

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA11-301

SAMANTHA CRIHFIELD

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** September 14, 2011

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. JV-10-505-3]

HONORABLE JAY T. FINCH, JUDGE

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Appellant Samantha Crihfield appeals from an order terminating her parental rights in her two children, J.E. and A.C., ages four and three. Her sole argument is that the trial court abused its discretion in denying her motion for a continuance. We affirm.

Appellant and her children lived in a home where methamphetamine was being manufactured. In May 2010, police arrested the adult occupants of the home, including appellant, whom they charged with endangering the welfare of a minor; exposing a child to a chemical substance; manufacturing a controlled substance in the presence of a minor; and using or possessing drug paraphernalia with intent to manufacture methamphetamine. The Arkansas Department of Human Services (DHS) obtained emergency custody of the children, and the circuit court adjudicated them dependent-neglected due to abuse or neglect that could endanger their lives. Appellant's termination hearing was set for November 16, 2010.

On November 15, 2010, at 2:15 p.m., appellant's attorney, who was appointed the previous June, filed a motion for a continuance. The motion recited that counsel needed



additional time to prepare for the hearing because she had several other trials; that appellant's criminal charges had not yet been resolved; that the children had not been out of the home for twelve months; and that the children's stability would not be affected by a continuance because they were living with a family member. The circuit court addressed the motion at the start of the next day's hearing.

Counsel stood on her motion and informed the court that appellant's criminal case was scheduled for a status hearing on November 29, 2010. She additionally argued that she had not received DHS's court report or exhibit list until shortly before the hearing. The court asked counsel what she would do differently if a one-month continuance were granted. Counsel responded that she might seek more services for appellant or file a motion based on lack of appropriate services under the Americans With Disabilities Act.

DHS objected to the continuance on the grounds that appellant's counsel had adequate time to prepare for the hearing; that the criminal proceeding was a separate matter; and that the exhibit list consisted of documents that were already part of the record and should have been in counsel's file. The prosecuting attorney came forward to say that the November 29 status hearing would merely set appellant's criminal case for trial the following spring.

The court denied the continuance and went forward with the proceedings. After hearing the evidence, the court entered an order terminating appellant's parental rights.<sup>1</sup> The court found that the children were likely to be adopted; that there was potential harm in

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<sup>1</sup> The court also terminated the parental rights of the children's father, John Ellis. He is not a party to this appeal.



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returning the children to appellant; and that two grounds for termination existed: 1) the children had been adjudicated dependent-neglected as the result of neglect or abuse that could endanger their lives; and 2) the children were subjected to aggravated circumstances in that there was little likelihood that services to appellant would result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(vi)(a) & (ix)(a)(3)(A), (B)(i) (Repl. 2009). Appellant does not challenge these findings on appeal. Her arguments are limited to the circuit court's denial of a continuance.

A motion for continuance shall be granted only upon a showing of good cause. *Butler v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 570, at 4. We will not reverse the denial of a motion for continuance absent an abuse of discretion amounting to a denial of justice. *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 401, 219 S.W.3d 705, 708 (2005). A circuit court abuses its discretion when it acts improvidently and without due consideration. *Henderson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 481, at 5.

We hold that no abuse of discretion occurred here. The termination hearing had been set since August 2010, and appellant's counsel was appointed in June 2010. Yet counsel waited until November 15, the afternoon before the hearing, to seek a continuance based partly on lack of preparedness. A movant's failure to exercise diligence is a factor to be considered by the circuit court in deciding whether or not to grant a continuance. *See Butler*, 2010 Ark. App. 570, at 5; *Smith*, 93 Ark. App. at 401, 219 S.W.3d at 708.

With regard to appellant's claim that she did not receive DHS's exhibit list or all exhibits until just before trial, the majority of the exhibits complained of consisted of pleadings



or other matters already on file or entered into evidence at previous hearings. Appellant does not say how DHS's earlier provision of these exhibits, or the few remaining ones, would have affected her hearing. *See Smith*, 93 Ark. App. at 401, 219 S.W.3d at 708 (holding that an appellant must demonstrate prejudice from the denial of the continuance).

Neither has appellant demonstrated prejudice in being required to go forward with the termination hearing before the November 29, 2010 status hearing in her criminal case. The prosecutor informed the court that the status hearing would accomplish nothing more than scheduling appellant's trial. Further, the circuit court did not rely on the duration of appellant's incarceration as a ground for termination.

As her primary argument on appeal, appellant contends that the circuit court predetermined the outcome of her case. Appellant cites the trial judge's comment that he disliked granting continuances in termination cases unless he knew of information that would likely result in a denial of termination. She also cites remarks by the judge that her request for a continuance evidenced her attorney's "real difficult time talking to [appellant and getting appellant] to fully grasp and understand what's going on here," and that the need for additional time was "evidence that [appellant] may not be a fit and proper person to have her children in her care."

The record reflects that the court duly considered the merits of appellant's motion for a continuance and denied it primarily because appellant could not demonstrate the advantage of a one-month postponement. The court's statements regarding the continuance request did mis-characterize appellant's reasons for seeking additional time. But we see no grounds to



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reverse in this instance. Appellant did not object to the remarks, argue that the court was biased, or seek the court's recusal. *See Lipps v. Lipps*, 2010 Ark. App. 295, at 6 (refusing to address an issue involving the trial judge's intemperate remarks from the bench where the appellant did not make an argument below with regard to the remarks, nor ask the judge to recuse).

The termination of parental rights order is affirmed.

Affirmed.

HART and GLOVER, JJ., agree.

*Leah Lanford*, Arkansas Public Defender Commission, for appellant.

*Tabitha McNulty*, Office of Chief Counsel, for appellee.

*Bristow & Richardson P.L.L.C.*, by: *Melissa B. Richardson*, attorney ad litem for minor children.