

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

DIVISION IV

CA 07-854

JANUARY 9, 2008

ANGELA MAYO

APPELLANT

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT, [NO. JV-06-61]

V.

HONORABLE LARRY BARNETT
BOLING, JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES, minor child

APPELLEE

AFFIRMED

Appellant Angela Mayo appeals the termination of her parental rights to her son LRB, as found by the Craighead County Circuit Court. LRB was born in December 2005, when appellant was on the run from law enforcement authorities. Appellant placed her infant son in a relative's custody within days of his birth. Appellee Arkansas Department of Human Services (DHS) took emergency custody of the child within two months due to one caretaker being a sex offender, in addition to environmental issues in the home. Appellant was incarcerated for the next year while the child was in DHS custody. Appellant was released on parole in the early months of 2007. After a termination hearing in May 2007, a termination-of-parental-rights order was entered on June 6, 2007, from which this appeal is taken.

Appellant contends that (1) the trial court erred by considering testimony and evidence from prior hearings in the course of the termination hearing, and (2) the trial court erred in terminating her parental rights because DHS failed to present clear and convincing evidence to support doing so. DHS and the child's attorney ad litem have filed briefs in opposition to appellant's arguments on appeal, asserting that there is no reversible error. We affirm.

First, appellant contends that the trial court violated Ark. Sup. Ct. R. 6-9 (2007), which was adopted to streamline the process for appeals in dependency-neglect proceedings, applicable from and after July 1, 2006. The Rule mandates that the record on appeal shall be limited to the transcript of the hearing being appealed and any materials relevant to that hearing. However, pursuant to statute, Ark. Code Ann. § 9-27-341 (Supp. 2005), the trial court must rely on the entire record to decide whether termination is in the child's best interest. Appellant argues on appeal that while the trial court acted correctly within the parameters of our Juvenile Code by considering prior testimony, evidence, and hearings in this case, it violated Rule 6-9, mandating reversal. We disagree.

At the outset, we reject appellant's complaint because she did not make this argument to the trial court. A party must first bring an objection before the trial court in order to preserve the issue for appeal. *See Madden v. Aldrich*, 346 Ark. 405, 58 S.W.3d 342 (2001) (holding that the failure to obtain a ruling from the trial court is a procedural bar to consideration of the issue on appeal); *see also Moore v. Ark. Dep't of Human Servs.*, 95 Ark.

App. 138, __ S.W.3d __ (2006) (refusing to review due-process argument with regard to notice where not raised in trial court).

Furthermore, on the merits, we perceive no conflict between Rule 6-9 and the statutes at issue. Rule 6-9(c)(1)(2007) states: “The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to that hearing, and all exhibits entered into evidence at that hearing.” Arkansas Code Annotated sections 9-27-341(a)(4)(B) & (d)(2) (Supp. 2005) respectively provide:

(a)(4)(B) The court shall rely upon the record of the parent’s compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile’s best interest to terminate parental rights.

....

(d)(2) If the parent was represented by counsel, the court shall take judicial notice and incorporate by reference into the record all pleadings and testimony in the case incurred before the termination of parental rights hearing.¹

The limitation of the record on appeal is distinctly a different matter than the evidence upon which the trial court should and must consider for the ultimate finding. We so held in *Smith v. Ark. Dep’t of Human Servs.*, __ Ark. App. __, __ S.W.3d __ (Oct. 3, 2007). Therefore, we affirm this point.

