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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA13-71

TANGA STRONG APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES; E.S. and T.S., MINORS APPELLEES	**Opinion Delivered** May 1, 2013 APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. JV-2011-671-6] HONORABLE EARNEST E. BROWN, JR., JUDGE AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Tanga Strong appeals the September 28, 2012 order of the Jefferson County Circuit Court terminating her parental rights to her children, E.S. and T.S., ages five and seven, respectively.[1] On appeal she argues that the trial court's finding that potential harm would befall the children if returned to her was clearly erroneous. We affirm.

The Arkansas Department of Human Services (DHS) removed the children from appellant due to her drug use on October 24, 2011, when she tested positive for cocaine. An emergency order was filed on October 25, 2011, and the children were adjudicated dependent-neglected on December 16, 2011. The children were placed in foster care with Stephanie Dismuke, paternal grandmother of E.S. Appellant was ordered to cooperate with DHS; keep DHS informed of her residence and employment; refrain from using illegal drugs;

[1]The rights of any putative father to T.S., and Paul Courtney, father of E.S., were terminated by this order but are not the subject of this appeal.

have a drug-and-alcohol assessment and follow the recommendations; submit to random drug screens; complete parenting classes; obtain and maintain stable housing and employment; maintain a clean, safe home for herself and the children; and demonstrate the ability to protect the children. Appellant was referred to the Family Treatment Drug Court (FTDC).

At the February 23, 2012 FTDC review hearing, the trial court found that appellant had partially complied with the case plan and court orders. The trial court noted that appellant failed to produce a drug sample that day and had failed to attend parenting classes. Appellant received a "strike one" for failing to comply. At the March 29, 2012 FTDC review hearing, the trial court found that appellant was in compliance. Appellant did not attend the review hearing on April 26, 2012, and also failed to attend the May 30, 2012 review. The trial court noted that appellant failed to appear and failed to make contact with DHS. Further, appellant was expelled from the FTDC, and the trial court found that there was little likelihood that additional services would result in reunification.

A permanency-planning hearing was set for June 21, 2012, and it was continued to July 12, 2012. Appellant failed to appear at the permanency-planning hearing, and the case goal was changed to adoption. The trial court found that appellant had failed to comply with the case plan and court orders and had made no progress toward alleviating or mitigating the causes of the children's removal from the home. DHS filed a petition for termination of parental rights on August 8, 2012, alleging that other factors arose subsequent to the filing of the original petition that demonstrated that return of the children to appellant's custody would be contrary to the children's health, safety, or welfare and that, despite the offer of appropriate

family services, the parent had manifested the incapacity or indifference to remedy those issues. A termination-of-parental-rights hearing was set for September 20, 2012.

At the termination hearing, appellant testified that she had not completed a drug-treatment plan and had not maintained contact with DHS. She said that she was homeless, had no telephone, no job, and no transportation. She was unable to produce a specimen for a drug screen on the day of the hearing. She testified that she had last seen her children "months ago." She stated that she received food stamps and lived at the Executive Inn, a hotel, and that her estranged husband covered the expense by working at the hotel. She asked for more time to get a house and a job so that she could be reunited with T.S. and E.S. She testified that she has eight children, the oldest being twenty-five years old, and that they range down in age to four years old.

Kismich Youngblood, a unit supervisor for DHS, testified that appellant had not visited her children since the end of May 2012 and had not completed parenting classes. She further testified that appellant had been dropped from outpatient drug treatment for noncompliance. She said that appellant did not make herself available to DHS to perform random drug screens, and she opined that appellant had been noncompliant. She further opined that the children were adoptable and that there were no hindrances to their adoptability. Youngblood recommended that appellant's parental rights be terminated.

Stephanie Lynn Dismuke, grandmother to E.S., testified that both children had been placed with her. She testified that since their placement there, appellant had not maintained regular contact with her or called to check on the children regularly, even though appellant

had her telephone number. Appellant had not offered any financial support or gifts to the children, nor did she contact them on Christmas. Dismuke testified that she wanted to adopt the children should they become available for adoption.

