NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-965

	Opinion Delivered January 28, 2009
DONNA SANDERS APPELLANT V.	APPEAL FROM THE UNION COUNTY CIRCUIT COURT, [NO. JV-2007-0129-3]
ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILD APPELLEES	HONORABLE EDWIN KEATON, JUDGE AFFIRMED

LARRY D. VAUGHT, Chief Judge

Donna Sanders appeals from the circuit court's order granting permanent custody of her daughter, B.S., to Wynonna Griffith, B.S.'s paternal grandmother. Sanders contends that the court erred in finding that there was sufficient evidence to award permanent custody of B.S. to Ms. Griffith. We affirm.

This case began on June 29, 2007, when the Department of Human Services exercised a seventy-two-hour hold on B.S. after being contacted by the sheriff's department. This contact followed a report filed by Christina Mitchell claiming that Robert Richards had taken the child to Mitchell's house, and Mitchell had agreed to watch the child until the mother showed up. The child's mother never arrived. Mitchell told DHS that she did not know the child's mother. On July 2, 2007, DHS petitioned for, and was granted, emergency custody of B.S. based on abandonment. The child's father, William Griffith, is not a party to this action.

Following an adjudication hearing on July 6, 2007, the circuit court found B.S. to be dependent-neglected. The goal of the case was reunification with Sanders, and DHS was ordered to develop a case plan. Custody of B.S. was continued in DHS. Sanders was ordered to complete parenting classes and mental-health counseling, to have a drug assessment and follow the recommendation of the assessment, to submit to random drug screens, and to treat DHS "appropriately" and keep DHS informed of her address.

The case plan developed by DHS set the following tasks for Sanders: maintaining employment, maintaining housing suitable for herself and B.S., continuing to receive medical services to ensure her medical condition became stable enough to care for B.S. and herself, attending individual counseling to deal with her emotional and mental-health issues, attending outpatient treatment as recommended in her assessment, and attending NA meetings three-four times per week until able to get into outpatient treatment. B.S. was to continue to receive early intervention services to address personal, social, and adaptive skills.

Following a review hearing on January 7, 2008, the circuit court held that returning custody of B.S. to the parent would be contrary to her welfare. The court placed B.S. in the temporary custody of Wynonna Griffith, her paternal grandmother, provided that B.S.'s father did not reside in the home. The court found that Sanders had not complied with the case plan in that she had failed to provide proof of attendance at NA/AA meetings, had missed counseling appointments, and had missed parenting classes. She was ordered to comply with all court orders, comply with the case plan, attend NA/AA meetings, complete outpatient treatment once available, contact her case worker to go over the case plan, and follow all

recommendations of her drug assessment. Sanders's visitation arrangement remained the same, with Griffith supervising the visits.

The permanency planning hearing was held on April 7, 2008. Sanders arrived late and was admonished by the court for interrupting and talking out of turn. Patty Redmond, the DHS caseworker assigned to this case, testified regarding Sanders's partial compliance with the case plan and court orders. Redmond testified that she could not verify Sanders's employment or her address. Redmond stated that Sanders attended her visits late, arriving at 10:30 when the visits started at 10:00, and began attending NA/AA meetings only the week before the permanency hearing. Redmond also testified that B.S. was doing extremely well under her grandmother's care. DHS recommended that permanent custody of B.S. be awarded to Griffith.

Dr. David Derr, Sanders's counselor, also testified. He stated that Sanders had been diagnosed with bipolar disorder, intermittent explosive disorder, campus abuse, and borderline personality disorder. Bipolar disorder causes frequent mood shifts, which create a great deal of difficulty in maintaining organization. The intermittent explosive disorder is also mood-related; it is an impulse disorder, which is difficult to regulate emotionally. Campus abuse impedes one's ability to make decisions. Borderline personality disorder is an emotional intensity disorder; it creates a great deal of difficulty in a person's ability to regulate their highs and lows, as well as their anger and temper.

Dr. Derr testified that he last treated Sanders in October, which limited his ability to help her. He further testified that her conditions are considered chronic and usually require

intensive treatment with medication and psychotherapy. Sanders was prescribed medication and individual therapy, and the last time she had her prescriptions renewed was January 24, 2008. He noted further that typically, a prescription is for a thirty or sixty-day supply.

