trial court's findings that the child's life-threatening injuries were the direct result of appellant's failure to protect him and that this physical abuse was inflicted by a parent. Because these circumstances constitute grounds for immediate termination of parental rights, appellant's argument regarding the failure of ADHS to provide reunification services is moot, and we therefore do not address it.

Affirmed.

BIRD and NEAL, JJ., agree.