The trial court found that DHS had proved by clear and convincing evidence that it was in the best interest of E.S. and T.S. that appellant's parental rights be terminated. The trial court noted that appellant had disappeared for the last six months and had not attempted to come to court or make visits and had stated to the caseworker that she did not want to see the children. The trial court found that there was no likelihood that services would lead to reunification and made a "best interest finding of that." It also found that appellant was still not employed and not in stable housing and granted the petition to terminate. In the resulting order, the trial court made a finding of aggravated circumstances and found that there was little likelihood that additional services would result in reunification. Appellant filed a timely notice of appeal, and this appeal followed.

Termination-of-parental-rights cases are reviewed de novo. *Hune v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 543. Grounds for termination of parental rights must be proved by clear and convincing evidence, which is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established. *Hughes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 526. 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). 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.* In resolving the clearly-erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). Termination of parental rights is an extreme remedy and in derogation of a parent's natural rights; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

In order to terminate parental rights, a trial court must find by clear and convincing evidence that termination is in the best interest of the juvenile, taking into consideration (1) the likelihood that the juvenile will be adopted if the termination petition is granted; and (2) the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii) (Supp. 2011). Additionally, the trial court must find by clear and convincing evidence that one or more statutory grounds for termination exists. *See* Ark. Code Ann. § 9-27-341(b)(3)(B). One statutory ground as set forth in the statute is that a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i).* Proof of only one statutory ground is sufficient to terminate parental rights. *Gossett v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 240, 374 S.W.3d 205.

Appellant argues that the trial court's finding that potential harm would befall the children's health and safety if returned to appellant was clearly erroneous, as was the finding

that there was little likelihood that further services would result in successful reunification. She argues that there was no evidence that the children's health and safety would be at issue if returned to her. She testified that she had a safe residence at the Executive Inn, with two beds, hot water, and facilities to keep and cook food. She also received food stamps and had arranged for her daughter to transport her to the grocery store. Therefore, she argues that she could provide the basic necessities of life to her children.

She contends that, while her drug-use status was not clear at the time of the termination hearing, DHS had failed to provide her with the resources she needed to become stable and accessible throughout the case. She suggests that DHS could have provided her with a prepaid cell phone, which would have allowed her to communicate with DHS and family members. She argues that she was homeless and jobless and that those issues played a factor in delaying reunification for the children. Therefore, she claims that DHS should have made a greater effort to assist her in resolving these issues. Instead, she contends, DHS put the burden on her. She claims that, due to her lack of resources, she was unable to regain custody of her children. She asserts that, because she was assigned so many caseworkers during the eleven months of this case, there was not enough time for the workers to implement a plan tailored to her specific needs. She contends that because she was homeless and without transportation or communication, she struggled to complete the two programs offered to her—family drug court and parenting classes. She claims that it was erroneous for the trial court to find that additional services would not result in reunification when, essentially, no services were provided.

The juvenile code allows for termination when it is in the child's best interest and one statutory ground has been proved. The trial court found that the children were adoptable. The testimony presented by Kismich Youngblood was that T.S. and E.S. were adoptable if parental rights were terminated. Stephanie Dismuke testified that she wanted to adopt the children. Therefore, the trial court's adoptability finding is not clearly erroneous.

This case began when appellant tested positive for cocaine in October 2011. Two months later, the trial court found that the children had been neglected. Over the next several months and review hearings, appellant failed to maintain contact with DHS, and an aggravated-circumstances finding was made. A June 1, 2012 order of the trial court found that there was little likelihood that additional services would result in reunification. This order was never appealed.

At the termination-of-parental-rights hearing, the evidence was that appellant had no home of her own; she still used illegal drugs; she had disobeyed court orders by failing to complete parenting classes and outpatient drug treatment; she had not obtained stable employment; and she did not maintain contact with E.S. and T.S. This evidence supports the trial court's finding that continued contact with appellant would cause E.S. and T.S. to suffer potential harm and was not clearly erroneous.

The trial court found that, since there had been a finding that there was little likelihood that services would result in successful reunification, aggravated circumstances existed. Under the juvenile code, this constitutes aggravated circumstances, and thus, valid statutory grounds. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i)*.

Affirmed.

PITTMAN and VAUGHT, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

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

Chrestman Group, PLLC, by: *Keith Chrestman*, for appellees E.S. and T.S.