Kay Hollis, lead counselor for South Arkansas Substance Abuse (SASA), testified. She testified that Sanders entered their program on Thursday, March 21, 2008. For four days, she was in the detoxification program, and then she was assigned to Hollis's caseload. According to Hollis, Sanders had just started the program, having had her first session the day before, when she asked if she could have a weekend pass. Hollis explained that SASA did not give weekend passes. Sanders left the program after completing six days out of the thirty-day program.

At the hearing, Sanders testified that she resided with her son, his girlfriend/fiancé, and their baby and had for almost three months. She testified that she and her boyfriend had broken up and that she intended to stay with her son and work as a self-employed house cleaner. She disputed Redmond's statement that she did not return phone calls. Sanders also recounted her version of events leading up to her leaving the SASA rehabilitation program and testified that after leaving SASA, she had attended NA meetings daily.

As to her mental health, Sanders testified that her doctor, Dr. Ken Prather, prescribed her medications. She claimed that she barely knew Dr. Derr and had only seen him once or twice. She further testified that she took her medications regularly and that she was scheduled to go back to see Dr. Prather on April 23. She stated that she had prescriptions for and took Depakote to control seizures, Diazepam, and Hydrocodone, which she had been "trying not to take." She claimed that she was no longer using Methadone.

Sanders testified that she did not believe that Griffith should have permanent custody of B.S. because Griffith lied when she previously told the court that she had no problem with Sanders and Sanders could see B.S. any time. Sanders testified that Griffith changed her telephone number "automatically" and would not let her speak to B.S. Sanders also claimed that at B.S.'s birthday party, Griffith asked Sanders to go into town to get some paper plates, and after returning only twenty minutes later, she had missed the opening of the gifts. Sanders also testified that when she left Griffith's house at about 7:00 p.m., B.S.'s father was still there and should not have been.

Griffith testified at the hearing that she had changed her telephone number since the last hearing because Sanders was calling her late at night to give her instructions on caring for B.S. but that she had always kept Redmond informed of her telephone number. She testified that she had been obeying the court's orders. She stated that her son had not been to her house when B.S. was present except during his Saturday visitation hours; he had been to her house at other times, but never when B.S. was home. She testified that the one exception was the day of B.S.'s birthday party, when her son stayed past his 5:00 p.m. visitation cut-off. She testified that if Sanders came unannounced to visit, she would allow her to visit with B.S. She stated that Sanders had been to her house to visit only once, for B.S.'s birthday party. On that occasion, Sanders arrived at 3:30 p.m., but left with her sister fifteen minutes later. Griffith testified that she did not send Sanders to get anything and that she had everything she needed at the house.

Ruling from the bench, the court found that it was not in the best interest of the child to be returned to Sanders. The court noted that—according to her own testimony and that

of Dr. Derr—Sanders was not attending counseling; she exhibited a lack of self-control throughout the hearing; she arrived late for nearly all visits with B.S.; her efforts to follow the court's orders regarding drug treatment were very recent; as late as January 7th, Sanders was unable to provide a urine sample for drug testing; and she had walked away from inpatient treatment. The court concluded that the juvenile's health and safety would not be adequately safeguarded if she were placed back in Sanders's custody. In its permanency planning and closing order, the circuit court made the following findings:

> 7. [Sanders] has not complied with the case plan in that she has failed to make her counseling appointments, was not attending NA/AA meetings until a few weeks ago, she was late for nearly all visitation with the juvenile and failed to complete inpatient drug counseling after checking herself in.
>
> 8. At this time, return to the custody of the parents is contrary to the welfare of the juvenile and placement in the permanent custody of Wynonna Griffith is in the best interest of and necessary to the protection of the health and safety of the juvenile.

The order stated that Sanders and B.S.'s father both had the obligation and ability to pay child support; a separate order of child support was to be entered at a later date. Additionally, visitation, which was to take place at the home of and under the supervision of Griffith, was set for both parents. Sanders's visitation was to be every Saturday from 11:00 a.m. until 1:00 p.m. The order was entered on May 28, 2008, and Sanders filed a notice of appeal on June 6, 2008, and an amended notice of appeal on June 25, 2008.

