

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

DIVISION II

CA08-35

June 4, 2008

AMY JACKSON  
APPELLANT  
v.

AN APPEAL FROM PULASKI  
COUNTY CIRCUIT COURT  
[No. JJN-03-1602]

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES  
APPELLEES

HONORABLE HEATHER MILES  
SPECIAL CIRCUIT JUDGE

AFFIRMED

Amy Jackson brings this appeal from the order of the Pulaski County Circuit Court terminating her parental rights to her three sons: J.J.-1, born May 22, 1997; J.J.-2, born March 4, 2000; and C.J., born May 5, 2002. She argues that there is insufficient evidence to support the circuit court's ruling, both as to grounds for termination and as to whether the termination is in the children's best interests. We affirm the circuit court's termination order and hold that the circuit court's findings are not clearly erroneous.

*Factual History*

On September 14, 2003, the Department of Human Services (DHS) placed a seventy-two-hour hold on the children, due to a report of the children being inadequately supervised. According to the affidavit in support of the emergency petition, J.J.-2 had been found in the

middle of a road in Jacksonville. When appellant was located, she was sleeping and unaware that her child had left the home. Marijuana was found in the home. There was a protective-services case open on this family from an incident earlier in the year when J.J.-2 had left the home.

On September 16, 2003, an order for emergency custody was entered placing custody of the children with DHS. Probable cause was later found to exist, and the children remained in DHS's custody. Appellant was ordered to have supervised visitation, to submit to a psychological evaluation, and to submit to random drug screens.

On October 28, 2003, the adjudication hearing took place. The court found that the children were dependent-neglected. The court specifically found that appellant had failed to take the necessary steps to prohibit her children from leaving the home without proper supervision and that appellant's habit of sleeping late was a contributing factor to the situation. The goal of the case was set as reunification, and DHS was given discretion to increase appellant's visitation with her children. In addition, DHS was ordered to provide a homemaker to appellant. Appellant was ordered to submit to a drug-and-alcohol assessment if any of the drug screens came back positive; to participate in individual counseling and medicine management; to attend parenting classes; to sign a release allowing DHS to obtain her mental-health records; to pursue a GED; and to work toward establishing paternity on each child.

On April 6, 2004, a review hearing was held. The court found that DHS had not made reasonable efforts in that the referral for drug treatment had not been timely made. The court found that little progress had been made.

On September 7, 2004, a permanency-planning hearing was held. The court found that appellant was making an effort to comply and granted appellant a thirty-day trial placement. The random drug screens were to continue. On October 8, 2004, an agreed order was entered that placed the children in appellant's custody. After several permanency-planning or review hearings held in 2005 and 2006, the court ordered that custody continue with appellant and that a protective-services case remain open.

On January 25, 2007, DHS filed a motion for ex parte emergency change of custody. The affidavit in support of the motion asserted that the children had changed schools two times in a three-week period with no prior notification to DHS. DHS had also received a report that the family had moved to a home where guns and knives were within reach of the children and the smell of marijuana was present. The affidavit stated that there were no beds, only pallets. A seventy-two-hour hold was taken. The court entered an emergency order placing the children in the care and custody of DHS on January 25, 2007.

On February 13, 2007, a permanency-planning hearing was held. Although custody remained with DHS, the goal of the case was reunification. Appellant was ordered to obtain her own housing, to obtain and maintain stable income, to keep DHS informed of any address or phone number changes, and to submit to drug screens.

Another permanency-planning hearing was held on June 19, 2007. The goal of the case was changed to termination of parental rights based on appellant's "most immediate obstacle," which was lack of appropriate housing for her children. However, despite the change of the goal to termination, the court noted that appellant's boyfriend appeared to be a net positive influence. The court ordered appellant to go to the Office of Child Support Enforcement and have the child-support orders regarding her children enforced.

