

DIVISION I

CA07-377

September 26, 2007

LAKESHA SHAFFERS
APPELLANT

AN APPEAL FROM PULASKI COUNTY
CIRCUIT COURT
[JJN05-2021]

v.

HONORABLE WILEY BRANTON,
CIRCUIT JUDGE

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES
APPELLEE

AFFIRMED

BRIAN S. MILLER, Judge

The trial court terminated appellant Lakesha Shaffers's parental rights to her four children: DT (d.o.b. 9-19-95); KA (d.o.b. 8-24-97); MS (d.o.b. 8-15-00); and MA (d.o.b. 8-29-01). She argues on appeal that the termination was not supported by sufficient evidence. We disagree and affirm.

In September 2005, the children were taken into emergency custody by the Arkansas Department of Health and Human Services (DHHS). A DHHS affidavit stated that DT reported to school with welts on her legs, some of which were open and oozing; that Shaffers beat DT with a broom and a belt; that Shaffers held DT down and put the broom handle to her neck, choking her; that DT was afraid to go home; that Shaffers took DT off her (DT's) medication; that DT was "very filthy"; and that Shaffers's house was messy and unclean, with little food, and the gas was off.

On December 21, 2005, the children were adjudicated dependent-neglected. Custody was continued in DHHS, with a goal of reunification. Shaffers was ordered to, among other things, obtain stable housing, attend parenting classes, and submit to psychological evaluation and random drug screens. At a later review hearing, the court stated that Shaffers could benefit from either in-patient or out-patient drug rehabilitation.

Following a permanency-planning hearing on August 1, 2006, the goal of the case was changed to termination of parental rights. The court observed that Shaffers was attending counseling and had taken parenting classes but “continues to test positive for marijuana, has not been to outpatient drug treatment, and has no housing.” A termination hearing was set for January 9, 2007.

At the termination hearing, caseworker Comera Farmer recommended that parental rights be terminated, based in part on Shaffers’s significant delay in complying with the court’s orders. Shaffers had established housing—a one-bedroom apartment—but did not do so until September 2006, approximately one year after the children had been removed from her custody and one month after the goal in the case was changed to termination. Shaffers also did not enter a drug program until September 2006, and she continued to test positive for marijuana through October 2006. Farmer also observed that the children had been out of the home for more than a year and could not be returned at present. Shaffers was facing criminal charges in connection with her abuse of DT, and the criminal court had entered a no-contact order regarding all the children. The order was expected to remain in effect for an indeterminate period while Shaffers awaited an Act III evaluation to ascertain if she was

competent to stand trial. Farmer and another witness stated that the four children were adoptable.

Dr. Paul Deyoub evaluated Shaffers in January and March 2006. He testified that she suffered from major, recurrent depression, cannabis dependence, dependent personality disorder, and mild mental retardation. He said that Shaffers acknowledged her inability to handle the children, and he remarked that it would be “a miracle if [Shaffers] could be brought up to par to raise four children.” He further stated that Shaffers was always distraught and overwhelmed and could “barely take care of herself.”

Based on the above evidence, the trial court terminated Shaffers’s parental rights. This appeal followed.

Parental rights may be terminated if clear and convincing evidence shows that termination is in the children’s best interest and that one or more statutory grounds have been proven. Ark. Code Ann. § 9-27-341(b)(3)(A) and (B) (Supp. 2005). The trial court found that termination was in the children’s best interest and relied on the statutory ground contained in Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2005): that the children had been adjudicated dependent-neglected and had been out of Shaffers’s custody for a at least twelve months, but, despite a meaningful effort by DHHS to rehabilitate Shaffers and correct the conditions that caused removal, the conditions were not remedied. We cannot say that the trial court’s findings were clearly erroneous. *See Meriweather v. Ark. Dep’t of Health & Human Servs.*, ___ Ark. App. ___, ___ S.W.3d ___ (Apr. 11, 2007) (applying the clearly-erroneous standard).

First, the trial court properly considered the need for permanency in the children's lives. The intent of the termination-of-parental-rights statute is to provide permanency in a juvenile's life in all instances in which 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. Ark. Code Ann. § 9-27-341(a)(3) (Supp. 2005). In the case at bar, the children had been out of Shaffers's custody for fifteen and one-half months. The no-contact order in the criminal case made it unlikely that they could be returned to Shaffers's custody, or even visit Shaffers, in the near future.

Secondly, Shaffers continued to test positive for drugs until two months before the termination hearing. Indifference to remedying drug use and continuing to test positive after the permanency-planning hearing is considered contrary to the children's health, safety, and well-being. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). Moreover, Shaffers made no attempt to remedy her drug problem or her housing problem until the children had been out of her custody for more than a year and the goal in the case had been changed to termination. A parent's "eleventh hour" improvements do not require reversal of a termination order. *See Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

Finally, Dr. Deyoub was pessimistic that Shaffers would ever be capable of caring for her four children. She suffered mild mental retardation with an IQ of 68, had a dependent personality, a drug dependency, other psychiatric disorders that were likely to continue, and she acknowledged that she could not handle her children. *See Meriweather, supra* (affirming

termination based, in part, on parent’s inability to accomplish day-to-day parenting tasks without intensive supervision); *Yarborough v. Ark. Dep’t of Human Servs.*, 96 Ark. App. 247, 254, ___ S.W.3d ___ (2006) (affirming termination, in part, because parent suffered from “deep-seated psychological problems”).¹

The above factors convince us that the trial court did not clearly err in terminating Shaffers’s parental rights. Shaffers contends, however, that because she was “making progress” and the children were living with her mother at the time of the termination hearing, there would be no harm in continuing reunification services. She cites Ark. Code Ann. § 9-27-338(c)(2)(A) (Supp. 2005), which provides that, at a permanency-planning hearing, the court shall set one of several goals, including authorizing a plan for termination of parental rights “unless the juvenile is being cared for by a relative ... and termination of parental rights is not in the best interest of the juvenile.” Even if this statute applies to a trial court’s ultimate decision to terminate parental rights, it permits the court to consider the best interest of the children. As we have stated, the trial court’s finding that termination was in the children’s best interest is not clearly erroneous.

Affirmed.

PITTMAN, C.J., and HART, J., agree.

¹ Shaffers does not argue that DHHS discriminated against her or failed to provide accommodations or services pursuant to the Americans with Disabilities Act.