Cite as 2011 Ark. App. 401

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-110

	Opinion Delivered June 1, 2011
CRYSTAL DUBOIS APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. JV-2009-855-3]
V.	HONORABLE STACEY ZIMMERMAN, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order terminating appellant's parental rights to two children, three-year-old A.W.J. and four-year-old A.W. Appellant, who was incarcerated at the time of the hearing, concedes on appeal that she was in no position to reunify with her children at the time of termination but argues that the termination order was premature because it was entered prior to the completion of three pending home studies. We affirm.

The children were removed from appellant's custody in December 2009 after the Arkansas Department of Human Services investigated a report that appellant was using and selling methamphetamine in the presence of her children. Hair-follicle screens were performed on both children, which proved positive for amphetamine and methamphetamine. Appellant had a baby in October 2009 who tested positive for methamphetamine at birth. These factors, and evidence that appellant's home was "filthy, unsafe, and horrifically unfit"

resulted in an adjudication that the children were dependent-neglected in January 2010. A case plan was developed, but appellant did not comply with it, failing to submit to a psychological examination, participate in individual counseling, undergo a drug-and-alcohol assessment, complete parenting classes, or submit to drug screens on a consistent basis. When appellant did submit, she tested positive for methamphetamine.

Appellant does not argue that this evidence is insufficient to support termination of her parental rights but instead argues that termination was premature because three home studies were still pending when the termination order was entered. Appellant bases this argument on Ark. Code Ann. § 9-27-355(c)(1) (Repl. 2009) and Ark. Code Ann. § 9-27-338(c)(3)(A) (Repl. 2009). We cannot address this argument, however, because it was not raised at the hearing. It is well established that an appellant must raise an issue and make an argument to the circuit court for it to be preserved for appeal. *Porter v. Arkansas Department of Health & Human Services*, 374 Ark. 177, 286 S.W.3d 686 (2008).

Even were the argument properly before us, we would find no error. We rejected the contention based on section 9-27-355(c)(1) in *Davis v. Arkansas Department of Human Services*, 2010 Ark. App. 469, at 6–7, where we said:

> In making her argument that her parental rights should have been kept intact, appellant relies upon Arkansas Code Annotated section 9-27-355(c)(1) (Repl. 2009) which states that "a relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the juvenile's best interest to be placed with the relative caregiver." Appellant's argument is misplaced. There is no comparable language in section 9-27-341, which is the termination statute. Section 9-27-355 concerns an initial placement of a juvenile after that juvenile is taken into DHS custody, not a placement when termination of rights has been requested.

With respect to the section 9-27-338(c)(3)(A) contention, that section of the code provides that termination with the goal of adoption is not permitted where the child is being cared for by a relative and termination of parental rights is not in the best interest of the child. Here, the child was not being cared for by a relative, and there was no evidence that any of the home studies requested involved relatives. Most likely they did not. At the hearing, appellant testified:

> I'm not even going to lie to you. I don't have family. I know my family inside and out. I don't want my children to be placed for adoption with a foster family. I mean, if [the children's godmother Peggy] could get them and my rights are terminated, I'd be okay with that because she could write and tell me my children are fine.

Peggy was not related to appellant or the children, and, significantly, no home study had been requested with respect to her, not even at the termination hearing. Section 9-27-338(c)(3)(A) is completely inapplicable to these facts.

Affirmed.

VAUGHT, C.J., and WYNNE, J., agree.