The second point on appeal is that the trial court clearly erred in terminating her parental rights. The trial court found that the child had been out of the mother’s custody for

¹Subsection (d)(2) was deleted by our legislature in the 2007 legislative session pursuant to Act 587. However, the effective date, July 31, 2007, was subsequent to these proceedings. Subsection (a)(4)(B) remains.

almost the entirety of his life. The trial court noted that appellant, a woman in her early twenties, had a long-term history of chemical addiction with periods of sobriety that, to date, had not been long lasting. The child was found to have some developmental and health issues that were being addressed in the foster home, and there was a likelihood of adoption. Appellant was found to have made some progress toward setting herself on a positive path, given the services she took advantage of in prison. Nonetheless, appellant was found not to be prepared, nor would she be in a reasonable time as viewed from the child's perspective, to be ready for reunification. While appellant proclaimed her love for her son and asked for more time to work toward reunification, the judge determined that termination of parental rights was in the child's best interest. A formal order was entered commemorating these findings, which included three bases to terminate:

- (1) That the child had been outside the home for greater than a year and despite efforts by DHS to rehabilitate the parent and help correct the conditions causing removal, those conditions had not been remedied by the parent;
- (2) That the child had been outside the home for greater than a year, and the parent willfully failed to provide significant material support or to maintain meaningful contact;
- (3) That the parent subjected the child to aggravated circumstances in that there was little likelihood that provision of services would result in successful reunification within a time frame consistent with the needs of the child.

Appellant filed a timely notice of appeal.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). 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. *Id.*

Grounds for termination of parental rights must be proven by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Where there are inconsistencies 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. *Dinkins, supra*. 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.*

The goal of Arkansas Code Annotated section 9-27-341 (Supp. 2003) is to provide permanency in a minor child's life in circumstances in which returning the child to the family home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more grounds must be shown by clear

and convincing evidence. Arkansas Code Annotated section 9-27-341(b)(2)(A) provides the grounds upon which a termination of parental rights may be established.

Appellant asserts that she obtained services on her own while in prison, such as drug-rehabilitation, parenting, alcoholics anonymous, and GED classes. In addition, she said that once she was released from prison, she obtained a full-time job and moved in with her aunt. Appellant contends that she did all she could while incarcerated to better herself, and once released, had only three months before the termination hearing was conducted, during which DHS gave her no services except a couple of visits. Thus, appellant argues that the finding of reasonable efforts is not supported by the evidence. Appellant contends also that the trial court erred in terminating her rights on failure to provide material support because she was under no court order to do so, DHS never asked for support, and she was not a wage-earner in prison.

Appellant's appeal fails because, even were we to agree with her first two arguments, she does not contest the third basis for terminating her parental rights, which was the "aggravated circumstances" finding. In a situation where an appellant on appeal does not attack all of a trial court's bases for its ruling, the appellate court will affirm without addressing the argument. *Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002); *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989).

Even so, were we to entertain her argument that DHS did not assist her in the months leading to termination of her rights, we would be duty-bound to support the trial court's action that gives effect to the legislature's overriding intent, which is to protect the best

interest of our state's children in achieving a safe and permanent home. Ark. Code Ann. § 9-27-341(a)(3). Appellant points to no services that DHS could provide that it did not. Indeed, appellant acquired relevant services in prison on her own, which is commendable. The difficulty is that appellant's circumstances of imprisonment and parole left the child in a precarious position of waiting for those issues to resolve while in foster care. Appellant was unable to be the parent that her child needed, at least not for the majority of this young boy's life, and stability and permanence had to be viewed from the child's perspective. *See Camarillo-Cox v. Ark. Dep't of Human Servs.*, __ Ark. __, __ S.W.3d __ (Jan. 5, 2005) (children out of home for one year and four months, parent complied with case plan for the last five months); *Trout v. Ark. Dep't of Human Servs.*, __ Ark. __, __ S.W.3d __ (Nov. 4, 2004); *Dinkins, supra*. To hold the child in limbo is contrary to the overriding legislative directive to provide permanency for children where return to the home cannot be accomplished within a reasonable time. 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. *Compare Camarillo-Cox v. Ark. Dep't of Human Servs., supra*. Progress that is made too late to achieve reunification within a reasonable time from the child's perspective will not suffice. *See Latham v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 25, __ S.W.3d __ (2007).

In summary, we affirm the termination of appellant's parental rights.

PITTMAN, C.J., and BIRD, J., agree.

