ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA08-157

May 28, 2008

CLARISE COLLINS APPELLANT	AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT [No. JJN2006-454]
v.	
ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES APPELLEE	HONORABLE WILEY BRANTON, JR. JUDGE
	AFFIRMED

Clarise Collins has appealed from an order of the Pulaski County Circuit Court terminating her parental rights to her children, L.C., born February 21, 2000; K.C.-1, born October 28, 2003; K.C.-2, born July 8, 2005; and K.C.-3, born July 8, 2005. She challenges the trial court's findings that the children were adoptable and that grounds existed for termination. We affirm the circuit court's decision.

DHS filed a petition for dependency-neglect on March 8, 2006, but did not exercise an emergency hold on the children. An adjudication hearing was held on April 25, 2006. In the adjudication order, the circuit court made the following findings:

> The mother appears to be overwhelmed and is not meeting the medical needs of the children and the evidence supports a finding of neglect. The children have medical disabilities including sickle cell, asthma and the twins are premature and require a lot of immediate medical attention. The mother appears to have mental

> health issues and has an anger control problem and has not been cooperating with the Department.

The trial court ordered appellant to submit to a psychological evaluation and to follow all recommendations; to begin individual therapy as soon as possible, regardless of the outcome of the psychological evaluation; to attend and complete parenting classes; to be drug-tested; and to cooperate with the department, the court, and her attorney. The court ordered DHS to provide intensive family services, including at least weekly visits to appellant's home.

A permanency-planning hearing was held on August 22, 2006. The court continued the goal of reunification, and the children remained in appellant's home. The court found that DHS had not made reasonable efforts to provide reunification services and made the following findings:

> The prognosis in this case is poor. The Court feels like It is waiting for a train wreck to happen. Ms. Collins' psychological evaluation, received into evidence today, is not encouraging at all, to put it mildly, and Dr. [Paul] Deyoub states that there will likely be no end to the Department's involvement with the family. The Home Study received into evidence today also does nothing to inspire any confidence in the Court. Given all of this, the Court must pose the question that even if the children are not in immediate danger, what kind of environment are the children growing up in and what kind of stimuli are they receiving and can they ever rise above this without further Court intervention?

The court directed appellant to follow all previous orders.

A permanency-planning hearing was held on January 16, 2007. The court entered an order providing that the children would remain in appellant's home, as recommended by DHS. The court noted that appellant had completed parenting classes; had submitted to a psychological evaluation; had participated in counseling; and had submitted to a home study. The court stated, however, that it was extremely concerned about her low-functioning

abilities and her anger. The court noted that, at the hearing as the court delivered its ruling, appellant engaged in an inappropriate outburst because she was offended by the court's referral to her as "low-functioning," as the psychologist had diagnosed. The court stated that appellant had yelled at the court and had quieted down only when she was threatened with jail time. The court stated:

> The Court continues to believe she is her own worst enemy and said as much following her outburst today. The Court has gone against Its instincts at every turn of this case, as indicated in earlier orders and iterated again today. Nevertheless, the Court will allow the children to remain in her custody but has serious doubts that she will be able to maintain them in her home and follow Court Orders and cooperate with the Department.

The court ordered DHS to make home visits at least every two weeks.

On January 22, 2007, the court signed an emergency order removing the children from appellant's custody. The court held a hearing on the emergency removal and made the following findings:

> At a Permanency Planning Hearing conducted last week, Clarise Collins acted inappropriately and became enraged when she was referred to as "low-functioning." Evidence at that hearing revealed she was possibly having psychotic episodes and her mental health diagnosis from Dr. Deyoub was confirmed by Dr. Shea of Little Rock Community Mental Health Center. At a minimum, it is clear to this Court that Ms. Collins is an irrational, angry and impulsive person who is low-functioning, regardless of whether she bristles at that term or not. Despite these concerns, the court continued the children in the mother's home with close monitoring by DHHS ordered. The mother Clarise Collins has, since the permanency planning hearing, reportedly threatened to flee with the children and have the judge killed. These alleged threats were communicated to the mother's court appointed counsel, Kendall Sample. Another factor that is of concern to the court is that the children are young, special needs children. There is probable cause to believe that the children of Clarise Collins are at risk of harm.

The court permitted appellant to have strictly supervised visitation with the children at the DHS office. It ordered her to take part in anger-management counseling in addition to the other services already ordered.

