

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-150

PATRICIA TORRES

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered June 27, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NOS. JV-2005-329; JV-2009-287]HONORABLE MARK HEWETT,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Patricia Torres appeals two Sebastian County Circuit Court orders¹ terminating her parental rights to her daughters A.R., D.R., and P.J.,² challenging the sufficiency of the

¹This appeal arose from two separate circuit court cases: JV-2005-329, involving A.R. and D.R., and JV-2009-287, involving P.J. Separate termination petitions, separate orders terminating parental rights, and separate notices of appeal were filed. While the cases were consolidated for purposes of taking evidence at the termination hearing, no formal order of consolidation was entered below. One record containing both case files was filed with this court, one docket number was issued, and one brief was filed. No motion to consolidate was filed in this court. This was not proper procedure. However, under Ark. R. App. P.–Civ. 3(c), the court may consolidate cases on its own motion. Given that the issues and facts underlying the cases are the same, the appeals arose from the same hearing, and the accelerated nature of termination cases, we consolidate these two cases on our own motion to avoid any unnecessary delay. We note, however, that the proper practice is to move for consolidation either before the trial court or this court.

²The parental rights of the children's fathers, Jeremy Gillory, Anthony Brown, and Terrance Jarrett, were also terminated. They are not parties to this appeal.

evidence to support the terminations. Because we find that there was sufficient evidence to support termination, we affirm.

On May 6, 2005, the Department of Human Services (DHS) petitioned for emergency custody of A.R. from her mother, sixteen year old Patricia Torres, after Torres testified in a FINS review hearing that she was having problems with her mother and requested that she and A.R. be placed in the custody of DHS. A probable cause order as to A.R. was entered on June 27, 2005, and A.R. was adjudicated dependent neglected on September 22, 2005.

On December 15, 2006, a petition for emergency custody was filed as to A.R. and her younger sister D.R. after another child in the household died under suspicious circumstances. A probable cause order was entered on January 30, 2007, and A.R. and D.R. were adjudicated dependent neglected on May 23, 2007.

At a permanency planning hearing on November 27, 2007, the court determined that it was in the best interest of A.R. and D.R. to allow Torres, who had recently turned eighteen, to have additional time to comply with the case plan. At the fifteen-month review hearing on February 26, 2008, the court continued the reunification process finding that, although Torres had several positive drug screens prior to entering residential drug treatment on January 19, 2008, she had been making significant progress and was complying with the case plan.

At a permanency planning hearing on October 31, 2008, the court changed the goals of the case to the concurrent goals of reunification and termination of parental rights. The

court noted that, while Torres had made some measurable progress, she had not maintained stable and appropriate housing, employment, income, or transportation, and she was due to give birth to a third child due within the month.

On April 6, 2009, DHS filed a petition for emergency custody as to P.J., Torres's third child, after Torres (1) lost her SSI benefits when she failed to complete a redetermination application; (2) failed to attend counseling; (3) failed to take prescribed medication; and (4) was terminated from her job for inappropriate conduct with a child that resulted in a report of child abuse and left her with insufficient income to support herself or her children. P.J. was adjudicated dependent neglected in an order filed on June 18, 2009.

At a review hearing on all three children on November 30, 2010, the Court found that Torres was complying with the case plan and that it was in the best interest of P.J. to be returned to her although the protective services case was held open. The older children remained in the custody of DHS.

In March 2011, Torres was arrested on drug charges, was evicted from her HUD housing, and was suspended without pay from her job with Wal-Mart. DHS subsequently filed an ex parte emergency motion for change of custody of P.J. P.J. was again found dependent neglected on May 23, 2011.

On October 6, 2011, DHS filed petitions for termination of parental rights on all three children. After a hearing, the trial court granted the petition, finding that termination was in the best interest of the children and that two statutory grounds for termination had been

proved by clear and convincing evidence: (1) that the minor children had been adjudicated dependent-neglected and had continued out of the home in excess of twelve months and, despite meaningful efforts by DHS to rehabilitate the home and correct the conditions that caused removal, Torres had failed to remedy those conditions, Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a), and (2) that subsequent to the filing of the original dependency-neglect petition, other factors or issues had arisen that demonstrated that return of the children would be contrary to their health, safety, or welfare and, despite the offer of appropriate family services, Torres had manifested the incapacity or indifference to remedy those subsequent factors, Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). Torres now appeals this determination, alleging that there was insufficient evidence of potential harm to support termination.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). 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. *Id.* Grounds for termination of parental rights must be proved by clear and convincing evidence. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). It must also be proved that termination of parental rights is in the children's best interest. *Smith v. Ark. Dep't of Health & Human Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007). Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the

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allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). 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. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Where there are inconsistencies in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed the witnesses first-hand. *Dinkins, supra.* 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.*

On appeal, Torres does not contest the court's determination that there were statutory grounds for termination or that her children were adoptable; rather, she contends that DHS failed to prove that termination was in the best interest of her children because there was insufficient evidence that she posed any potential harm to their well being. The best-interest inquiry requires consideration of two factors: the likelihood of adoption and the potential of harm to the children if returned to their mother's custody. *Tucker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 430, ___ S.W.3d ___. However, those factors that must be taken into consideration do not, themselves, have to be supported by clear and convincing evidence. *Id.* Potential harm must be viewed in a forward-looking manner and in broad terms. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722. The court is not

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required to find that actual harm would result or to affirmatively identify a potential harm. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

Here, Torres was unable to demonstrate that, once she was released from jail, she would be able to provide a stable home or sufficient income. She did not know where she was going to live upon her release, or how she would make ends meet. Prior to her incarceration, she had failed to maintain stable and sufficient income. Additionally, the record is replete with incidents indicating her poor judgment. She was convicted of maintaining a drug premises, among other drug-related offenses, and on the date she reported to serve her sentence, she married Terrance Jarrett, a convicted felon, although she was aware that she had been ordered not to associate with anyone with a criminal record. Moreover, she stated that she would consider giving Jeremy Guillory (a level 3 sex offender, her rapist, and father of A.R.) a second chance to be in A.R.'s life. Given these facts, the fact that these children had spent over seventy-five percent of their young lives in foster care, and the fact that Torres had been given ample opportunity to correct the problems giving rise to the children's removal from her home and had not done so, the circuit court did not commit clear error in finding that there was a risk of potential harm if the children were returned to Torres's care. Accordingly, we affirm.

VAUGHT, C.J., and ROBBINS, J., agree.