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

DIVISION IV

CA07-341

September 19, 2007

JENNIFER AND TOBY HORN
APPELLANTS

v.

ARKANSAS DEPARTMENT OF HEALTH & HUMAN SERVICES
APPELLEE

AN APPEAL FROM YELL COUNTY CIRCUIT COURT
[NO. JV2005-30]

HONORABLE TERRY SULLIVAN, CIRCUIT JUDGE

AFFIRMED

Appellants Jennifer and Toby Horn argue that the trial court lacked sufficient evidence to terminate their parental rights to CH (dob 5-25-05). We find no error and affirm.

CH was diagnosed by Arkansas Children's Hospital as a "medically-fragile" and "failure-to-thrive" infant shortly after his birth. He cannot eat solid food and must consume special nutritional drinks that are specially mixed and thickened for each meal. If the mixture is too thin, he will aspirate. He also requires a daily oxygen check. If his "pulse/ox" count drops to a certain level, he is administered oxygen through a mask that must be held on his face for ten to fifteen minutes. He has a pronounced reaction to strong smells such as smoke and perfume. He also receives regular physical, speech, and developmental therapy, has frequent doctor appointments, takes regular shots for respiratory infections, takes medication for asthma and reflux, and has suffered problems with his eyes and ears. By all indications, his

problems are long-term, though he has made some small advances in his development. He was almost twenty months old at the time of the termination hearing and was beginning to take his first steps.

When CH was at Children's Hospital in the months following his birth, staff members contacted DHHS and expressed concern about appellants' lack of nurturing and attention to CH, their inability to remember what to do for him in certain medical situations, and their need for constant verbal cues for proper feeding. DHHS responded and took custody of CH in September 2005. He was adjudicated dependent-neglected on November 14, 2005, by which time he had been moved to a foster home in Crawford County that specialized in caring for medically fragile children. Appellants, who lived in Yell County, were directed to visit him there. The goal of the case was reunification, and appellants were ordered to attend parenting classes, submit to psychological evaluations, and keep their house clean. The court also ordered that no smoking take place in any home where CH resided or visited.

Thereafter, DHHS offered various services to appellants, including instructions on administering oxygen to CH; transportation to visits; parenting classes; housecleaning instructions; and budgeting classes.[1] By the time a fifteen-month review hearing was held in December 2006, the court found that appellants had made some progress but that it had been "very, very slow." For example, the court noted that there had been problems with appellants cooperating with DHHS and that "Jennifer Horn was ordered to cease smoking and ensure her clothes were washed at the last hearing. This was not done." Due to appellants' lack of

[1] The evidence showed that, despite the fact that both appellants were working, they often, within days of being paid, had no money for gas to visit CH.

progress and CH having been in DHHS custody for more than one year, the goal in the case was changed to termination of parental rights. Appellants were directed to allow DHHS access to their home; to keep a clean house; and to stop smoking. A termination hearing was set for February 14, 2007.

At the hearing, caseworker Carol Geels testified that she had been to appellants' house the previous week, and she introduced several photographs. They reflect an extremely unkempt house, with dirty dishes and other items covering all counter space and floor space, plus numerous electrical cords hanging from appliances. Geels also said that the house had a bad odor and smelled of tobacco smoke (although she could not tell if the smoke was recent or old). She said that she was denied access to appellants' bedroom when she visited the home. Geels said further that appellants arrived for visitations with CH with body odor and, during visitations, Toby Horn would interact with CH for only a short time, then lie down and read. Also, Geels said, appellant Jennifer Horn had learned how to connect CH's breathing machine and put the mask on his face, but she was unable to hold him so that she could keep the mask on his face. According to Geels, neither appellant accepted the severity of CH's condition and said they felt that he would "grow out of" his problems.

Witness Susan Pickle testified that she met with appellants to conduct a parenting class shortly before the termination hearing. She said that appellants were disheveled and smelled of smoke.

Social Service Aide Susan Goree said she detected the smell of smoke on one of the appellants the Thursday before the hearing. She also said that she had been in appellants' home regularly over the past year. In her visit the previous December, there were mouse droppings,

the house was messy and unclean, had spills on the counters and stacks of dirty dishes, and it smelled of smoke. One month later, she visited the house, and conditions remained the same. She said that she tried to tell appellants how to clean their house to remedy the situation—how to shampoo the carpet, wash the walls, wash the dishes, get rid of the mice, and clean things up. However, she said, she had not "had much luck getting through to them" and that they became angry with her. She also was denied access to appellants' bedroom when she visited the home.