The court held another hearing on March 13, 2007, at which appellant and her attorney were present. The court made the following findings:

> The Court finds today that the children are dependent-neglected and that the allegations in the affidavit are materially true and correct. Specifically, the Court finds that Ms. Collins made physical threats to Judge Branton. The Court finds that Ms. Collins made physical threats against her former attorney, Ms. Sample. The Court finds that Ms. Collins made credible threats to abscond with her children. The Court does not trust Ms. Collins and would be foolish to leave the children with her. She makes impulsive, ill-advised decisions. Several of these children are special needs children and the Court has serious concerns about her ability to provide these children with an appropriate environment in which to thrive. The Court is not saying that it believes she would actually harm the children but that notwithstanding, the Court is convinced she would flee with the children, thereby placing them at risk. Given her impulsiveness, the Court must also find her threats to be credible. These children were very reluctantly left in the mother's custody since this case opened almost a year ago and in that time, the situation has deteriorated, despite there being services in place to assist Ms. Collins. The Department has stood by her throughout but the Department's caseworker's testimony today was particularly revealing. The caseworker stated that the children should go home with Ms. Collins and that Ms. Collins needs a "guardian" to handle her finances and otherwise assist her. This shows the Department's true position. If Ms. Collins needs a guardian, then she is not herself fit and appropriate as a parent. Dr. Deyoub's psychological evaluation indicates that Ms. Collins "has no insight into her own behavior." This Court strongly agrees. She continues to be her own worst enemy. She "blew up" yet again at the end of today's hearing. This is at least the third time she has done this in Court. Today the Court is making a specific finding of Willful Contempt by Ms. Collins and had the jail not been so overcrowded, the Court would likely have let her "cool off" in detention. The fundamental dilemma here is whether or not Ms. Collins can ever become a better parent, in control of her emotions and conducting herself as an adult and not a child. Another particularly telling moment of testimony occurred when the Court learned that Ms. Collins seven-year old daughter stated that once the family is reunited she's "gotta take care of Mom and the other kids." This seven-year old girl already understands that her mother must have help, including help raising the children. At seven, that child shows more insight than Ms. Collins does. It's sad that a seven-year old views her life in such a way, as a caregiver to her mother and not as a happy, carefree child. The Court is not at all optimistic about the future prospects of this case. The Court has been consistent in that

opinion since the beginning and sadly, the Court's pessimism has proven prescient. Notwithstanding, the Court will set Reunification as the goal at this time.

The court again ordered appellant to receive anger-management counseling. It also stated that appellant's visits would be strictly supervised at the DHS office by at least two people.

Another permanency-planning hearing, which appellant and her attorney attended, was held on June 19, 2007. The court changed the case's goal to termination of parental rights and adoption, making the following findings:

> The Court is today changing the goal in this case to Termination of Parental Rights/Adoption. It is true that Ms. Collins has made some efforts to comply but the larger issue is whether she has benefitted in any way and whether she ever will. As an example, she was referred for a Medication Management Appointment and was prescribed medication. Rather than take the medication, she threw it away. The Court has to wonder if she's not simply going through the motions. Her attitude remains poor and unsurprisingly, she had yet another inappropriate outburst in Court today and fled the courtroom and had to be brought back in by the bailiff. Even then, she loudly muttered under her breath as the Court continued to make Its ruling. There was a telling moment today wherein Ms. Collins, in regard to throwing away the medicine, stated she could have just lied and said she was taking the medication and the Department wouldn't have known because "y'all stupid, anyway." This indicates to the Court that her efforts have been something less than sincere. In essence, she has complied against her will. She does not truly desire changes in her life. Sadly, she needs significant and lasting changes but she can't seem to, or perhaps won't, grasp this.

