

ARKANSAS COURT OF APPEALSDIVISION III
No. CA12-1122

ASHLEE NICOLE ADAMS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD

APPELLEES

Opinion Delivered April 17, 2013

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. 17-JV-2011-6 II]HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Ashlee Adams appeals from an order of the Crawford County Circuit Court terminating her parental rights to her son, D.J., born on July 3, 2007. Appellant argues that the trial court erred in terminating her parental rights on the ground that she was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of her child's life. We affirm.

The Arkansas Department of Human Services (DHS) opened a protective-services case on the family in late 2010 due to inadequate supervision of D.J. by appellant. Appellant moved constantly with the child and failed to notify DHS of her whereabouts. DHS was unable to make any contact with appellant between November 16, 2010, and January 5, 2011. DHS exercised a seventy-two-hour hold on D.J. on January 5, 2011, following appellant's arrest on an outstanding warrant. An order for emergency custody was entered on

January 11, 2011. D.J. was adjudicated dependent-neglected in an order entered on March 4, 2011. Appellant pled guilty to three counts of second-degree forgery on April 11, 2011. She was sentenced to three concurrent ten-year sentences, with eight years of each sentence suspended. The goal of the case remained reunification until the court changed it to termination of parental rights in the March 8, 2012 review order. DHS petitioned to terminate Adams's parental rights on April 20, 2012. In the petition, DHS alleged that Adams was "sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life, more specifically, the mother was sentenced to three terms of 24 months and 96 months suspended in the Circuit Court of Crawford County, Case No. CR 2011-23."

The termination hearing took place on August 16, 2012. At the hearing, Erica Eneks, the DHS family-service worker on this case, testified that Adams's sentence was the reason that DHS petitioned the court for termination of her parental rights. According to Eneks, Adams's ten-year sentences constituted over half of D.J.'s childhood. Eneks opined that D.J. was adoptable and that it would be detrimental to return him to Adams's custody. She also stated that Adams was due to be released in early 2012, but that Adams had assaulted a guard, was charged with second-degree battery, and had her time extended. Adams was also transferred from the Regional Correctional Facility to the McPherson Unit following the assault. Eneks conceded that it was possible that Adams would be released from prison, at the latest, within three months; however, Eneks said that she had not seen anything from the Department of Correction showing a specific date for Adams's release. She also said that

Adams would not be in a good position upon her release to do whatever DHS wanted her to do.¹

Adams testified that her release date was set for November 3, 2012. She stated that she would more than likely be released early due to overcrowding of the prison.

The court granted DHS's petition, stating in pertinent part:

I think the controlling issue here is the time that's passed while mom's been incarcerated, as well as the fact the child's been in custody for a period of one year or more. And finally, as all of you understand, the Department was willing to work on this plan as well as the court up until the time mom got transferred to McPherson, all those things happened without D.J.'s intervention, or the Department, those are actions of mom so I think the proof is clear.

The termination order was filed on September 26, 2012. The order listed appellant's criminal sentence as the sole ground for termination. Adams filed a timely notice of appeal on October 16, 2012.

We review termination of parental rights cases de novo.² Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child.³ Grounds for termination of parental rights must be proved by clear and convincing evidence.⁴ It must also be proved that termination of parental rights is in the children's best

¹Adams failed to comply with her case plan prior to her incarceration.

²*Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

³*Id.*

⁴*Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

interest.⁵ 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.⁶ 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 proved by clear and convincing evidence is clearly erroneous.⁷ We give due regard to the opportunity of the trial court to judge the credibility of the witnesses.⁸ 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.⁹

Adams argues that it was error for the trial court to consider her suspended sentence as part of her sentence for purposes of the termination statute because she was only sentenced to twenty-four months' imprisonment. She acknowledges that the current version of Arkansas Code Annotated section 9-27-341(b)(3)(B)(viii)¹⁰ reflects the amendment to the statute that requires only that she be sentenced for a "substantial period of the juvenile's life" versus the previously codified definition of "substantial period" as "a sentence, not time

⁵*Smith v. Ark. Dep't of Health & Human Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007).

⁶*Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992).

⁷*J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

⁸*Id.*

⁹*Id.*

¹⁰ (Supp. 2011).

actually served, of no less than fifteen years, none of which has been suspended.”¹¹ Citing *Fields v. Arkansas Department of Human Services*,¹² appellant contends that it suggests that if a parent’s release from prison can be predicted with certainty, despite the length of the non-suspended sentence, that factor should be considered. A similar argument was rejected by this court as unpersuasive.¹³ Furthermore, we have interpreted the relevant statute, which only requires that the sentence imposed be substantial, not that the sentence imposed that is actually served be substantial.¹⁴ Accordingly, our review is directed to the entire sentence.

Even assuming arguendo that appellant would be released from prison when she hoped, she would not be able to immediately reunite with D.J. The stated intent of Arkansas Code Annotated section 9-27-341 is “to provide permanency in a juvenile’s life in all instances where 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 return to the family home cannot be accomplished in a reasonable period of time.” Viewed from D.J.’s perspective, the trial court did not clearly err in finding that he should not have to wait in limbo for possible reunification with appellant. Therefore, we affirm.

Affirmed.

HARRISON and GRUBER, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha B. McNulty, Office of Chief Counsel, for appellee Arkansas Department of Human Resources.

Chrestman Group, PLLC, by: *Keith Chrestman*, for appellee D.J.

¹¹Ark. Code Ann. § 9-27-341(2)(H)(ii) (Repl. 1998).

¹²104 Ark. App. 37, 289 S.W.3d 134 (2008).

¹³See *Williams v. Ark. Dep’t of Human Servs.*, 2010 Ark. App. 449.

¹⁴See *Jones v. Ark. Dep’t of Human Servs.*, 70 Ark. App. 397, 19 S.W.3d 58 (2000).