On appeal, Sanders challenges the sufficiency of the evidence supporting the award of permanent custody to Griffith. She argues that the trial court erred when it found that she had made only "recent efforts" to comply with court orders. She further argues that the trial court erred in finding that it was not in B.S.'s best interest to be returned to her and in finding that

B.S.'s safety and health could not be adequately safeguarded if returned to her, and she contends that the trial court should have allowed her more time to rehabilitate herself before awarding permanent custody. She also argues that Griffith is not a suitable custodian.

The burden of proof in dependency-neglect proceedings is by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2008). On appeal, we will not reverse the trial court's findings unless they are clearly erroneous, giving due regard to the trial court's opportunity to judge credibility of the witnesses. *Ark. Dep't of Human Servs. v. McDonald*, 80 Ark. App. 104, 91 S.W.3d 536 (2002). A finding is clearly erroneous when, although there is evidence to support the finding, after reviewing all the evidence the court is left with a definite and firm conviction that a mistake has been made. *Id.*

Ark. Code Ann. § 9-27-338(c)(Repl. 2008) provides that at the permanency planning hearing the circuit court shall enter one of the following permanency goals, listed in order of preference, in accordance with the best interest of the juvenile: (1) returning the juvenile to the parent if it is in the best interest of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home; (2) authorizing a plan for the termination of the parent-child relationship unless the juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile; (3) authorizing a plan to obtain a guardian for the juvenile; (4) authorizing a plan to obtain a permanent custodian, including permanent custody with a relative, for the juvenile; (5) continuing with the goal of reunification if certain conditions are met. Under section 9-27-338(c)(5), the trial court is permitted to continue with the goal of reunification "only when the parent is complying with the established case plan and orders of the court, making significant measurable progress

towards achieving the goals established in the case plan and diligently working toward reunification." In addition, it must be shown that reunification is "expected to occur within a time frame that is consistent with the juvenile's developmental needs." Ark. Code Ann. § 9-27-338(c)(5)(B). "The burden is on the *parent* to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to retain reunification as the permanency goal." Ark. Code Ann. § 9-27-338(c)(5)(D) (emphasis added).

Sanders argues that the permanency planning hearing was premature and that, under Ark. Code Ann. § 9-27-338(a)(1)(A), she should have been given twelve months to rehabilitate herself before a permanency planning hearing was held. However, Sanders did not raise this argument below; consequently, she is barred from raising it on appeal. *Ark. Dep't of Health & Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007). Next, Sanders argues that the circuit court erred in finding that it was not in B.S.'s best interest and that her safety could not be adequately safeguarded if she were returned home. This argument is used to support Sanders's contention that the court erred in finding that she had only made "recent efforts" to comply with court orders. In response, she points specifically to (1) her attendance at visitation, (2) her submission to random drug tests, (3) her completion of parenting classes, (4) her pursuit of mental-health treatment, and (5) submitting to drug and alcohol assessment and following the recommendations made.

While the evidence showed that she attended visitation, Sanders consistently arrived thirty minutes late. And, although she did submit to random drug screens, she tested positive for multiple substances during this case, including cocaine and Methadone. Sanders also left

the drug rehabilitation center without completing the program, and only began attending NA meetings after leaving the program in the end of March 2008. Additionally, she missed scheduled appointments for her medication management and psychotherapy. Further, Sanders followed some, but not all, orders of the court. She neither kept DHS informed of her address nor maintained a permanent address for much of the case. Because Sanders was not complying with the case plan and court orders, we cannot say it was error for the circuit court to conclude that reunification was no longer in B.S.'s best interest.

Finally, Sanders argues that Griffith has not been appropriately guarding B.S.'s health and safety. Sanders's argument is based on the one time that Griffith allowed her son, B.S.'s father, to stay past his allotted visitation on the day of B.S.'s birthday party. However, the record contains substantial evidence that Griffith was providing a stable, nurturing environment for B.S. As such, it was not clearly erroneous for the circuit court to determine that it was in B.S.'s best interest and was necessary to her health and safety to be in Griffith's permanent custody.

Affirmed.

ROBBINS and GRUBER, JJ., agree.