

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
BRIAN S. MILLER, JUDGE

DIVISION IV

CA07-518

October 3, 2007

KRISTA RUSSELL  
APPELLANT

AN APPEAL FROM SEBASTIAN COUNTY  
CIRCUIT COURT  
[No. JV-2002-341]

v.

ARKANSAS DEPARTMENT OF  
HEALTH & HUMAN SERVICES  
APPELLEE

HONORABLE MARK HEWETT,  
CIRCUIT JUDGE

AFFIRMED

Krista Russell appeals from an order terminating her parental rights to three of her children: A.R. (a daughter born January 4, 1995), K.R. (a daughter born October 21, 1999), and K.R. (a son born March 8, 2004). We affirm.

The girls were first removed from Russell's home in May 2002 after A.R. was sexually abused by an out-of-home offender and physically abused by her stepfather. A June 25, 2002 adjudication order, found that the children were dependent-neglected and set reunification as the goal of the case. The court ordered Russell to obtain psychological evaluations; to attend follow-up counseling; to have a drug-and-alcohol assessment and to receive treatment and random drug screens to complete parenting classes; to participate in

the children's therapy; to maintain stable housing, employment, and income; to cooperate with DHHS and its providers; and to participate in a domestic-violence support group. The girls were returned to Russell after a July 2003 review hearing.

Russell gave birth to a son, K.R., on March 8, 2004. The children were removed from Russell's home on November 19, 2004, and an adjudication order was entered on May 10, 2005, finding that the children's needs were not being met, although DHHS had provided services and had made reasonable efforts to preserve the family. The court found that the children were dependent-neglected and set reunification as the goal. Russell was given weekly visitation and was ordered to maintain stable and appropriate housing, income, and employment. The court ordered her to submit to random drug screens, to remain drug-free, and to participate in therapy with the children. Russell gave birth to another daughter on August 11, 2005, who is not a party to this appeal.

On January 30, 2006, the court entered a permanency-planning order maintaining reunification as the goal. The court noted that Russell's son had asthma and that she had not attempted to stop smoking. In addition to the previously-ordered actions, the court ordered Russell to apply for food stamps; to arrange for reliable transportation; and to cooperate with CASA. In a March 2006 review order, the court again ordered Russell to obtain reliable transportation and a driver's license; to get outpatient drug treatment; to participate in family counseling; and to cooperate with the children's therapist's requests.

The goal of the case was changed to termination in an April 2006 review order. The court found that DHHS made reasonable efforts to reunify the family but that Russell failed

to comply with the case plan; to maintain stable housing, employment, income, or transportation; to make her home accessible to DHHS or CASA; and to obtain drug treatment. In an August 2006 review order, the court found that Russell met several of its requirements but failed to maintain stable and appropriate housing, employment, or transportation and that she failed to complete outpatient drug treatment or counseling.

In a December 20, 2006 permanency-planning order, the court found that terminating Russell's parental rights was in the best interests of all of the children, except for the second-oldest daughter. Although Russell now had housing and was employed, the children had been in and out of foster care since May 2002 and Russell had neither submitted to outpatient drug treatment nor completed counseling.

In its January 4, 2007 termination petition, DHHS alleged that the children had been in its custody for more than twelve months and that there was little likelihood that they could be returned to Russell within a reasonable period of time; that Russell failed to remedy the causes of her children's removal, despite the services offered by DHHS; and that, since removal, circumstances had arisen that made it impossible to safely return them.

At the February 9, 2007 termination hearing, Brenda Baker, a social worker assigned to counsel Russell, testified that her counseling sessions with Russell ended when Russell missed two sessions and then failed to return Baker's messages. Bonnie Zirbel, an outpatient counselor, testified that she assessed Russell on two occasions and recommended outpatient treatment but Russell failed to comply. Chris Keller, a substance-abuse counselor, testified that he attempted to schedule Russell in group therapy sessions that were convenient for her

work schedule; however, she did not attend any.

Cheryl Edwards, a social worker assigned to counsel Russel and A.R., testified that Russell stopped attending counseling in August 2004, when A.R. was placed with Russell on a trial basis. Edwards further testified that A.R. regressed psychologically while in Russell's care. After residing in Russell's home for three months, A.R. became angry, acted out, tore up things, and hit other children.

Amber Waite testified that she became Russell's primary mental health therapist after Russell attempted suicide in June 2006. She stated that the case was closed when Russell failed to respond to a letter she sent to Russell addressing Russell's failure to appear for an appointment on September 15, 2006.

Rob Ratley, with the electric company in Fort Smith, testified that service to Russell's residence had been shut off in December 2006 and January 2007 and that she was scheduled for shut-off on February 21, 2007. He said that the second-oldest daughter's and the son's social security numbers and A.R.'s name had been used to secure service.

Michelle Sylva stated that she had been assigned to assist Russell with homemaking skills on a weekly basis since November 2006, when, except for a futon bed, her apartment had no furniture; however, Russell had all the things she needed by mid-January 2007.