DHS filed its petition to terminate parental rights on August 17, 2007. The sole ground for termination was that the children had been adjudicated dependent-neglected and had been out of the parent's home for more than twelve months and that, despite a meaningful effort by DHS to assist the parent, the conditions which necessitated removal had not been remedied by the parent.

The hearing on the termination petition was held on September 25, 2007. Matthew Frederick, the children's therapist, testified that he had had seventeen sessions with J.J.-1 and between fifteen and seventeen sessions with J.J.-2 and C.J. He described J.J.-1 as suffering from anxiety symptoms, while J.J.-2 and C.J. both showed signs of ADHD symptoms. He said that all three children, but especially J.J.-1, needed permanency and stability. Frederick said that J.J.-1 constantly asked when he was going to be stable and that, once or twice a year, he started over in a new school or home. He said that J.J.-2 and C.J. were in slightly different positions from J.J.-1 because they were younger when the case started and have "less solid" memories of their mother than does J.J.-1.

He also said that, although appellant had attended some of the sessions with the children, she needed to address certain issues in order to make reunification a viable option. According to Frederick, one of the issues that remained to be addressed was appellant changing her work hours so that she could supervise the children after school. He stated his belief that appellant was not using good judgment and insight in developing solutions to her problems. He said that J.J.-1 showed signs of “parentification,” that is, taking on an adult role by trying to take care of his siblings. Frederick said that he had not had enough contact with the children to recommend whether appellant’s parental rights should be terminated but added that the children needed a clear course, either reunification or termination. He also said that, regardless of the court’s decision, the children would continue to need individual and possibly family therapy. He also encouraged appellant to continue her counseling and to develop a support network.

Former DHS caseworkers testified that appellant had made some progress in complying with some parts of the case plan but that she had not complied with other parts. The noncompliance included having the children miss “a lot” of school and appellant failing to keep her home clean.

Dr. Paul Deyoub, a forensic psychologist who evaluated appellant in November 2003, testified that he had concerns about her parenting skills because she was drug-addicted and unable to care for the children. He said that appellant had a diagnosis of depression and personality disorder with inadequate and dependence traits. Dr. Deyoub said that it concerned him that the case had lasted four years and that the children were back in foster care. He

described appellant as having reading deficits but otherwise average intelligence. He attributed appellant's need to be continually prompted, in order to take the steps necessary for reunification, to her personality disorder.

Rosemary Doby, the current DHS caseworker, recommended that appellant's parental rights be terminated in order for the children to have permanency. She said that appellant was employed and had a home she shared with her boyfriend. She said that appellant's boyfriend had been participating with appellant during the entire case and that he appeared appropriate. According to Doby, appellant had completed the parenting classes and other orders of the court. She added that she did not have any concerns with appellant as a mother to the children, based on her observation of the interaction between appellant and the children. She noted that all of appellant's progress had been recent.

Lisa Saulsberry, the DHS adoption specialist, testified that the children were adoptable and that there were several families willing to adopt the children.

Janet Smith, the foster mother for the children, testified that all three children were academically behind, especially J.J.-1.

Brian Burke, appellant's boyfriend, testified that he and appellant had their own apartment and that both were employed. He said that he and appellant intended to get married once appellant obtained a divorce. He said that he believed that he helped appellant stabilize her life and that she should not have her parental rights terminated. He also said that he had noticed changes in appellant, such as keeping up with her business without help.

Appellant testified that she understood the need for her to be stable, stating that she

was going to remain at her current home for at least two years. She also said that her current eight-month employment was the longest job she ever held. Appellant explained that she was not previously employed because she was taking care of her mother but that she had learned to stand on her own since her mother's death. She said that it would not be difficult to adjust her working hours so that she could care for the children. Appellant testified that she had stopped using drugs in 2005, that she attended AA and NA meetings, completed her therapy, participated in the children's therapy, and completed parenting classes. She also said that she had a support network and a plan for child-care arrangements. She said that she wanted to do what it took to get her children back and that she now "gets it."

