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

DIVISION II

CA 07-205

SEPTEMBER 19, 2007

DAVID HOLLIS, SR. and TANYA MARIE KELLETT

APPELLANTS

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES

APPELLEE

APPEAL FROM THE UNION COUNTY CIRCUIT COURT
[NO. JV-06-145]

HONORABLE EDWARD A. KEATON, JUDGE

AFFIRMED

Tanya Kellett and David Hollis have appealed from an order terminating their parental rights to three children: J.H., born March 20, 2003; D.H., born July 6, 2002; and B.H., born August 21, 2004. We affirm the circuit court's decision.

DHS filed a petition in Union County for emergency custody of all three children on November 18, 2004, alleging that the children had been abused and neglected. In the supporting affidavit, a DHS worker stated that Tanya had left the home and had been living on the street; that Tanya had informed the police that David had physically abused J.H. and D.H., who were bruised; that Tanya had a black eye and bruises; that B.H. had a severe diaper rash; that Tanya had taken the children to the home of a relative where roaches were everywhere and there was no running water; and that the children were dirty and unkempt. An order for emergency custody was entered on November 18, 2004.

A probable-cause hearing was conducted on November 24, 2004, and the circuit court found probable cause for the children's removal from appellants' care. At the December 20, 2004, adjudication hearing, the circuit court continued the case to give appellants' appointed counsel time to prepare and ordered scientific testing to determine the children's paternity. As it turned out, David is not the biological father of D.H.

An adjudication hearing was held on January 20, 2005. The court entered an adjudication order finding that the children were dependent-neglected, awarding DHS temporary custody of the children and stating that the goal of the case would continue to be reunification. The court ordered the parents to complete an assessment for substance-abuse treatment; to refrain from the use or possession of controlled substances; to submit to drug screening; to submit to drug screening before each visit with the children, which would not occur if they tested positive for methamphetamine; to obtain and maintain suitable and hazard-free housing; to attend and complete individual and joint counseling; and to attend and complete parenting classes.

At a March 7, 2005, review hearing, Tanya and her attorney, David's attorney, and Shannon Hollis appeared. The court received a home-study on Paul (David's brother) and Shannon Hollis that same day and placed temporary custody of the children with Paul and Shannon. The goal continued to be reunification with a concurrent plan for permanent relative custody. The court found that DHS had made reasonable efforts to provide reunification services, such as parenting classes, homemaker services, drug testing, and

individual and family casework, to the family. The court ordered supervised visitation and directed David and Tanya to take the same actions as it had previously ordered.

According to DHS's May 20, 2005, court report, neither parent had complied with the case plan or court order since the last hearing. It said that both appellants were unemployed and had had no counseling; that Tanya had had several angry encounters with the DHS supervisor and caseworker and had said that she had to take care of David[1] and "did not have time for all of the other shit"; that Tanya had screamed that DHS was harassing her and that she was not doing any of the case plan except the drug tests to visit the children; that Tanya had dropped out of a recovery program (in which she did not fully participate) and had not attended any further drug treatment or assessment, AA or NA meetings, parenting classes or counseling sessions; and that David had not attended any parenting classes, counseling sessions, or drug treatment. The report stated that both parents had aggressively refused to take a random drug test at home. DHS recommended that the children remain in the permanent custody of Shannon and Paul and that it be relieved of providing services to appellants. As for the drug tests, David tested positive for four of five drugs on May 10 and missed all of the visits except May 10 and May 17. Tanya was a "no show" for her visits and the drug testing on April 12, April 19, and May 3; she tested positive for two of five drugs on March 15, positive for THC on March 22, positive for THC on April 1, and positive for THC on April 26. Her April 6 drug test was clear.

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[1]David had recently received serious burns.

In June 2005, appellants agreed to give permanent custody of the children to Paul and Shannon, and that case was closed.

On March 7, 2006, DHS filed an order for emergency custody of the children in Sevier County, where Paul and Shannon lived. A probable-cause hearing was held on March 9, 2006, at which appellants were present. The court found that there was probable cause to remove the children from Paul's and Shannon's care and that they should continue in the custody of DHS, which was ordered to develop an appropriate case plan.

