NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-671

	Opinion Delivered December 3, 2008
V.L., MINOR MOTHER APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT,
V.	JUVENILE DIVISON [NO. JV-2006-487]
ARKANSAS DEPARTMENT OF HUMAN SERVICES and J.L., MINOR CHILD	HONORABLE CINDY THYER, JUDGE
APPELLEES	AFFIRMED

DAVID M. GLOVER, Judge

V.L., who reached her eighteenth birthday on November 29, 2008, appeals the termination of her parental rights to her son, J.L., born on September 28, 2006. We affirm the trial court's decision.

This case began when V.L. and her sister were removed from their parents' custody when J.L. was only two months old. There were allegations that V.L. had been sexually abused by her father, grandfather, and uncle. For much of this proceeding, V.L.'s father was considered probably to be J.L.'s father; before the final termination hearing, he was ruled out through DNA testing. At first, V.L. and J.L. were placed in a foster home together, but after three weeks, DHS filed a petition for emergency custody of J.L. because V.L. could not or would not care for him. During the course of this proceeding, appellant was placed in twelve

foster homes and ultimately was sent to Millcreek, a residential facility, because she was combative and disruptive. While at Millcreek, she was diagnosed as mentally retarded.

In the adjudication order, the court set concurrent goals of reunification, relative placement, or adoption and directed DHS to make referrals for V.L. to Developmental Disability Services. A permanency-planning hearing was held on November 15, 2007. In the resulting order, the court changed the goal to termination, even though appellant had complied with the case plan and orders of the court.

At the termination hearing held on March 25, 2008, appellant's psychological evaluation was admitted into evidence. She was reported as having a full-scale I.Q. of forty-eight, and as performing at second-to-fourth grade levels. The report concluded that she could live independently, with supervision.

Brenda Morton, a family-service worker with DHS, testified that J.L. was doing "great" in his placement in a local foster home; that his foster parents were interested in adopting him; and that, even if that home were found to be inappropriate, a child of his age would normally have no problems being adopted. Ms. Morton testified that V.L. acted as if she were eleven years old and did not have the capacity to take care of a child. She said that Millcreek is not a family-oriented facility and J.L. could not be placed there with V.L. Ms. Morton said that if J.L. were returned to V.L., she would not intentionally harm him, but she would not know how to protect him from harm. Ms. Morton stated that there were no services that could be offered to V.L. that would result in a successful reunification in a time frame that would be consistent with J.L.'s best interests. Ms. Morton said that, although V.L. had complied with

the case plan and court orders and loved J.L., she was not able to care for him and would never attain the capacity to do so. Ms. Norton made it clear that J.L. did not come into the department's care because he was subjected to neglect; it was after V.L. and J.L. came into DHS's care that it was discovered that V.L. was mentally incapable of caring for him. In fact, she said, they both needed someone to take care of them.

Linda Armstrong, who supervised V.L.'s visitation with J.L., testified that she believed that he would be in danger if returned to V.L.'s care without supervision. She stated that V.L. had trouble getting along with peers and got into a lot of fights at Millcreek; in fact, she had a black eye at the termination hearing. She stated that, although V.L. loves J.L. very much, she needs someone to take care of her and could not take care of him by herself. She stated that, during visitation, V.L. had given J.L. toys or sharp objects that could hurt him, such as a glass Christmas tree ornament. She also said that, when discussing foods that she could give J.L., V.L. had indicated that she could feed him hot dogs and candy, which were dangerous. She said that, although V.L. liked visiting with J.L., she soon tired of holding him and gave him to someone else to hold; when the visits were over, V.L. was ready to leave.

V.L. testified that she had done everything she could to get her son back; that she planned on completing the twelfth grade at Millcreek; that she wanted to go to college and get a job; and that she wanted her son back. She said that she knew how to take care of a child because she took care of her little sister.

The trial court entered an order terminating appellant's parental rights to J.L. on March 26, 2008. The court found that there was little likelihood that services to the family

would result in successful reunification and set forth three grounds for termination. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(*a*), (vii)(*a*), and (ix)(*a*)(3) (Repl. 2008). Appellant pursued this appeal with different counsel.

