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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 12-462

DARCEY LOVELL APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILD APPELLEES	**Opinion Delivered** OCTOBER 3, 2012 APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT, [NO. JV-11-38] HONORABLE TERRY SULLIVAN, JUDGE AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Darcey Lovell appeals the termination of her parental rights to her infant daughter, A.L., as found by the Conway County Circuit Court. The child was born in March 2011, and she was taken into Department of Human Services (DHS) custody upon discovery of narcotics in her system. The child was adjudicated dependent-neglected in April 2011. The parents' visitation rights were curtailed for a time over the summer of 2011. A review hearing was conducted in August 2011, and at the conclusion of a December 2011 permanency-planning hearing, both parents were deemed to have failed to comply with the case plan and both had incurred new criminal charges.[1] The goal was changed to adoption at that time. The trial court considered DHS's petition to terminate parental rights in February 2012, granting DHS's petition in an order filed on March 9, 2012.

[1]A.L.'s father, whose parental rights were also terminated, is not part of this appeal.

On appeal, appellant does not contest the grounds for termination of her parental rights. Instead, appellant contends that termination of parental rights was improper where a less restrictive alternative was for the child to be placed with the paternal grandparents. DHS and the child's attorney ad litem have filed a joint brief in opposition to appellant's arguments on appeal, asserting that there is no reversible error. We affirm.

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.* At least one ground for termination of parental rights, and that it is in the child's best interest to terminate those rights, must be proved by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). A "best interest" finding must include a consideration by the trial court of the adoptability of the child and the potential for harm if the child were returned to the parent. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). 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. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). 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 inconsistences in the testimony presented at a termination hearing, the resolution of those

inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). 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 affirm the trial court's decision to terminate appellant's parental rights.

At the termination hearing, appellant appeared, as did the paternal grandmother (Elizabeth DeSalvo), but the father did not. The case worker testified that appellant tested positive for drugs during the case, she had no job or her own residence, she had encountered criminal charges (possession of drugs and fraudulent use of a credit card), and she rarely visited her child when allowed. It was learned that appellant had been stabbed and the father had been shot during the course of this case plan. In sum, the case worker opined that appellant had made no worthwhile progress in the case plan. Testimony established that A.L. had been in the same foster home since she was removed from the parents, and the foster family was interested in adopting her.

A home study was conducted on Ms. DeSalvo's home shortly after A.L. came into DHS custody, in April 2011, but the home was not approved. The report reflected that the physical aspects of the home were appropriate, but appellant and the biological father were aggressive and hostile with Ms. DeSalvo rendering the home unsuitable for A.L. In fact, Ms. DeSalvo called DHS to withdraw her home as a potential placement at that time because of the threats and conflict she experienced with appellant and her son over the child. At the termination hearing, Ms. DeSalvo reinstated her interest in having A.L. in her home even

though she had not seen A.L. at all. She thought that her acquisition of an order of protection against appellant would resolve the harassment issues she experienced with appellant; she said she did not know where her son was.

The trial court heard closing arguments from the attorneys for DHS, the child, and appellant. Appellant's counsel urged the trial court not to terminate parental rights because there was a grandmother ready to be considered as a relative placement. The trial court orally rendered all the relevant findings to support termination of parental rights. The trial court commented that Ms. DeSalvo's request was admirable but not viable where the volatility with the parents was likely to return and the child needed stability and permanency. The trial court also noted that Ms. DeSalvo had not been in contact with DHS since her request to be removed from consideration as a placement, nor had she ever seen A.L. A formal order followed, as did this appeal.

Appellant now relies on Ark. Code Ann. § 9-27-355(b)(1) (Supp. 2011) and Ark. Code Ann. § 9-28-105 (Supp. 2011), for the proposition that preferential consideration for placement of a child taken into DHS custody is *at all times* with a qualified relative. She contends that the paternal grandparents were a potential placement for A.L. and that this statute should have weighed against terminating parental rights. We have rejected this very argument and decline appellant's invitation to revisit and overrule those decisions. *See Henderson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 430 (petition for rehearing denied August 22, 2012); *Dubois v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 401; *Davis v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 469, ___ S.W.3d ___ .

We agree with appellant that the purpose of the Juvenile Code is to provide permanency in a juvenile's life in all instances where return of the juvenile to the family home is contrary to the juvenile's health, safety, or welfare. Ark. Code Ann. § 9-27-341(a)(3) (Supp. 2011). This child could not be returned to her parents, a fact conceded by appellant. The trial court considered that placement with the grandmother would likely result in a return of chaos, and he considered that the grandmother had never even seen A.L. to establish a relationship with her. These considerations were relevant to A.L.'s best interest. In sum, the trial court's finding of clear and convincing evidence that it was in A.L.'s best interest to terminate appellant's parental rights was not clearly erroneous. *See Davis*, *supra*; Ark. Code Ann. § 9-28-105 (Supp. 2011).

We affirm.

PITTMAN and GLADWIN, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabith B. McNulty, Office of Chief Counsel, for appellee.

Keith Chrestman, attorney ad litem for minor child.