

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA07-539

October 3, 2007

CHRISTOPHER GILLEAN
APPELLANT

AN APPEAL FROM WASHINGTON
COUNTY CIRCUIT COURT
[No. J05-764-3]

v.

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES
APPELLEE

HONORABLE STACEY A. ZIMMERMAN,
CIRCUIT JUDGE

AFFIRMED

Christopher Gillean brings this appeal from the order of the Washington County Circuit Court terminating his parental rights to his son N.G., born May 22, 2002, and his daughter A.G., born June 3, 2003.¹ Appellant argues three points for reversal: that the evidence did not support the termination of his parental rights; that the termination of the mother's parental rights improperly prejudiced the circuit court's findings as to his efforts to maintain a relationship with the children; and that the circuit court lost jurisdiction to hear the termination petition where the hearing was held outside the ninety-day period provided in Ark. Code Ann. § 9-27-341(d)(1) (Supp. 2005). We affirm.

This case originated on August 16, 2005, when appellee Arkansas Department of Health and Human Services (ADHHS) received a report from the Springdale Police

¹The parental rights of Emily Yeager, the mother of the two children, are not at issue in this appeal. Yeager's rights were terminated in February 2006, and this court affirmed on June 20, 2007. *Yeager v. Arkansas Dep't of Health and Human Servs.*, No. CA06-1454 (Ark. App. June 20, 2007) (not designated for publication).

Department that N.G. and A.G. were wandering around their apartment complex unattended. ADHHS exercised a seventy-two-hour hold on the children and was granted an ex parte order of emergency custody on August 19, 2005. Appellant was incarcerated at this time and was not living with Yeager and the children.

At a hearing held on August 26, 2005, the circuit court found that there was probable cause for ADHHS to take custody of the children. The adjudication hearing was held on September 28, 2005. The circuit court adjudicated both children dependent-neglected, based upon the mother's illegal drug use, her inadequate supervision, and the fact that she had been evicted from her apartment.

A review hearing was held on December 7, 2005. The court listed the goals of the case to be reunification with a concurrent goal of adoption. Appellant made his first appearance following his incarceration. He was ordered to obtain a psychiatric assessment and follow its recommendations, refrain from illegal drug use, submit to and pass random drug screens, and maintain weekly contact with ADHHS.

A permanency-planning hearing for both parents was held on February 23, 2006, where the court changed one goal of the case to the termination of Yeager's parental rights while continuing the concurrent goal of reunification with appellant. The court specifically found that appellant had complied with all of the court's orders and the case plan and that he had made much progress towards alleviating the cause of the children's removal and completing the requirements of the case plan. Appellant was ordered to comply with the circuit court's previous orders, as well as to establish his paternity to the children.²

Another permanency-planning hearing for appellant was held on May 17, 2006, and the circuit court found the goals to remain reunification with appellant, with a concurrent

²The circuit court entered a concurrent order relieving ADHHS from providing services to Yeager.

goal of adoption. Appellant was found to have “ongoing domestic violence and mental health issues that are not properly being addressed even though [he] has followed the other orders of the court.” The court also found that ADHHS had made reasonable efforts to provide services to the family. ADHHS was ordered to file a termination petition as to appellant.³

ADHHS filed its petition seeking termination on May 24, 2006, alleging three grounds for termination and that the children’s best interests would be served by terminating appellant’s parental rights.⁴

Another review hearing was held on November 29, 2006. Appellant was found to have continued his involvement with Yeager; to have made poor decisions, which resulted in his arrest for hindering the apprehension of a fugitive; and to not have taken his medications as prescribed. Appellant was ordered to keep ADHHS informed of his address; to follow the recommendations of his doctors and therapists; to continue in individual counseling, including keeping all of his appointments, following all recommendations, and signing a release so ADHHS could discuss the case with appellant’s therapist; to take all medications as prescribed; to refrain from using illegal drugs; to complete twelve hours of parenting classes by February 1, 2007; to maintain stable housing and employment; to demonstrate the ability to protect the children; and to call ADHHS caseworker Darla Hash weekly. The court noted that appellant had made “minimal” progress towards completing the goals of the case.

The termination hearing was held on February 9, 2007. Darla Hash testified that appellant had partially complied with the case plan and the court’s orders by maintaining

³Yeager’s parental rights were terminated at the same hearing.

⁴ADHHS filed an identical petition on November 16, 2006.

weekly contact with ADHHS, by taking his medications, and by maintaining his residence and employment. She noted that he had fallen short by not consistently participating in counseling and that he had recently tested positive for cocaine and marijuana. She also noted that appellant had not completed the twelve hours of parenting classes by February 1 as ordered. Hash described the children as making great strides in the therapeutic foster home and opined that the children were “highly adoptable” and that adoption was in their best interests. On cross-examination, she said that appellant was not emotionally ready to care for his children because of specific issues, including the children’s behavioral problems. According to Hash, her main concern was the choice of friends appellant made because she lacked knowledge about those friends. She also expressed concern that appellant had resumed his drug use. She ultimately stated her recommendation for termination and no further contact between appellant and his children.

In his testimony, appellant asserted that he could take care of his children by providing for them financially and by having a clean and appropriate residence. He said that he was working on his emotional stability and making progress with his counselor. He said that he had maintained weekly contact with ADHHS as ordered by the court. Appellant admitted that he had used cocaine a few days prior to the hearing, calling it a “bad choice” he made while feeling overwhelmed by stress. He said that he and his counselor were working to help him make better choices. He also acknowledged that he had been convicted of hindering apprehension and that he had completed most of his sentence on work-release. On cross-examination, he admitted that he had not completed the twelve hours of parenting classes by February 1, as he had been ordered to do.