Marie Lawrence, a DCFS supervisor, requested termination of parental rights "so that we can make a permanent solution" for CH. She said that CH had bonded with his foster family and did not recognize appellants as his parents or caretakers. She also said that neither appellant accepted the severity of CH's condition and that the concerns that were expressed when the case first opened had not yet been resolved. Lawrence visited appellant's home in December 2006 and found it cluttered, though some of the rooms were "not that bad." But photographs from her January 2007 visit show an extremely cluttered home, despite Jennifer Horn's representation that she had been up most of the night cleaning. Lawrence said that she had never seen the home where it would be appropriate to return CH to it. She too was denied access to appellants' bedroom.

There was also evidence that CH was adoptable; that two other children had previously been removed from appellants' home due to environmental neglect; and that appellants did not participate fully in budgeting classes.

Jennifer Horn testified that she made efforts to clean the house and that she had gotten rid of the mice. She said that she had quit smoking but that she had one cigarette a week at

her grandmother's house. She said that Toby smoked a cigar once in a while but not in the house. Toby testified that it had been over a month since he had smoked. He also testified that he thought Children's Hospital and DHHS were "picking on" them.

At the close of Toby's testimony, the court made a spontaneous visit to appellants' house, which Toby had described as "pretty clean." Photographs from that visit show significant clutter and filth throughout the house, dangling cords, and the house's only toilet, which caseworker Carol Geels described as "nasty." According to Geels, the house was not appropriate for a medically fragile child.

After the hearing, the trial court terminated appellants' parental rights. The court noted that CH had never been in appellants' custody and had been in DHHS custody for eighteen months; that appellants had not demonstrated that they had the knowledge to provide for CH's special needs; that there was severe environmental neglect; that CH had special medical needs and could not tolerate the smell of smoke; and that appellants had been ordered to clean the home but had not done so. The court stated: "The house is not appropriate for a child today, it was not appropriate for a child 18 months ago, and the Court does not know if it will be appropriate for a child a year from now." Appellants appeal from that order.

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. *Sowell v. Ark. Dep't of Human Servs.*, 96 Ark. App. 325, ___ S.W.3d ___ (2006). Grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* On appeal, we determine whether the trial court's findings were

clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *See id*.

Pursuant to Ark. Code Ann. § 9-27-341(b)(3)(A) and (B) (Supp. 2005), an order terminating parental rights must be based on a finding that termination would be in the best interest of the child and on at least one of several statutory grounds, such as a finding that the child has been adjudicated dependent-neglected and, despite meaningful effort by DHHS to rehabilitate the home and rectify the conditions causing removal, the parent has failed to remedy the conditions. In the present case, the trial court found that termination of parental rights was in CH's best interest and that the above stated statutory ground had been proved. We cannot say that those findings were clearly erroneous.

Appellants were made aware of the seriousness of CH's condition shortly after his birth. The child has, at the very least, extreme breathing difficulties, is susceptible to infections, and cannot be exposed to strong odors or unclean environments. Yet, appellants refused to accept the gravity of CH's condition, and they steadfastly maintained their home in a manner that was inappropriate—in fact dangerous—to him. Moreover, the disarray and uncleanliness in appellants' home persisted from early on in the case through the day of the termination hearing. Abundant proof of environmental neglect over a long period of time has been considered as evidence in support of termination. *See Sowell*, *supra*.

Likewise, appellants seemed unwilling to acknowledge the effect that strong smells, such as tobacco, have on CH. Several witnesses testified that, not long before the termination hearing, appellants and their home smelled of smoke. Appellants themselves admitted to

smoking occasionally, though not in their home. Smoking has been considered a factor in affirming a termination of parental rights where a medically fragile child is involved. *Id.*

Appellants argue that the trial court did not give proper attention to the things they did accomplish. For example, Jennifer learned to operate CH's oxygen machine and place a mask on his face. However, her limited accomplishment was of little use to CH if she could not keep the mask on his face for the required amount of time. Partial progress by a parent does not necessarily require the court to deny termination. *See Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

The challenges in caring for a child of CH's delicate nature are profound. It is clear from the record that constant care and vigilance must be exercised in order for CH to progress. Unfortunately, appellants have not learned the skills to cope with his medical condition and have not been able or willing to provide a safe environment for him. This situation persisted despite CH having been in DHHS custody for over fifteen months and DHHS providing appropriate training and instruction in how to remedy appellants' situation. We therefore agree with the trial court that termination of parental rights was in CH's best interest and that appellants failed to remedy the conditions that led to CH's removal.

Affirmed.

BIRD and MARSHALL, JJ., agree.