

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA08-295

June 4, 2008

ARLENE LEGRAND  
APPELLANT

v.

ARKANSAS DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
APPELLEE

AN APPEAL FROM CRAIGHEAD  
COUNTY CIRCUIT COURT  
[No. JV 2005-186]

HONORABLE LARRY BOLING  
JUDGE

AFFIRMED

Appellant Arlene Legrand brings this appeal of an order of the Craighead County Circuit Court terminating her parental rights to her children, T.L., born April 29, 1997; D.L., born April 23, 1999; and M.L., born April 28, 2003. She argues that there was insufficient evidence to support the circuit court's finding that termination was in the children's best interests or that grounds for termination had been proven. We affirm.

The Arkansas Department of Human Services ("DHS") sought emergency custody of the children on April 7, 2005. The affidavit filed in support of the petition stated that two of the children had been left unattended at a store. The affidavit continued that the oven was being used to heat the house, that the house was filthy with a sticky brown substance on the kitchen floor, that a feces-covered sheet was being used as a door, and that roaches were

present in every room. Legrand was arrested on two counts of child endangerment. The court granted the emergency petition on April 7, 2005. The court later found probable cause for issuance of the emergency order.

On May 23, 2005, the court adjudicated the children dependent-neglected and ordered that they remain in DHS's custody. The court ordered Legrand to comply with the case plan and cooperate with DHS, to submit to random drug screens and a drug and alcohol assessment, and to obtain and maintain stable and appropriate housing and employment.

At a permanency-planning hearing on April 6, 2006, the court found that return of the children to Legrand's custody was not in their best interests and approved DHS's plan for termination of parental rights and adoption, with a concurrent plan for permanent relative placement. The court also found that Legrand had not complied with the case plan in that she had not maintained contact with DHS and had tested positive on her last drug screen.

At a review hearing on September 21, 2006, DHS informed the court that a home study had been completed on Angela Legrand, the children's aunt who lived in Arizona. The court approved the placement at a review hearing held December 21, 2006. The court found that Legrand had completed parenting classes, submitted to a psychological evaluation, and submitted to drug testing; however, she had not visited with the children or obtained stable housing, and some of her drug screens were positive.

At a subsequent permanency-planning hearing on March 8, 2007, the court found it to be in the children's best interests to be in permanent placement with their aunt and that termination of parental rights was not in their best interests because of this placement. The court found that Legrand had completed parenting classes, submitted to a psychological

evaluation, and submitted to drug testing. However, she had not visited with the children or obtained stable housing, and some of her drug screens were positive. The court also noted that Legrand had not attended any hearings since April 2006. The placement continued following an August 16, 2007 review hearing.

On October 8, 2007, DHS filed a petition seeking the termination of Legrand's parental rights. DHS alleged four grounds for termination, including that the children had been out of Legrand's custody for over twelve months and the conditions that caused the removal had not been remedied and that the children had been abandoned.

The termination hearing was held in December 2007. Brenda Morton, the DHS caseworker, testified that the department was recommending termination because the children had been in foster care for over two years and needed stability. She related that the children had been placed with their maternal aunt in Arizona but that placement had been disrupted after about six months, and the children had been returned to Arkansas and placed in a foster home. Morton expressed her belief that, despite one child having unspecified issues, the children were adoptable. She further testified that Legrand had not visited the children since before they went to Arizona in December 2006 and that she had sporadic telephone contact with Legrand just prior to the termination hearing. She recounted the parts of the case plan that Legrand had or had not complied with, adding that Legrand did not explain why she did not attend any hearings after the April 2006 permanency-planning hearing. She indicated that some of Legrand's drug screens were positive for marijuana.

On cross-examination, Morton said that she did not notify Legrand or the secondary case worker in Newport when the children were returned to foster care in Arkansas. She did

not do so, in part, because notification would have been detrimental to the children. Morton also acknowledged that the department did not entertain the prospect of reunification when the children returned to foster care in the summer of 2007 because they had already been in care for two years at that time.

Legrand testified that she was living in Newport, Arkansas, and that she was employed. She said that the last hearing she attended was the April 2006 hearing where the decision was made to attempt to place the children with her sister in Arizona. She did not dispute the testimony of the worker but told the court that she loved her children, and that she had done what was asked of her but had been unable to arrange for transportation to visit her children.

The circuit court announced from the bench that it would grant the petition. The court found that termination was in the children's best interests, that DHS had proven by clear and convincing evidence that the children had been out of appellant's home since April 5, 2005, that she had had no contact with the children or the court since April 6, 2006 and no significant contact with the children since October 2005. In addition, the court found there to be a high degree of likelihood that the children would be adopted and that the mother had abandoned the children because she knew that the children were back in Arkansas. This appeal followed.

We review termination of parental rights cases de novo. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (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 proven 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.*

In her sole point for reversal, Legrand argues that the circuit court erred in finding that there was sufficient evidence to support the termination of her parental rights. Her argument is divided into two parts: that there is insufficient evidence that termination of her parental rights is in the children's best interests and that there is insufficient evidence of grounds for termination.

In the first part of her argument, Legrand asserts that the circuit court made no finding that return of the children to her custody would be harmful to the children, and, therefore, there was insufficient proof that termination would be in the children's best interests. The plain language of section 9-27-341 provides that the court must find by clear and convincing evidence that termination is in the children's best interests, giving *consideration* to the risk of potential harm. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). The risk of potential harm is but a factor for the court to consider in its analysis. *Id.* There is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Furthermore, the supreme court has directed that the harm analysis be conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home. *See Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). The DHS case worker testified that the children needed permanency. This lack of permanency is demonstrated by the fact that the children had been out of

Legrand's custody for more than two years. It is also shown by the fact that Legrand failed to see her children for that period or to remain in contact with DHS.<sup>1</sup>

This leads to the second part of Legrand's argument, where she asserts that DHS failed to prove grounds to terminate her parental rights. DHS alleged multiple grounds for the termination of Legrand's parental rights. The circuit court found that four grounds had been established. Only one ground is necessary to terminate parental rights. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). Under the juvenile code, abandonment is defined in Ark. Code Ann. § 9-27-303(2) (Repl. 2008) as,

the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and failure to support or maintain regular contact with the juvenile without just cause or an articulated intent to forego parental responsibility[.]

Here, Legrand has abandoned her children. First, she testified that she had not seen the children since October 2005. She also indicated that she was willing to let her sister raise the children if she could not have them. This indicates that Legrand wanted the placement with her sister to continue for an indefinite period of time, another of the statutory elements of abandonment. There was no testimony that Legrand was in any way prevented from visiting the children.

We cannot say that the circuit court was clearly erroneous.

Affirmed.

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<sup>1</sup>To the extent that Legrand is arguing that DHS never informed her that the children had returned from Arizona, she bears some responsibility for that failure. She could have contacted the DHS case worker to inquire about the children. She also could have contacted her sister with the same inquiry.

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