

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-334

MICHELLE WARD

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD

APPELLEES

Opinion Delivered September 21, 2011

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. JV-2010-376]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Michelle Ward appeals from an order of the Lonoke County Circuit Court adjudicating her daughter A.S., born September 5, 2010, dependent-neglected. Ward's sole point on appeal is that the evidence was insufficient to support the court's determination. We affirm the court's order.

A.S. was removed from Ward's custody at birth when A.S. tested positive for drugs, but the court dismissed the dependency-neglect petition and returned A.S. to Ward's custody. The Arkansas Department of Human Services (DHS) continued to maintain an open protective-services case on the family. Ward was sentenced to probation in September 2010 for possession of a controlled substance and reported to probation officer Kim Lloyd. Because of repeated positive drug screens, Ward's monthly reporting duty was changed to a weekly report. When Ward continued to have positive drug screens, Officer Lloyd called Ward's DHS caseworker, Bridgette Austin, out of concern for A.S. to see if there was still an open



protective-services case.

Because of Officer Lloyd's phone call, Ms. Austin visited Ward's home on November 15, 2010, and requested a drug screen. Ward tested positive for methamphetamine. Ms. Austin testified that when she arrived at the home, Carol Stivers, A.S.'s paternal grandmother with whom Ward and A.S. lived, invited her in. Ms. Austin said that the home was very cold, that A.S. was wearing a short-sleeved outfit and sitting in her car seat, and that Ward did not stay inside with them, initially claimed that she could not take a drug screen, and kept going outside. Ms. Austin arrived at 12:50 p.m. and finally obtained a drug screen at 3:20 p.m. During this visit, the caseworker who was with Ms. Austin picked up A.S., and A.S.'s diaper was soaking wet through to her clothes. There was also urine in the car seat. Ms. Stivers changed the baby's diaper but left her in the wet outfit. Ms. Austin testified that Ward did not interact with the baby that day and was argumentative, distant, and "paranoid." Ms. Austin testified that she put a hold on A.S. because Ward tested positive for methamphetamine and was behaving oddly and because it concerned her that A.S. was in such a cold home sitting in urine. An order for emergency custody was entered on November 18, 2010, and a probable cause order was entered on November 22, 2010.

At the adjudication hearing held on January 4, 2011, Ms. Austin testified that Ward tested positive for methamphetamine and THC at the staffing one week before the hearing. Officer Lloyd testified that Ward had reported the day before the hearing and tested positive for amphetamine. She said that she would be filing a violation report that would be submitted to the prosecuting attorney's office to prepare a petition to revoke Ward's probation. The



court entered an adjudication order on January 4, 2011, finding A.S. dependent-neglected based on Ward's drug use. Ward filed this appeal from the court's order.

Adjudication hearings are held to determine whether the allegations in a petition are substantiated by the proof. Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009). Dependency-neglect allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009). We will not reverse the circuit court's findings unless they are clearly erroneous. *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733. In reviewing a dependency-neglect adjudication, we defer to the circuit court's evaluation of the credibility of the witnesses. *Id.* And in an adjudication hearing, the focus is on the child, not the parent; at this stage of a proceeding, the juvenile code is concerned with whether the child is dependent-neglected. *Id.* An adjudication of dependency-neglect occurs without reference to which parent committed the acts or omissions leading to the adjudication; the juvenile is simply dependent-neglected. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 283, 248 S.W.3d 498, 502 (2007).

Ward contends on appeal that the court's sole reason for finding A.S. dependent-neglected was Ward's drug use and that drug use is not a proper statutory ground. Ward argues that there was no finding that Ward was neglecting A.S.'s care. The relevant statute defines a dependent-neglected juvenile as "any juvenile who is at substantial risk of serious harm as a result of . . . [a]bandonment, [a]buse, [s]exual abuse, [s]exual exploitation, [n]eglect, [p]arental unfitness; or [b]eing present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian." Ark.



Code Ann. § 9-27-303(18)(A) (Repl. 2009).

In *Maynard v. Arkansas Department of Human Services*, 2011 Ark. App. 82, 389 S.W.3d 627, we affirmed the circuit court's adjudication of dependency-neglect where the circuit court found that Maynard failed to take reasonable action to protect her child from neglect or parental unfitness when the existence of the condition was known or should have been known when she tested positive for methamphetamine and other drugs while the child was in her care and custody. In affirming the court's finding, we noted that the statutory definition of a neglected child does not require proof of actual harm or impairment having been experienced by the child. "The term 'substantial risk' speaks in terms of future harm." *Maynard*, 2011 Ark. App. 82, at 7, 389 S.W.3d at 630. We then reasoned that Maynard's drug use affected her ability to care for her child in at least two ways: by exposing her to criminal liability, which would inevitably affect her child's well-being because she could not care for her child if she were incarcerated, and by potentially impairing Maynard's ability to care for her child while under the influence of drugs.

In this case, A.S. was born with drugs in her bloodstream and immediately placed in DHS custody. Ward was placed on probation and continued to have drug screens that were positive for drugs. Two months later during a routine home check, Ward tested positive for methamphetamine, appeared paranoid and argumentative, and A.S. was found sitting in a urine-soaked car seat dressed inappropriately for the weather in a soaking wet diaper. Between the time that the emergency hold was placed on A.S. in mid-November and the adjudication hearing was held on January 4, Ward had several positive drug tests. Ward's



probation officer testified that she would be filing a probation-violation report.

While “drug use” is not set forth as a ground in this code section, neglect and parental unfitness are. In its adjudication order, the court listed as a specific reason for its finding of dependency-neglect: “drug use of the mother.” But the court also noted that A.S. was placed in foster care immediately after she was born and that, in addition to the positive drug test on November 15, 2010, there were “environmental concerns” and Ward “appeared unable to properly take care of [A.S.]” Moreover, we do not think it is clear error for the court to consider that Ward’s continued drug use in this case could constitute parental unfitness or neglect of her newborn daughter. Our de novo review does not leave us with a firm conviction that a mistake has been made here. We affirm the circuit court’s order.

Affirmed.

GLADWIN and WYNNE, JJ., agree.

Deborah Sallings, Arkansas Public Defender Commission, for appellant.

Tabitha McNulty, Office of Chief Counsel, for appellee.

Chrestman Group, PLLC, by: *Keith L. Chrestman*, attorney ad litem for minor child.