Tiffany May, a family service worker, testified that DHHS offered a panoply of services to Russell, including parenting and domestic-violence classes, psychological evaluations, drug-and-alcohol assessments, referrals for outpatient drug treatment, in-home counseling, individual counseling, family counseling, day-care services, assistance with

homemaking, budgeting, and housecleaning, and a HUD request. She stated that Russell's excuse for not attending a drug-treatment program was that it conflicted with her work schedule at a convenience store, which was her sixth job since the case began. She stated that Russell had nine residences in the past two years and sometimes lived with friends. She said that Russell tested positive for marijuana on November 21, 2006.

May described an angry confrontation between Russell and A.R. during visitation in March 2005. When May asked Russell to calm down, Russell cursed at May and pushed a door hard enough to punch a hole in the wall and damage the hinges. May confirmed that Russell did not keep A.R. in counseling once A.R. was back in Russell's home and that A.R. had been in nine different placements and in either a treatment facility or residential therapeutic foster care for the majority of her stay with DHHS. She said that the minors are adoptable.

May testified that Russell had difficulty maintaining stable housing and employment and had not completed domestic-violence or in-home parenting classes. She said that Russell lied to her and to the court. May stated that Russell had a drug problem and needed to go to outpatient treatment.

The final witness for DHHS was Brenna Myers, who testified that DHHS was awaiting the results of a home-study conducted on Russell's parent's home in Indiana.

Russell testified that she had worked at a convenience store since August 2006; that she had lived at her current apartment since September 2006; that she had all the necessary furniture; that she drove a 1999 Ford Taurus that was titled, tagged, and insured; and that she

had no transportation problems. She said that the electricity to her apartment had been shut off two times but all of the utilities were currently on. She admitted that she went to counseling only three times because her work schedule did not allow it. She acknowledged that DHHS helped her to obtain furniture and clothing for the children. Russell admitted to abandoning furniture, flinging the door into the wall at the DHHS office, and taking A.R. off her medication without a doctor's supervision. Russell conceded that, except for a single payment, she had not paid child support.

The circuit court terminated Russell's parental rights on March 26, 2007. In doing so, the court found that the minors had been out of Russell's home for more than twelve months and that there was little likelihood that the children could be returned to Russell within a reasonable period of time. The court also found that there would be a serious risk of harm to the minors if they were returned to Russell and that the minors were adoptable.

The court further found that DHHS had made reasonable efforts to provide the family with reunification services and that despite these efforts, Russell was unable or unwilling to rehabilitate herself or her circumstances to the extent that the juveniles could be safely returned to her. These determinations were based on a number of factors, including the fact that, during the two years immediately preceding its order, Russell: (1) had nine separate residences; (2) had her electricity disconnected twice; (3) had six different jobs; (4) tested positive for drugs and refused to attend drug treatment; (5) did not cooperate with in-home counseling and did not complete domestic violence classes; and (6) failed to pay child support and had an arrearage of \$2,001.00. The court found that Russell was unable to

manage her own affairs and that she frustrated reunification efforts by refusing to be candid with DHHS and the court.

On appeal, Russell first argues that she met some of the requirements of her case plan and that the trial court erred in finding that the termination of her parental rights was in the best interests of her children and in finding that one of the grounds for termination was proven. 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 trial court finds that a disputed fact was shown by clear and convincing evidence, we determine whether the trial court's finding is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* In matters involving the welfare of young children, we give great weight to the trial judge's personal observations. *Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005). Where there are inconsistencies in the testimony, the resolution of those inconsistencies is best left to the trial judge, who heard and observed the witnesses first-hand. *Id.*

A heavy burden is placed upon a party seeking to terminate a parental 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.*

The court can terminate parental rights upon a finding of the following:

(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.

...

(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 facts 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.

Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2005).

Based upon the circuit court's findings, the court was correct in holding that grounds for termination existed and that termination was in the children's best interests. DHHS made meaningful attempts to offer reunification services to Russell, and she failed to take advantage of most of those services. Indeed, she did not achieve the case plan's intended result of making her capable of caring for her children. *See Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Although Russell complied with some of the court's orders, especially as the termination hearing drew near, "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.” *Camarillo-Cox v. Ark. Dep’t of Human Servs.*, 360 Ark. 340, 355, 201 S.W.3d 391, 401 (2005). 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.*, 99 Ark. App.25, \_\_\_ S.W.3d \_\_\_ (2007).

Russell’s second argument is that the trial court erred in finding that DHHS made reasonable efforts to provide reunification services to her. She argues that DHHS failed to help her obtain and maintain stable housing and employment and that it should have followed up on its home-study with her parents in Indiana. We affirm on this point because DHHS made more than reasonable efforts to reunify Russell with her children.

Russell’s third argument is that the evidence was insufficient to support findings by clear and convincing evidence that an appropriate permanency plan existed and that the children were likely to be adopted. When determining whether termination is in the children’s best interests, the court is to consider, among other factors, whether they are likely to be adopted if the termination petition is granted. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) (Repl. 2005). Moreover, an appropriate permanency placement plan must be in place before the circuit court may consider a petition to terminate parental rights. Ark. Code Ann. § 9-27-341(b)(1)(A) (Repl. 2005). Every factor, however, need not be established by clear and convincing evidence. *Davis v. Ark. Dep’t of Health & Human Servs.*, 98 Ark. App. 275, \_\_\_ S.W.3d \_\_\_ (2007). We affirm on this point because the trial testimony, as recounted above, was more than adequate to support the trial court’s findings.

Affirmed.

MARSHALL and BAKER, JJ., agree.