

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA11-639

COLLEEN NEW and BILLY NEW
APPELLANTS

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES and MINOR CHILDREN
APPELLEES

Opinion Delivered October 12, 2011

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[No. JV-09-41]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellants Colleen and Billy New appeal from a March 28, 2011 order entered by the Lonoke County Circuit Court terminating their parental rights to A.N., their four-year-old daughter. We see no error and affirm.

The termination of parental rights at issue in this appeal followed the removal of A.N. and her stepbrother, M.N., from appellants' custody pursuant to an emergency order filed on February 12, 2009, following an investigation by the Arkansas Department of Human Services (DHS). The inquiry revealed that Colleen had choked her stepson, M.N., and left marks on his face and neck that were observed and reported by his teacher.

Following the removal, M.N. was placed in the custody of his maternal grandmother; however, DHS concluded that there were no viable "relative" placements for A.N., specifically denying a placement of A.N. in the care of her maternal grandfather, Burris Null. Subsequent to the denial, Null hired an attorney and filed a motion to intervene in the case. Although Null



was not mentioned in any of the court's orders (including the order of termination), the court did acknowledge at the termination hearing that Null had filed a motion to intervene and would be allowed to participate in the case only to the extent that A.N.'s placement was at issue. The court specifically stated that Null would not be allowed to present any evidence as to whether the underlying termination of parental rights was proper.

At the hearing, Null was allowed to participate in the cross-examination portion of DHS's case-in-chief. However, after appellants presented their defense, the court terminated their parental rights and placed A.N. for adoption. Following the termination decision, Null questioned the court as to why he was not permitted to present "his case" on the issue of placement in his role as an intervenor. The trial court responded that it had allowed him to cross-examine witnesses for "two days" and that he would receive notice of any future placement hearings. In response, A.N.'s court-appointed ad litem noted that Null's rights were derivative of Colleen's rights, and now that her parental rights had been terminated, Null no longer had standing to participate in any aspect of the case. The court acknowledged the point and agreed that it would "look into that."

Appellants now argue that the trial court's decision to limit Null's participation in the termination and placement proceedings violated his due-process rights and that violation directly impacted their parental rights. However, appellants have no standing to argue on behalf of Null. *Cassidy v. Ark. Dep't of Human Servs.*, 76 Ark. App. 190, 61 S.W.3d 880 (2001). It was Null, not appellants, who was allegedly denied the opportunity to "present or proffer proof regarding whether it would be in A.N.'s best interest to be placed in his care." As such, it is his burden to establish that his due-process rights were violated, and there is no evidence or argument



justifying how or why the burden should or could be shifted to a third party. *Burdette v. Dietz*, 18 Ark. App. 107, 711 S.W.2d 178 (1986). Therefore, our review on appeal is limited to the question of how the denial of Null's desired level of participation directly impacted appellants' rights.

However, our consideration of appellants' claim of prejudice is prohibited by their failure to make any objections or arguments to the trial court relating to the alleged prejudice they suffered as a result of Null's limited participation in the matter. Because we will not presume that a trial court erred, it is an essential requirement that appellants must produce a record showing reversible error. *Johnson v. State*, 342 Ark. 357, 28 S.W.3d 286 (2000). Here, appellants failed to make any record below of the alleged harm they suffered by the trial court's decision to limit Null's role in the proceeding, and they failed to proffer the relevant testimony. In order for us to conduct a meaningful review of the potential prejudice suffered, the record must contain not only an objection outlining why the exclusion of the testimony was improper (and a corresponding ruling by the trial court), but also a proffer of the excluded testimony. *Morton v. State*, 2011 Ark. App. 432, 384 S.W.3d 585. As such, we are unable to reach the merits of appellants' argument that they suffered collateral prejudice from an alleged breach of Null's due-process rights. Therefore, the trial court's decision to terminate appellants' parental rights is affirmed.

Affirmed.

HOOFFMAN and BROWN, JJ., agree.

Leah Lanford, Ark. Pub. Defender Comm'n, for appellant.

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

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