The circuit court ruled from the bench and granted the petition to terminate appellant's parental rights. The court found that appellant did not have the necessary insight into what it meant to be a proper parent. The court also found that, for the most part, appellant had complied with the case plan and court orders. Nevertheless, the court found that DHS had provided clear and convincing evidence that the children had been adjudicated dependent-neglected and had continued out of the custody of appellant for over twelve months and that the conditions that caused the removal had not been remedied by appellant despite meaningful efforts by DHS. The court entered its order terminating appellant's parental rights on October 23, 2007. Appellant filed a timely notice of appeal.

#### *Discussion*

We review termination of parental rights cases de novo. *Yarborough v. Arkansas 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 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, 231 S.W.3d 103 (2006).

In her sole point for reversal, appellant 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 interest and that there is insufficient evidence of grounds for termination.

Appellant first argues that the circuit court failed to make a specific finding of potential harm to the children should they be returned to her care. According to Ark. Code Ann. § 9-27-341 (Repl. 2008), the circuit court was only required *to consider* the potential harm to the health and safety of a child that might result from continued contact with the parent. *See Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). The court was not required to find that actual harm would result or to affirmatively identify a potential harm. *Id.* 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. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). Finally, the court's potential-harm inquiry is but one of many factors that a circuit court must consider in a best-interest analysis. *Id.* Here, the testimony of Matthew Frederick shows that the lack of permanency is harming the children, especially J.J.-1. Frederick said that J.J.-1 constantly asks when he is going to be stable and that, once or twice a year, he is starting over in a new school or home.

Other testimony indicated that the lack of stability was still an issue. Appellant and the children had moved several times before the children were taken into custody for the second time. Appellant's failure to secure safe and appropriate housing of her own is contrary to the children's well-being and best interest. *Carroll, supra*. Also, there was testimony that appellant failed several drug tests during 2005. Continuing drug use shows an indifference to remedying the problems plaguing the family. *Carroll, supra*. We cannot say that the circuit court was clearly erroneous in finding that termination would be in the children's best interest because of the evidence of potential harm to the children.

Appellant next argues that the circuit court erred in finding grounds for termination because the reasons for removal of the children had been remedied. Appellant argues that she had remedied the conditions by completing the case plan's requirements. However, even full completion of a case plan is not determinative of the outcome of a petition to terminate parental rights. *Wright v. Arkansas Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332

(2003). What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id.*

The children were removed from appellant's custody in September 2003. They were returned to appellant's custody in October 2004, where they remained until January 2007. They have remained in DHS's custody since that time. Thus, the children had been in appellant's custody for twenty-seven of the forty-eight months prior to the termination hearing; the rest of the time, the children were in DHS's custody. There is no requirement that the twelve-month period be consecutive. *Johnson v. Arkansas Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002).

In *Trout v. Arkansas Department of Human Services*, 359 Ark. 283, 197 S.W.3d 486 (2004), the supreme court affirmed the termination of the parental rights of a mother where she had not been stable for a sufficient amount of time to indicate reunification was possible. The court held that to give the mother more time to comply would only ignore the fact that she had consistently failed to comply with the court's order. In *Camarillo-Cox v. Arkansas Department of Human Services*, 360 Ark. 340, 201 S.W.3d 391 (2005), the supreme court affirmed a termination order even though the mother had shown significant improvement and had eventually met nearly all of the case-plan requirements, because those improvement were not made until the "eleventh hour" of the case. "[E]vidence 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." 360 Ark. at 355, 201 S.W.3d at 401.

It was undisputed that appellant did not obtain employment until after the children were removed in January 2007 and that she did not obtain stable housing until July 2007. She said that she was not employed prior to that time because she was caring for her mother. However, her mother died in May 2006, and appellant did not obtain employment for another eight months. These events show that appellant was unable to provide a stable home — one of the children’s most basic needs. Therefore, we cannot say that the circuit court was clearly erroneous in finding grounds for termination of appellant’s parental rights.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.