

ARKANSAS COURT OF APPEALS

DIVISIONS I and IV

No. CA08-883

KURT BELUE

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES

APPELLEE

Opinion Delivered December 17, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. JV2006-545]

HONORABLE MARK HEWETT, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

1. PARENT & CHILD – TERMINATION OF PARENTAL RIGHTS – THERE WAS SUFFICIENT EVIDENCE TO SUPPORT TERMINATION OF APPELLANT’S PARENTAL RIGHTS.— The intent of Arkansas’s termination statutes is to provide permanency in a juvenile’s life in all instances in which the return of a juvenile to the family home is contrary to the juvenile’s health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from a juvenile’s perspective; here, at the time of the termination hearing, appellant’s children had been out of the home for twenty months; appellant was living in a one-bedroom apartment and had not secured stable employment; and, he had been turned down for Social Security benefits, which he could only hope to receive within a year if his appeal proved successful.
2. PARENT & CHILD – TERMINATION OF PARENTAL RIGHTS – THERE WAS EVIDENCE SHOWING POTENTIAL HARM IN RETURNING THE CHILDREN TO APPELLANT.— Appellant’s inability to properly interact with his children during visits, despite being prompted and instructed; his failure to support another child; and his testimony that the Department of Human Services had done nothing to help him, even though it had provided numerous services, along with several other factors, evidenced a potential harm in returning the children to appellant and an incapacity or indifference on his part to remedying the circumstances that prevented the children from being returned to him.
3. PARENT & CHILD – TERMINATION OF PARENTAL RIGHTS – APPELLANT’S COMPLIANCE DID NOT WARRANT REVERSAL OF TERMINATION ORDER.— Appellant’s compliance with certain aspects of the case plan did not warrant reversal of the termination order; what mattered was whether his

compliance made him capable of caring for his children, and the appellate court could not say that the circuit court clearly erred in ruling that it did not.

Melissa Dorn Bratton, Arkansas Public Defender Comm'n, for appellant.

Gray Allen Turner, Office of Chief Counsel, for appellee.

Jo Ellen Carson, attorney ad litem, for the minor children.

Kurt Belue appeals from an order terminating his parental rights in four children: K.B. (born January 29, 2002), S.B. (born May 21, 2003), T.B. (born January 7, 2005), and H.B. (born March 5, 2006). He argues that there was insufficient evidence to support the termination order. We affirm.¹

In March 2006, the Arkansas Department of Human Services (DHS) began providing the Belue family with caseworker services, homemaker services, and referrals for domestic violence and anger management. According to a DHS affidavit, a visit to the home in August 2006 revealed a serious roach infestation and foul odor. The children were found with "dirt caked upon the bottom of their feet, smelling as if not bathed recently, rashes from being unwashed, caked on feces in the youngest[']s] diapers, and dead roaches in one child's hair." The DHS investigator also found that Kurt Belue was unemployed and that, although he professed the inability to afford a steam cleaner as DHS had requested, there was a large, flat-screen television on his living room wall. DHS filed a petition for emergency custody of the children, which the court granted on August 7, 2006. The court subsequently found probable

¹ The same order terminated the parental rights of the children's mother, Susie Belue. Mrs. Belue is not a party to this appeal.

cause for the children's removal and adjudicated them dependent-neglected, based on environmental neglect and medical neglect. The medical-neglect finding stemmed from three of the children being diagnosed with failure to thrive.

The adjudication order established a goal of reunification and required Kurt Belue to complete parenting classes; submit to a psychological examination and follow recommendations; submit to a drug-and-alcohol assessment and follow recommendations; maintain clean housing with working appliances; obtain stable transportation with valid tags, insurance, and driver's license; submit to random drug screens; and visit the children regularly. These requirements were later expanded to include attending counseling as recommended; resolving pending criminal charges; maintaining stable, appropriate, and smoke-free housing; maintaining employment; taking medications as prescribed; and cooperating with CASA and DHS. Review orders entered by the court in February and July 2007 found Belue in partial compliance with court orders and the DHS case plan.