An adjudication hearing was held on April 6, 2006. The court found the children to be dependent-neglected and stated that the goal would be reunification with a concurrent plan for adoption. The court gave appellants supervised visitation and ordered them to comply with the case plan. It ordered DHS to refer the parents to Union County for services. The court found that the parents had the obligation and ability to pay child support and that a separate order of child support would be entered. On May 19, 2006, the Sevier County Circuit Court transferred the case to Union County. The 2004 case was reopened and was consolidated with the 2006 case.

A review hearing was held on August 11, 2006. The court found that the children's return to appellants' custody would be contrary to their welfare. It stated that the case plan was "moving towards an appropriate permanency plan for the juveniles" with the goal of the case to be termination of parental rights and that DHS had made reasonable efforts to provide reunification services. The court held that appellants could have visitation with the children at the DHS office if they first had negative drug tests. The court stated that the "mother and

father testified that they last used marijuana three weeks ago and that they would test positive today."

DHS filed a case plan and court report on August 11, 2006, recommending that appellants' parental rights be terminated. According to the report, appellants were living together; Tanya was unemployed; David was working for his family; and it was unknown if they had completed any drug treatment.

On August 23, 2006, DHS filed a petition for termination of parental rights. Wesley Barton, the putative father of D.H., was also named as a defendant. David tested positive for marijuana on August 25, 2006, as did Tanya. On September 1, 2006, David tested positive for marijuana; Tanya's test was negative. David's test on September 8, 2006, was negative, while Tanya's results stated that she was "taking sinus gelatin caplets acetaminophen & pseudoephedrine." David's test on September 15, 2006, was positive for marijuana; Tanya's was negative. Both appellants' tests were negative on September 29, 2006.

On October 26, 2006, DHS's court report recommended that appellants' parental rights be terminated. The report stated that appellants lived together; that appellants' drug tests on September 29, 2006; October 6, 2006; October 13, 2006; and October 20, 2006, were negative; that Tanya was unemployed and David worked for his family; and that neither had completed any drug treatment.

On November 6, 2006, the termination hearing was held, at which appellants, Shannon, David's great-aunt, and two DHS workers testified. On November 20, 2006, the trial court announced from the bench its decision to terminate appellants' parental rights. The

circuit court entered an order on December 20, 2006, terminating appellants' parental rights on the following grounds:

> 4. The Court finds it to be contrary to the children's best interests, health and safety, and welfare to return them to the parental care and custody of their parents and further finds that the Department of Health and Human Services has proven by clear and convincing evidence that:
>
> (a) It is in the juveniles' best interest to terminate the parental rights of the mother and father;
>
> (b) That the juveniles have been adjudicated by the court to be dependent-neglected and the minor children have continued out of the custody of the parents in excess of one year, and despite a meaningful effort by the Department of Human Services to rehabilitate the home and correct the conditions which caused removal, those conditions have not been remedied by the parents; and
>
> (c) Subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose which demonstrate that return of the juvenile to the family home is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances which prevent return of the juvenile to the family home.
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> 5. There was an adjudication of dependent-neglect in this matter against the parents. The Court ordered several things for the parents to do to rehabilitate the home in January, 2005. In March, 2005, the Court reviewed the case. At that time the father was hospitalized due to injuries sustained in an explosion. At that hearing, custody of the children was placed with Paul and Shannon Hollis. DHHS was ordered to do drug tests before visits and provide transportation. In June, 2005, the mother had not completed treatment program at the Recovery Center. The father and mother were not employed. The Court said they had a duty to support the children, but did not order child support. Permanent custody was placed with Paul and Shannon Hollis. The Department was relieved of providing services, and the case was closed. Once the case was closed, the Department was not obligated to offer services to the parents. The parents agreed to the closing of the case with permanent custody to Paul & Shannon Hollis. The parents basically gave up on reunification.
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> 6. This case came to court again because the children were removed from Paul and Shannon Hollis' home. Of the things the Court had previously ordered, the parents did not complete counseling, parenting classes or drug treatment. After DHHS

involvement when the case was previously open, the visits with the children was sporadic. Distance between where the children lived and the parents lived is taken into account by the Court in making this observation.

7. The parents have not remedied the conditions that first caused their children to be removed from their custody. They did not complete the things that the Court ordered them to do to rehabilitate the home. The parents had a drug problem. The children were physically abused also. The parents were to be tested before each visit. Drug rehab was ordered. Neither parent completed treatment. Placing the children back with these parents due to them not completing drug treatment would be harmful to the children's health and safety.

