ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

CA 07-117

June 20, 2007

KATHY HOSIER
APPELLANT

V.

ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES
APPELLEE

APPEAL FROM THE CLAY COUNTY CIRCUIT COURT, JUVENILE DIVISION [NO. EJV-2005-12]

HONORABLE CINDY GRACE THYER, CIRCUIT JUDGE

AFFIRMED

Appellant Kathy Hosier appeals an order terminating her parental rights to her daughters C.C., born 7/12/94, and K.H., born 1/26/01. Appellant offers two arguments on appeal: (1) The trial court erred when it considered testimony from prior hearings in its decision to terminate parental rights; (2) The trial court erred in terminating parental rights because appellant was in substantial compliance with the case plan and court orders. We find no error and affirm.

C.C. and K.H. were taken into the custody of the Department of Health and Human Services (DHHS) on August 26, 2005, after the State Police Child Abuse Hotline received a report alleging that C.C. had been sexually abused by a family friend living in the home.

The allegation was investigated and found to be true. In addition, C.C. was found to have been sexually abused by her stepfather, who is now deceased.

The children were adjudicated dependent-neglected at hearings held on September 23, 2005, and November 16, 2005. In the adjudication order filed January 6, 2006, both children were found to have been sexually abused by Boyd Keelin, a friend of appellant's. There were also findings of environmental neglect in the form of filthy living conditions, and appellant was charged with sixty counts of animal abuse stemming from her operation of a kennel.[1] A goal of reunification was set for the case, and appellant was ordered to complete parenting classes, cooperate with DHHS, submit to psychiatric testing and follow the recommendations thereof, and find suitable housing. Appellant was allowed supervised visitation with her children, but the court ordered that there be no contact between the children and Keelin.

At a review hearing held July 10, 2006, the goal of reunification was continued, but appellant was ordered to seek psychotherapy, seek an assessment for the possible benefits of psychotropic medication, and to cooperate with DHHS, follow the case plan, and comply with previous orders of the court. At the permanency planning hearing held on August 24, 2006, the goal of the case was changed to termination of parental rights. The goal for C.C. was set as adoption, and the goal for K.H. was set as reunification with her biological father. The court found that appellant had not complied with the case plan or the orders of the court, and specifically that she had not kept regular individual therapy sessions and had not

[1] Appellant was later sentenced to thirty days' imprisonment on these charges.

submitted to a psychotropic medication assessment.

A termination hearing was held on October 2, 2006. DHHS presented the testimony of Daryl Aikman, who is Keelin's parole officer.[2] Aikman testified that on September 22, 2006, only ten days before the termination hearing, he had conducted a home visit at Keelin's residence, and appellant was there with Keelin. Aikman stated that it appeared they were just talking and preparing dinner. Aikman testified he was there approximately twenty minutes, and appellant was at the residence the entire time and remained at the residence when Aikman left.

Candy Tarpley, an investigator for DHHS, testified that she was involved in the primary pick-up in the case. She testified that she knew who Keelin was, and that approximately two weeks previously, she had seen Keelin and appellant together at the grocery store.

Mia Mumford, a therapist at Mid-South Health Systems, testified that she had been providing family therapy to appellant on a weekly basis since August 8, 2006. Mumford testified that the primary issue they addressed in therapy was appellant's relationship with C.C. and appellant's refusal to believe the allegations of sexual abuse perpetrated by Keelin. Mumford also testified that they had been examining appellant's pattern of behavior as it involved forming relationships with people who have betrayed her trust and hurt her children. Mumford recommended terminating appellant's parental rights based on (1)

[2] In an order filed April 17, 2006, Keelin pled guilty to sexually assaulting appellant's daughters, received a sentence of 120 months' probation, and was required to register as a sex offender.

appellant's inability to resolve whether she believes C.C. was ever really sexually abused, (2) appellant's trouble believing that C.C. can tell the truth, and (3) appellant's pattern of forming relationships with former sex offenders and people who compromise the safety of her children. Mumford did state that appellant had attended all scheduled therapy sessions since August 8, 2006, but she also testified that it could take months or years for appellant to reconcile her issues.

DHHS caseworker Max Pohl testified that he had been the caseworker assigned to appellant's case for the past year. He testified that the children had been in DHHS custody for almost fourteen months. Pohl testified that appellant's compliance with the case plan and court orders over the past thirteen months had varied. Appellant's initial psychotherapy with Families, Inc. had ceased due to non-compliance, but after the permanency planning hearing on August 24, appellant began attending regular therapy sessions at Mid-South. Pohl stated that he did not see any real results from the therapy that would make him feel secure.

Pohl also testified that appellant told him she was not seeing Keelin and signed a contact sheet on September 21, 2006, verifying that she had not seen Keelin since bailing him out of jail on April 19, 2006.[3] Pohl testified that he later received the information concerning the home visit to Keelin's residence on September 22. Pohl expressed concern that if appellant was not honest with him, then perhaps she was not being honest in her therapy. He was also concerned that if the children went back to appellant, they would be placed in the same situation of being around Keelin, and DHHS would not have the ability

[3] At the time Keelin was released from jail, he listed appellant's address as his home address, and appellant admitted to DHHS that he was living in another trailer on her property.

to monitor the situation on a day-by-day basis. Pohl testified that the safety of the children and their well-being would be in question during the time they were not being monitored, and he believed termination of appellant's parental rights was in the children's best interest.

Finally, Liz Fitzgibbons, another caseworker at DHHS, testified as to the likelihood of C.C. being adopted. Fitzgibbons testified that because C.C. has special needs, finding an adoption placement for her would be harder, but she also testified that C.C. has a sweet personality and is very endearing. She testified that she believed DHHS could find a good family for C.C., she had already been talking to some families about C.C., and there was a likelihood that C.C. would be adopted.