On November 15, 2007, the court entered a permanency-planning order that changed the goal of the case to termination of parental rights and adoption. The order stated that Belue had failed to maintain appropriate housing, employment, and transportation; exhibited anger problems despite completing an anger-management class; failed to stop smoking; and had "current criminal charges," which the court did not specify. DHS filed a petition to terminate parental rights on December 6, 2007.

At the termination hearing in April 2008, Belue testified that DHS never offered to assist him in any way. He said he had complied with the case plan and court orders by acquiring

transportation, attending counseling, and visiting the children. He was living in a one-bedroom apartment and saw no need to get a larger apartment while the children were out of his custody. He said he would be able to move into another place if the children were returned to him. Belue also testified that he had been unemployed since October 2007, though he had been filling out job applications. He had also filed a Social Security disability claim stemming from injuries he received in a May 2005 car accident. The claim was denied, but he continued to pursue the case, and he and his attorney hoped that he would begin receiving benefits within a year. In the meantime, he supported himself with food stamps and a \$17,000 settlement, presumably a tort settlement pertaining to the car accident. At the hearing, Belue was unsure of the amount remaining from the settlement. However, the proof showed that he had lived on the funds for six months and had purchased approximately \$1300 worth of furniture and a \$2000 used car. By Belue's own admission, he could not manage his financial affairs, and his mother controlled his money and paid his bills for him.

Belue further testified that he was "gaining some ground" on his anger issues. He denied signing, or said he was "tricked" into signing a DHS case plan prepared in 2006, which provided that Belue needed anger-management classes but which contained the following notation of a signatory's disagreement with the plan: "b/c I don't have problems with anger." Belue also testified at one point during the hearing that he did not believe he had anger issues.

Belue acknowledged that he still smoked outside his home. He further stated that he did not pay child support on his other five children, though his testimony was conflicting as to whether he owed support. He also said he was aware that his wife had abused the children "ever

since [they] were born.” Yet, as he explained, he did not call the authorities but “tried to get the police called on me” by standing on the front porch and yelling at Mrs. Belue to “get the hell out of the house.”

Robin Sanders testified that she had been Belue’s counselor since January 16, 2008, although Belue had been in counseling for “quite some time.” She said Belue attended all of his appointments with her but had only made “minimal progress.” Sanders testified that the first session in which she noticed any progress was on March 18, about three weeks before the termination hearing.

Cindy Farrell of Court Appointed Special Advocates (CASA) testified that Belue told her that he would be willing to “take a couple of the children” or “just whatever he could get.” She said that he was apparently referring to the fact that he knew he did not have a lot of room in his apartment.

Glenda Evans of CASA testified that she recommended termination of parental rights based on the lack of progress over the history of the case. She said that Belue could not count on receiving disability benefits and that CASA’s investigation turned up no evidence that he could not work. Evans observed that Belue would limp in the courtroom but not at other locations where she had seen him. She also said she had seen Belue get angry to the point of being “somewhat out of control.” She expressed concern about his anger “with regard to putting the children back in his care.” Evans additionally stated that Belue still owed support on at least one of his other children. According to her, Belue’s contacts with her consisted mainly of his complaining about DHS rather than discussing the children.

DHS family service worker Tiffany May testified that Belue had completed parenting classes, but she was not sure how much he had learned from them. She said that he often spoke negatively about the children's mother in front of them, despite being told it was inappropriate. She further testified that Belue still had to be prompted and monitored during his visits with the children. May additionally expressed concern that Belue had learned little from anger management classes, noting that he had difficulty controlling his anger while testifying at the hearing. She recited the numerous services that DHS had offered in the case, including transportation, homemaker services, housing, clothing, and counseling referrals, and one-on-one parenting instruction. According to May, the children were readily adoptable.