Appellant argues in her first point that the trial court erred in not appointing an attorney ad litem for her as provided by Ark. Code Ann. § 9-27-316(f)(1) (Repl. 2008). Appellant, however, cannot raise this issue on appeal because she did not raise it to the trial court. *See Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

In her second point, appellant challenges the sufficiency of the evidence. 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. *Id.* 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:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(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

(B) Of one (1) or more of the following grounds:

(i)(*a*) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(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.

. . . .

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies.

. . . .

(ix)(*a*) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

. . . .

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

(B) "Aggravated circumstances": means:

> (1) 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. . . .

In determining whether there is clear and convincing evidence that termination is in the child's best interests, the court is to consider, among other factors, whether he is likely to be adopted if the termination petition is granted and the potential harm to the child that could result from returning him to his parent. *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(i) and (ii) (Repl. 2008). Every factor, however, need not be established by clear and convincing evidence. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Appellant concedes that J.L. is adoptable, but argues that the trial court erred in finding that he would be subject to potential harm if returned to her. The trial court's comments from the bench show that it credited the family-service worker's testimony that appellant could not recognize potential harm; that she gave the child a glass ornament with which to play during visitation; and that she had to be reminded not to give him a hot dog or candy to eat because of the choking hazard. When considered with the testimony that appellant cannot even care for herself, much less a child, we have no hesitation in holding that this finding was supported by the evidence.

Appellant admits that the child had been in DHS's custody for over twelve months, but states that the only condition that caused his removal was that she was a juvenile in DHS's custody; that there was no way for her to remedy that condition until she turned eighteen;

and that treating her differently from people older than eighteen, without a legitimate government purpose, violated her constitutional rights. We disagree. The dependency-neglect proceeding involving J.L. was opened, not because of appellant's age, but because she either could not or would not take care of him when they were initially placed together.

Appellant states that the court erred in basing its "other factors" finding on DHS's discovery, after the filing of the original petition, that she had mental health issues. She argues that DHS knew of her mental health issues at the beginning of this proceeding. We disagree. The evidence clearly demonstrated that it was three weeks after she and J.L. were initially placed together that her inability to care for him became clear. In fact, the full extent of her mental-health problems was not diagnosed until she was at Millcreek.

Appellant contends that the trial court erred in finding that there was little likelihood that services to the family would result in successful reunification. She argues that the court should have allowed DHS to place her and her child together after she completed the program at Millcreek. Again, we disagree. This finding was supported by the family-service worker's testimony. She listed all of the services that had been provided appellant and said that she could think of no further services that would result in successful reunification.

For the first time on appeal, appellant argues that her trial counsel's assistance was ineffective because he failed to recognize a conflict of interest and have substitute counsel appointed; he failed to ensure that she had an attorney ad litem; and he failed to argue that she was being denied equal protection under the United States Constitution. We do not reach this argument because we will not consider a claim of ineffective assistance of counsel as a point on appeal unless it was first raised in the trial court. *Jones v. Ark. Dep't of Human Servs.*, *supra*.

Appellant's final argument is that the trial court erred in not providing for a less restrictive alternative to termination. The Code, however, does not support her argument. According to Arkansas Code Annotated § 9-27-338(c) (Repl. 2008), which lists the permanency goals that the trial court is allowed to consider, termination and adoption are preferred to other placements if the child cannot be returned to the parent's custody.

DHS established all grounds for termination set forth in the order. There is no question that appellant loves J.L. and that she has worked hard to overcome her problems. Nevertheless, a parent's rights may be terminated even though she is in full compliance with the case plan. *Wright v. Ark. Dep't of Human Servs.*, *supra*. What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id.* Our statement in *Meriweather v. Arkansas Department of Health & Human Services*, 98 Ark. App. 328, 333, 255 S.W.3d 505, 508 (2007), also applies to the situation before us: "We are convinced that appellant was willing to try to be the parent that [the child] needed, but she was unable to be that parent on her own. Appellant's parental rights simply had to yield to the best interest of [the child]." Thus, this proceeding's focus must be on what is best for J.L., not V.L., regardless of the tragic circumstances that contributed to her problems.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.