At the conclusion of the testimony, the court ruled that appellant's parental rights would be terminated as to both C.C. and K.H. The court found that appellant was not credible, specifically referencing testimony offered by appellant at the permanency planning hearing on August 24 and noting the inconsistencies in that testimony. Based on that testimony and the testimony offered at the termination hearing, the court found that DHHS had proven by clear and convincing evidence that termination was in the best interest of the children.

Appellant then objected to "part of the Court's rational[e] and the reasons stated by the Court," arguing that it was improper for the court to rely on the prior testimony from the permanency planning hearing in making its decision. Appellant argued that considering the prior testimony violated Supreme Court Rule 6-9(c)(1)(2006), which states: "The record for appeal shall be limited to the transcript of the hearing from which the order on

appeal arose, any petitions, pleadings, and orders relevant to that hearing, and all exhibits entered into evidence at that hearing." Appellant also argued there was an apparent conflict between that rule and Ark. Code Ann. § 9-27-341(a)(4)(B) & (d)(2) (Supp. 2005), which respectively provide:

> (B) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights.
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> (2) If the parent was represented by counsel, the court shall take judicial notice and incorporate by reference into the record all pleadings and testimony in the case incurred before the termination of parental rights hearing.

The court agreed there was a potential conflict between the rule and statute and struck that portion of its ruling that referred to the August 24 hearing. However, the court reiterated that it found appellant not credible based on the evidence introduced without objection at the termination hearing. The order terminating appellant's parental rights, which references only the evidence presented at the termination hearing, was entered on December 6, 2006. This timely appeal followed.

We recognize that termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Wade v. Ark. Dep't of Human Servs.,* 337 Ark. 353, 990 S.W.2d 509 (1999). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* The facts warranting termination of parental rights must be proven by clear and convincing evidence, and in reviewing the trial court's evaluation of the evidence, we will not reverse unless the court's finding of clear and convincing evidence is clearly erroneous. *Baker v. Ark. Dep't of Human*

Servs., 340 Ark. 42, 8 S.W.3d 499 (2000). Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. *Id.* In resolving the clearly erroneous question, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Id.* Additionally, we have noted that in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations. *Ullom v. Ark. Dep't of Human Servs.,* 340 Ark. 615, 12 S.W.3d 204 (2000).

Appellant's first argument on appeal is a reiteration of her argument below, namely that the trial court erred when it considered appellant's prior testimony from the permanency planning hearing as a basis to terminate her parental rights. However, appellant's objection to the trial court's ruling on that basis was sustained below, and the court struck any consideration of prior testimony from its ruling. A party cannot complain when he or she has received all the relief requested, *Mikel v. Hubbard*, 317 Ark. 125, 876 S.W.2d 558 (1994), thus appellant's argument is without merit. Appellant also argues that striking a portion of the trial court's ruling was not enough to cure its error; however, there is a presumption that a trial judge will consider only competent evidence, and this presumption is overcome only when there is an indication that the trial judge gave some consideration to the inadmissible evidence. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). Here, the record shows that the trial court specifically struck that portion of its ruling that contained what appellant asserts was improper evidence, and the order referenced only the evidence that was presented at the termination hearing. Appellant has failed to

show any indication that the trial court continued to rely on the previous testimony in making its ruling.[4]

Appellant's second argument on appeal is the broad assertion that "the trial court erred when it terminated parental rights of the appellant." The bulk of appellant's argument on this point consists of a series of references to other termination cases, but with no argument as to how those cases are or are not applicable to the case at bar. As part of her second argument, appellant also asserts that this court should consider the steps she has taken to comply with the case plan and court orders. Appellant argues that she completed parenting classes, has undergone a psychological evaluation, resolved the environmental neglect issues, and was substantially compliant in attending visitation with the children. However, our case law has established that a parent's rights may be terminated even though they are in partial compliance with the case plan. *Chase v. Ark. Dep't of Human Servs.,* 86 Ark. App. 237, 184 S.W.3d 453 (2004). In fact, this court has held that even full completion of a case plan is not determinative of the outcome of a petition to terminate parental rights. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id.* In this case, the trial court found that the evidence showed appellant remained incapable of protecting the health and safety of her children, and we cannot say that this finding was clearly erroneous.

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[4] Moreover, we note that under Ark. Code Ann. § 9-27-341(a)(4)(B), it would have been proper for the trial court to rely in part on appellant's previous testimony offered at the permanency planning hearing, and we perceive no conflict between Supreme Court Rule 6-9 and the above-noted provisions of Ark. Code Ann. § 9-27-341.

We note appellant's assertion that just the possibility of a "child maltreatment incident" reoccurring and the court's concern about appellant's relationship with Keelin are not statutory grounds to terminate. In fact, the evidence of appellant's continued contact with Keelin presented at the termination hearing raises a substantial likelihood that the abuse could reoccur and supports the trial court's finding that "there is the potential harm to the health and safety of the juveniles caused by returning the children to the custody of the mother." *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(ii) (Supp. 2005). Finally, appellant concludes her argument with the statement, "Furthermore, termination of her parental rights was not proven to be in the best interest of the children," but she fails to develop any argument to support the assertion. When an appellant neither cites authority, nor makes a convincing argument, and where it is not apparent without further research that the point is well taken, we will affirm. *Mikel, supra*. Furthermore, avoidance of potential sexual abuse supports the conclusion that termination of parental rights is in the best interest of the children.

Affirmed.

PITTMAN, C.J., and ROBBINS, J., agree.