The court found that aggravated circumstances were present:

> The ordered services for Ms. Collins are meant to fix the problems in the home and the problems must be fixed. There cannot be half-hearted or insincere compliance. The Court does not see that Ms. Collins is making any progress and is finding further that Aggravated Circumstances exist in this case in that it is unlikely that reunification efforts are going to result in successful reunification. Ms. Collins continues to show atrociously poor judgment. She has taken up with a married boyfriend and she says there's nothing wrong with this and it's nobody's business. The Court is of the position that while Ms. Collins is under the jurisdiction of the Court, it is very much the Court's business as to who she associates with. The Court further learned that someone, allegedly Ms. Collins' boyfriend's wife, tried to shoot this

> boyfriend. Ms. Collins was asked if this concerned her and was asked "What if your children had been around when someone opened fire?". Ms. Collins remained wholly unconcerned and further stated "ain't nobody gonna mess with me." Needless to say, the Court is not going to allow adults to place children in dangerous situations. In the present case, Ms. Collins can't or doesn't want to understand what a dangerous situation is. Moreover, as the Court has noted before, given Ms. Collins mental diagnoses and the special needs of her children, there is a serious question about her ability to provide even basic care. As these children get older, they will become more difficult to deal with, not easier.

The court directed that appellant have no visitation with the children and set a termination-of-parental-rights hearing for October 9, 2007.

On September 10, 2007, DHS filed a petition for termination of appellant's parental rights, citing the court's previous finding of aggravated circumstances. Appellant and her attorney appeared at the termination hearing. The CASA report was introduced into evidence, recommending that appellant's parental rights be terminated. Letitia Jackson, the family-service worker, testified that appellant had completed all of the requirements of the case plan except for anger-management counseling and recommended that her parental rights be terminated. Ms. Jackson said that she did not think the children would be safe with appellant; that, after all of the services provided to her over the years, appellant had shown little improvement; and that DHS had nothing further to offer her. Wendy Childs, an adoption specialist, testified that, based on the children's ages and "everything known about the case," the children were adoptable. Shirley Manuel, one of the children's paternal grandmother, testified about appellant's history of physically assaulting her and her son, Kwaise Jones.

The report of appellant's psychological evaluation, which was admitted into evidence, gave the following diagnosis:

Axis I	Parent-Child Relational Problems (V61.20)
	Adjustment Disorder With Disturbance of Conduct (309.3)
Axis II	Mild Mental Retardation (317)
	Personality Disorder NOS (Immature, Inadequate) (301.9)
Axis III	None
Axis IV	Primary Family Support Problems, DCFS Involvement
Axis V	Current GAF 40

The major problem with Clarise Collins is her mental retardation, and in her case, the associated behaviors with her mental retardation. The other factor, which interacts and may be secondary to her mental retardation, is a personality disorder with immature and inadequate personality traits. Given that these diagnoses will not change, then her problems will be ongoing as long as she has children. Her mental retardation will not change and her cognitive ability can be expected to remain the same, since it has been lifelong. Seemingly, her personality disorder is so much associated with her mental retardation that she is going to continue to be an immature and inappropriate individual, especially regarding social relationships. She was childish and immature throughout the evaluation, and seems to have no insight regarding her own behavior. She has a two bedroom apartment with her four developmentally disabled children, some of them medically fragile. There is no escaping the conclusion that essentially she is inadequate and either unfit or close to unfit to manage four children. The demands will not necessarily lessen as the children grow older, but the demands will change. As the children grow older, she may not have to take care of health fragile infants, but a host of behavior problems will develop when these children are old enough to act out and misbehave. The choice will be either to remove the children from her custody if there is another incident, or ongoing inability to care for the children, or the alternative will be to supervise this woman indefinitely with a protective services case. She requires individual counseling to help her cope because parenting classes alone will not be sufficient. Parenting assistance has to be ongoing and the only way to do that will be individual counseling, intensive family services, and frequent home visits. All of these children have to be in childcare all year long, because it means someone else will take care of them at least during the daytime on the weekdays. She requires a firm approach because if she does not cooperate, there will be no choice but to remove the children, since there will be no recourse to ensure the health and safety of the children. Either she cooperates or there is no way to know that the children are being taken care of. Her problems are intractable because of her mental retardation and immature personality. I doubt she will ever be finished with DHHS and, I am sorry to predict that at some point, the children will be brought into foster care.