8. The court finds that Arkansas Department of Health and Human Services, throughout this matter, has made reasonable efforts to reunite this family. The Department did make meaningful efforts to rehabilitate the family.

We review termination of parental rights cases *de novo*. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, __ S.W.3d __ (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005). Additionally, in matters involving the welfare of young children, we will give great weight to the trial judge's personal observations. *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. *Id.*

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. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, __ S.W.3d __ (2007). 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.*

Arkansas Code Annotated section 9-27-341(b)(3) (Supp. 2005), provides in pertinent part:

> An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
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> (A) That it is in the best interest of the juvenile, including consideration of the following factors:
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> (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 returning the child to the custody of 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.
>
> (*b*) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(*a*) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(*a*) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

. . . .

(vii)(*a*) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Appellants argue that, by focusing on their behavior before custody was given to Paul and Shannon, the trial court accepted DHS's presumption that their situation did not change between June 2005 and August 2006, when DHS filed the petition to terminate, and that it shifted the burden of proof to them. Pointing out that the 2004 case was closed when Paul and Shannon took custody of the children, appellants argue that, after the 2006 case was filed, DHS should have provided reunification services to them, especially after the Sevier County Circuit Court ordered DHS to refer them to Union County for services. It is undisputed that DHS did not offer reunification services after June 2005, either in Sevier County or Union County. Therefore, appellants argue, the court's finding that DHS had offered appropriate family services and had made a meaningful effort to rehabilitate their home is clearly erroneous.

We disagree. There is no support for appellants' argument that DHS should have started with a clean slate in 2006 and offered them more services. It is also clear to us that the circuit court would have been grossly remiss in carrying out its duties if it had *not* carefully considered the entire history of DHS's involvement with this family. What happened after the

children were removed from Paul and Shannon's custody cannot be considered in isolation; the circumstances existing at the time of the termination hearing could properly be assessed only in the context of DHS's entire history with appellants. Here, the 2004 and 2006 cases were consolidated by the Union County Circuit Court, which was proper in view of Ark. Code Ann. § 9-27-341(a)(4)(B) (Supp. 2005), which states that the court, in making its decision, shall rely upon the record of the parents' compliance in the entire dependency-neglect case and the evidence presented at the termination hearing.

Additionally, evidence was presented about appellants' current situation. At the termination hearing, DHS's Union County work supervisor, Stephanie Higgins, testified at length about the 2004 case, including appellants' nearly complete failure to comply with the court's orders, their hostility to DHS, their severe problem with drugs, and their relinquishment of permanent custody of the children to Paul and Shannon. She stated that it was because of appellants' noncompliance in the 2004 case that DHS did not recommend offering any services in this case. She also said that, when reunification services were stopped before, appellants made no objection. Further, Ms. Higgins stated that DHS did consider appellants' present living situation in the same home, with all of its environmental problems, as in the first case.

We also note that the court had before it the drug tests that appellants failed in the 2006 case. Further, David did not participate in a drug-treatment program; he testified that he had quit doing methamphetamine of his own free will. He admitted that he had "smoked weed" since the children were taken back into DHS's care in March 2006 and that he and

Tanya lived in the same household as before. Tanya admitted that she had smoked marijuana since the last time they were in court.

Arkansas Code Annotated § 9-27-341(a)(3) (Supp. 2005) provides:

> The intent of this section is to provide permanency in a juvenile's life in all instances where the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective.

Improvement and compliance toward the end of a case plan will not necessarily bar termination of parental rights. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). "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." *Id.* at 355, 201 S.W.3d at 401. Too-little progress that is made too late to achieve reunification within a reasonable time from the child's perspective will not suffice. *See Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Latham v. Ark. Dep't of Health & Human Servs.*, __ Ark. App. __, __ S.W.3d __ (May 9, 2007).

These children have been out of appellants' home since November 2004, which is most of their lives. In light of appellants' continued drug use, their remaining in a household that has been demonstrated to be hazardous, along with their defiance of the court's previous orders, we hold that the trial court did not err in terminating their parental rights.

Affirmed.

GLOVER and BAKER, JJ., agree.