In its ruling from the bench, the circuit court went through the history of the case and noted some of Yeager’s non-compliance with the court’s orders or the case plan. The circuit court found that, due to appellant’s drug abuse, the children would be in imminent danger

if they were returned to his custody. The court specifically found that appellant had not complied with the court's orders or the case plan by not completing parenting classes, by testing positive for drug use, and by not attending AA meetings as recommended. The court also found that appellant lacked stability and was unable to provide a safe home for the children due to emotional problems and substance abuse problems. The court terminated appellant's parental rights, citing one ground. A written order was entered on March 9, 2007. The written order found that ADHHS had proven three grounds for termination. Appellant timely filed his notice of appeal. He now raises three points for reversal.

This court reviews termination of parental rights cases de novo. *Yarborough v. Arkansas 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 circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, ___ S.W.3d ___ (2006). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

Appellant first argues that the evidence does not support the circuit court's conclusion that grounds for termination exist and that termination is in the best interests of the children. Although the circuit court's written order found three grounds for termination and appellant argues that there is no evidence to support one of the grounds, only one ground is necessary.

Ark. Code Ann. § 9-27-341(b)(3)(B). The question this court must answer is whether the circuit court clearly erred in finding that there was clear and convincing evidence of facts warranting termination of parental rights. *See Trout v. Arkansas Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

In its written order, the circuit court found as a basis for termination that, subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose that demonstrate that return of the children to the family home is contrary to the children'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 prevents return of the juvenile to the family home. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a)*. Since the original removal of the children, appellant was released from his incarceration only to be arrested on another charge, albeit a misdemeanor. By being incarcerated, appellant could not provide a home for his children. He failed a random drug test just a few days prior to the termination hearing. This is evidence of his noncompliance with the circuit court's order to refrain from using illegal drugs and further shows his indifference to remedying the problem. *See Ullom v. Arkansas Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000); *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Parental drug use was one of the reasons ADHHS removed the children in the first place. The most recent positive drug test was not, as appellant claims, an isolated incident. In its ruling from the bench, the circuit court recited extensively from notes from appellant's counselor showing appellant's long history of drug use back to age fourteen that included use of marijuana, methamphetamine, and cocaine. The counselor noted that appellant was blaming ADHHS, the circuit court, and others for his drug use. Further, the notes show that appellant told his counselor that he was paid for his mechanic work with drugs and that he

drank to cope with stress. Most telling was the counselor's observation that appellant was using the counseling sessions in order to deceive ADHHS. Appellant's continued drug use shows that the problem had not been remedied and continues to show the potential harm to the children if they were placed in his custody. Appellant also failed to complete both the AA/NA and the parenting classes as ordered. The failure to consistently attend counseling sessions is a factor that shows indifference and will support termination of a parent's rights. *See Jefferson v. Arkansas Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004). In light of this evidence, we cannot say that the circuit court was clearly erroneous in finding that one ground for termination had been proven or that there was the potential of harm to the children should they be placed in appellant's custody.

Appellant also argues as part of his first point that ADHHS did not provide services that would enable him to be reunified with his children. This court has held that, after a circuit court has made a finding that ADHHS has provided a parent with reasonable reunification services, if the parent does not timely appeal the circuit court's findings, those findings cannot be challenged later. *Moore v. Arkansas Dep't of Human Servs.*, 69 Ark. App. 1, 9 S.W.3d 531 (2000). Appellant did not appeal from the earlier permanency hearing and review orders where the circuit court specifically found that ADHHS had made reasonable efforts to provide services. He also does not indicate what other services should have been provided.

In his second point, appellant argues that the circuit court wrongly focused on Emily Yeager's actions and non-compliance with the case plan and court orders in deciding whether his rights should be terminated. It is true that, in its remarks from the bench, the circuit court recounted the history of the case, and that included Yeager's actions. We believe that the circuit court's later remarks refute the argument being made because the court stated that the reason the children remained in foster care had nothing to do with

Yeager's actions but instead resulted from appellant's own on-going drug and emotional problems. The circuit court also indicated that, if appellant had complied with the case plan and court orders, the children would have been placed with him. Appellant labels these remarks by the circuit court as a "belated attempt to rehabilitate unmistakable prejudice." However, he points to no evidence of prejudice other than the circuit court's recounting the history of the case, including Yeager. It was appellant, under questioning by his own attorney, who injected the issue of Yeager into the case. One cannot view the case in isolation and ignore Yeager because she is the mother of the children. There is no error.

In his third point, appellant argues that the circuit court lost jurisdiction because the petition for termination was filed on May 24, 2006, and the hearing was not held until February 9, 2007, despite the command of Ark. Code Ann. § 9-27-341(d)(1), which requires that the court conduct and complete a termination of parental rights hearing within ninety days from the date the petition for termination of parental rights is filed. Appellant argues that this provision is jurisdictional and that the circuit court's failure to comply with the statute should result in a reversal and dismissal of the petition. He does not, however, discuss the fact that ADHHS filed another petition for termination on November 16, 2006, and the hearing was held within ninety days of that petition. Further, he fails to cite any authority holding that the time limitation is jurisdictional. Assignments of error unsupported by convincing argument or authority will not be considered on appeal, unless it is apparent without further research that the point is well taken. *Rodriguez v. Arkansas Dep't of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

Affirmed.

HART and BIRD, JJ., agree.