The court entered an order on November 13, 2007, terminating appellant's parental rights to the children. It found them to be adoptable and stated:

> Today, the Court finds that the mother, Clarise Collins, has made no progress toward rehabilitating herself or her situation such that the Court could not even consider supervised visitation, much less returning the children to her custody. Despite the clear orders of this Court for the mother to undergo counseling and anger management, the mother refused these services. The Court does not know today if the mother is taking prescribed medications, and because the Court does not find the mother to be a credible witness, it is not able to simply take her word at face value. The mother continued to demonstrate her low-functioning, instability and lack of insight in court today in that she had yet another inappropriate outburst of anger and left the courtroom. The hearing continued without her presence, but she could be heard outside the courtroom yelling for a significant period of time. The Court finds that the mother has made no progress whatsoever and that in terms of progress the mother is right back where she started, that she remains a danger to her children, and based on her actions, the only thing her children would learn from her is to be out of control, inappropriate and threatening to others. The mother informed the Court, during her inappropriate outburst and leaving the courtroom that she was never coming back to this Court. While the children have not been out of her custody for a full year, this case has been ongoing for well over a year, and the Court stands by its earlier finding of aggravated circumstances in this case, because it is perfectly clear that no reunification services will be of use to, or even accepted by, the mother, and the children will not be able to be reunited with the mother in the foreseeable future, if ever. The Court terminates Clarise Collins' parental rights at this time.

Appellant pursued this appeal.

Appellant contends that, although she did not assert any rights under the Americans with Disabilities Act to the circuit court, this court should consider it and determine whether she was provided reasonable accommodation to complete reunification services. We disagree. Because appellant failed to raise this argument to the trial court, she is barred from raising that issue for the first time on appeal. *Ark. Dep't of Health and Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

Appellant argues that the evidence does not support the trial court's findings that the children are adoptable or that grounds existed for termination. She argues that, although she was unquestionably limited in her ability to understand what she needed to do, would always need help, and had a "problematic" attitude toward the court, there was no evidence that she

had harmed the children; that she would not benefit from continued counseling and services; or that she could not, with assistance, be an appropriate caregiver for her children. She argues that she was not given sufficient time and appropriate assistance to meet the requirements of the case plan and asks us to reverse the decision terminating her parental rights and to remand for further proceedings.

There is no requirement that DHS prove that the children *will* be adopted; instead, the statute states that, after consideration of each of the statutory factors, including their likelihood of being adopted, the evidence must be clear and convincing that the termination is in the best interest of the children. *See McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). The adoption specialist testified that the children were adoptable. Additionally, appellant threatened to flee with the children; she made threats against her former attorney and the trial judge outside the courtroom; she intentionally threw away her medication; she refused to participate in anger-management counseling; and she made frequent expressions of hostility and anger in the courtroom. Given these facts and the children's special needs, we cannot say that the trial court erred in finding that termination was in the children's best interests.

We also hold that there was sufficient evidence to support termination on the basis of aggravated circumstances. Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008), the facts warranting termination of parental rights must be proven by

clear and convincing evidence. In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant facts were established by clear and convincing evidence. *Wright v. Ark. Dep't of Human Servs.*, *supra*. Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction regarding the allegation sought to be established. *Id*. Furthermore, we will defer to the trial court's evaluation of the credibility of the witnesses. *Id*.

Arkansas Code Annotated section 9-27-341(b) provides in relevant part:

> (3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
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> (A) That it is in the best interest of the juvenile, including consideration of the following factors:
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> (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
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> (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and
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> (B) Of one (1) or more of the following grounds:
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> . . . .
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> (vii)*(a)* That other factors 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.
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> . . . .
>
> (ix)*(a)* The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:
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> . . . .

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification. . . .

It is true that appellant completed many of the requirements asked of her. However, a parent's rights may be terminated even though she is in partial compliance with the case plan. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004). In fact, even full completion of a case plan is not determinative of defeating a petition to terminate parental rights. *Wright v. Ark. Dep't of Human Servs.*, *supra.* What matters is whether completion of the case plan has achieved the intended result of making the parent capable of caring for the child. *Id.* A stable home is one of a child's most basic needs. *Latham v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 25, ___ S.W.3d ___ (2007).

The evidence that supported the court's best-interest finding also supported its finding that there was little likelihood that services would result in successful reunification. Dr. Deyoub's report reinforced that conclusion. He diagnosed her as having no insight into her behavior and unlikely to improve even if given services; he believed that she would have to be supervised indefinitely if she had custody of her children. Additionally, appellant admits that she did not complete anger-management counseling. Because her refusal or inability to control her anger was one of her most severe problems, this omission is significant. Thus, even with more time and reunification services, there is no reason to believe that appellant could ever

provide a stable home for the children, much less within a reasonable time from their perspectives.

Affirmed.

GRIFFEN and HEFFLEY, JJ., agree.