After the hearing, the court terminated Belue's parental rights as to all four children. The court found that termination was in the children's best interest, considering the likelihood of adoption and the potential harm in returning the children to Belue. *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(i) and (ii) (Repl. 2008). The termination order specifically mentioned, among other factors, Belue's lack of stability and failure to make substantial progress in the case over twenty months; his failure to maintain stable and appropriate housing and employment; his failure to benefit from anger-management classes; his failure to stop smoking; and his inability to manage his own finances. The court cited as a ground for termination that the children had been out of Belue's custody for more than twelve months and, despite meaningful efforts by DHS to rehabilitate him and correct the conditions that caused removal, those conditions were not remedied. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2008). Belue filed a timely notice of appeal and argues that there was insufficient

evidence to terminate his parental rights.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents. *Smith v. Arkansas Department of Human Services*, 100 Ark. App. 74, 264 S.W.3d 559 (2007). However, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* An order terminating parental rights must be based upon a finding by clear and convincing evidence that (1) termination is in the best interest of the children, including consideration of the likelihood of adoption and the potential harm caused by returning the children to the parent, and (2) at least one statutory ground for termination exists. Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008). 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. *Meriweather v. Arkansas Department of Human Services*, 98 Ark. App. 328, 255 S.W.3d 505 (2007). 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. *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.*

We are not firmly convinced that the trial court was mistaken in terminating Belue's parental rights. At the time of the termination hearing, the children had been out of the home for twenty months. Belue was living in a one-bedroom apartment and had not secured stable employment. He had also been turned down for Social Security disability benefits, which he

could only hope to receive within a year if his appeal proved successful. The intent of our termination statutes is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective. Ark. Code Ann. § 9-27-341(a)(3) (Repl. 2008).

There was also evidence that Belue's disability claim was of questionable legitimacy. Glenda Evans testified that CASA's investigation turned up no evidence that Belue could not work, and she said he tended to limp in court but not at other times. Additionally, Belue's money-management skills were so lacking that he was unsure of the amount he had left from his car-accident settlement, and he relied on his mother to oversee his routine financial tasks.

The proof showed as well that Belue was observed by one witness to be angry to the point of losing control, and that he continued to have trouble controlling his anger, even on the witness stand. Belue's counselor said he had made only minimal progress in counseling, which is hardly surprising, given that he denied on more than one occasion having anger-management issues. These factors, along with Belue's inability to properly interact with the children during visits, despite being prompted and instructed; his failure to support another child; and his testimony that DHS had done nothing to help him, even though it had provided numerous services, evidence a potential harm in returning the children to Belue and an incapacity or indifference on his part to remedying the circumstances that prevent the children from being

returned to him. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2008).² Moreover, Belue's compliance with certain aspects of the case plan does not warrant reversal of the termination order. What matters is whether his compliance made him capable of caring for his children. *See Wright v. Arkansas Department of Human Services*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). We cannot say that the circuit court clearly erred in ruling that it did not.

The dissent states that this case bears a great similarity to *Strickland v. Arkansas Department of Human Services*, 103 Ark. App. 193, ___ S.W.3d ___ (2008), but *Strickland* is clearly distinguishable. There, this court reversed a termination order that rested on only one potentially supportable ground, which was Ms. Strickland's inability to obtain proper housing, despite her continuous attempts. She eventually acquired a one-bedroom apartment, as did Mr. Belue, but she had two children to his four. More importantly, Ms. Strickland's ability to financially support her children did not depend on the mere possibility of obtaining an income source a year or more in the future. At the time of her termination hearing, she had already established her entitlement to disability benefits and was regularly receiving them. There was also no evidence that Ms. Strickland suffered from anger-management issues.

Affirmed.

GLADWIN, GRIFFEN, and VAUGHT, JJ., agree.

HART and HUNT, JJ., dissent.

² Although the circuit court cited a separate ground for termination, in our de novo review, we may hold alternatively that other grounds for termination were met. *Smith v. Arkansas Department of Human Services, supra*.

