

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CA13-25

VANESSA McDANIEL

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

Opinion Delivered April 24, 2013

APPEAL FROM THE YELL COUNTY  
CIRCUIT COURT, NORTHERN  
DISTRICT [NO. JV-2011-05]HONORABLE TERRY SULLIVAN,  
JUDGE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

This is an appeal from an order terminating appellant's parental rights. She argues that the evidence is insufficient to support either the finding that there were statutory grounds for termination or the finding that termination of her parental rights was in the child's best interest. We affirm.

Appellant and her husband were arrested in their home for manufacturing methamphetamine on February 23, 2011. The Arkansas Department of Human Services took appellant's son, C.M., and his stepsister, H.M., into emergency custody because they had no caretaker after their parents were arrested. C.M., although less than three years old, "swore like a sailor" when he was taken into protective custody. He attempted to jump out of a moving car and was so violent and destructive that it took three police officers to restrain him in the emergency room so that an initial physical could be performed. It was evident that nine-year-old H.M. had been C.M.'s primary caretaker because she initially resisted anyone

else who tried to care for him and did not want to be separated from him. C.M.'s cursing was not simply the result of anger; it was his normal language. He was aggressive, hurt himself, hurt others, smeared feces, and threw food. He did not sleep well. His behavior was such that he was in six different foster homes within six days.

C.M. improved after being placed in therapeutic foster care, but he would regress dramatically during supervised visitations with appellant, hurting himself by clawing at his face while screaming, biting the inside of his mouth, and banging his head so violently that he was ultimately required to wear a helmet. He would not make eye contact with appellant and referred to her as his "mean momma." He would become physically ill when being taken to visit appellant or even when appellant was mentioned. C.M. had weekly nightmares in which he would wake up screaming, "I don't want you to," during the period that he was visiting appellant and said that he worried about appellant "getting him" and taking him away from foster care.

Although appellant behaved appropriately during the visits, C.M.'s negative reactions to her visits were so profound and extraordinary that, after he had been in foster care for approximately one year, visitation with appellant was discontinued. Afterward, C.M.'s behavior improved markedly; his aggression was reduced tremendously, and he stopped harming himself. He also stopped having frequent nightmares. The therapeutic-foster-care supervisor testified that the improvement was the direct result of the cessation of visitation.

After the hearing, the trial court, *inter alia*, terminated appellant's parental rights to C.M. The court found by clear and convincing evidence that, subsequent to the filing of the

original petition, other factors arose that demonstrated that return of the child would be contrary to his health, safety, and welfare, and that, despite the offer of appropriate services, appellant had manifested the incapacity or indifference to remedy the issues or rehabilitate their circumstances. See Ark. Code Ann. § 9-27-341(b)(3)(B)(vii) (Repl. 2009). The court further found that termination of appellant's parental rights was in C.M.'s best interest.

In cases where the issue is one of termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Trout v. Arkansas Department of Human Services*, 359 Ark. 283, 197 S.W.3d 486 (2004). Although termination of parental rights is an extreme remedy in derogation of the natural rights of the parent, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child and must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. *Camarillo-Cox v. Arkansas Department of Human Services*, 360 Ark. 340, 201 S.W.3d 391 (2005).

Pursuant to Arkansas Code Annotated section 9-27-341(b)(3), an order terminating parental rights must be based upon clear and convincing evidence, *i.e.*, proof that will produce in the fact-finder a firm conviction as to the verity of the allegation sought to be established. *Camarillo-Cox, supra*. On appeal, the issue is whether the trial court's finding that the fact was proven by clear and convincing evidence is clearly erroneous. *Allen v. Arkansas Department of Human Services*, 2011 Ark. App. 288. A finding is clearly erroneous when the appellate court is, on the entire evidence, left with a definite and firm conviction that a mistake has been made. *Camarillo-Cox, supra*. In deciding whether a finding of the trial court is clearly

erroneous, we give great deference to the superior opportunity of the trial court to observe the parties and to judge the credibility of witnesses. *Tucker v. Arkansas Department of Human Services*, 2011 Ark. App. 430, 389 S.W.3d 1.

Appellant essentially argues that grounds for termination of her parental rights were lacking because she completed the case plan and there was no evidence that she harmed C.M. directly. However, completion of the case plan is not determinative; what matters is whether completion of the case plan achieved the intended result of making a parent capable of caring for the child. *Wright v. Arkansas Department of Human Services*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). The evidence was clearly sufficient to justify a finding that it would be impossible to return C.M. to appellant's custody at the time of the hearing; the most optimistic estimate was one year, but there was also opinion evidence that C.M. could never be returned to appellant's care. And, although it is true that there is little direct evidence to show that appellant is responsible for C.M.'s behavior, the circumstantial evidence that appellant either abused C.M. or failed to protect him from abuse is overwhelming. It is noteworthy that C.M. told caseworkers that his father sexually abused him and that appellant kicked him in the head. It is likewise significant that, although H.M.'s father was ultimately found to have subjected H.M. to severe abuse by suffocation, strangulation, and immersion, appellant refused to cooperate with the investigators.

Appellant also challenges the trial court's finding that termination was in C.M.'s best interest. She primarily argues that it is unlikely that C.M. will be adopted in the near future. However, adoptability is not an essential element of proof in a termination case. It is merely

a factor that must be considered by the trial court in determining the best interest of the child. *Renfro v. Arkansas Department of Human Services*, 2011 Ark. App. 419, 385 S.W.3d 285. Here, the evidence of traumatization and C.M.'s fear of appellant is so great that, even should he not be adopted, we cannot say that the trial court clearly erred in finding that termination of parental rights is in C.M.'s best interest.

Affirmed.

GLADWIN, C.J., and VAUGHT, J., agree.

*Deborah R. Sallings*, Arkansas Public Defender Commission, for appellant.

*Tabitha B. McNulty*, County Legal Operations, for appellee Arkansas Department of Human Services.

*Chrestman Group, PLLC*, by: *Keith L. Chrestman*, for appellee C.M.