

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-1088

TRACY GEORGE LOWE
APPELLANT

V.

ARKANSAS DEP'T OF HUMAN
SERVS. and MINOR CHILD
APPELLEES

Opinion Delivered February 15, 2012

APPEAL FROM THE ST. FRANCIS
COUNTY CIRCUIT COURT,
[NO. JV-11-57]

HONORABLE ANN HUDSON,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Tracy George Lowe appeals from an order of the St. Francis County Circuit Court adjudicating her daughter, K.A., dependent-neglected. She argues on appeal that the evidence was insufficient to support the court's determination. We affirm.

DHS exercised a seventy-two-hour hold on K.A. on April 11, 2011, after she showed up at a hearing in Crittenden County Juvenile Court without a parent or guardian present. At the time of the juvenile court hearing, K.A. was sixteen years old.¹ According to DHS's affidavit in support of its petition for emergency custody and dependency-neglect, K.A. had been involved in a fight with a male and had suffered a head injury, which required medical

¹She turned seventeen three months later.



attention.² A background check revealed that she was listed as a runaway from Illinois, where she had been living with her father and grandmother. The court granted DHS emergency custody of K.A. on April 14, 2011. A probable-cause order was entered on April 19, 2011.

The court held an adjudication hearing on July 19, 2011. Evette Boyd, the family service worker assigned to K.A., testified that K.A. was currently in a foster home in St. Francis County.³ She stated that K.A. was working on obtaining her GED and that DHS had developed a case plan that called for the return of K.A. to Lowe. According to Boyd, Lowe was employed in St. Francis County. Boyd said that prior to coming into DHS's custody, K.A. lived part time with her mother and part time with her brother. Boyd testified that although DHS wished to return K.A. to her mother, it wanted to continue services.

Appellant testified that although K.A. was living with her at the time, she was unaware that her daughter had a case in Crittenden County Juvenile Court. She also stated that she did not know the reason K.A. was in court in Crittenden County. Lowe testified that she “guess[ed]” K.A. was visiting her stepfather because Lowe was at work. She said that she did not know anything about why K.A. was “picked up.” She testified that K.A. was not going to school “like she was supposed to do.” Lowe said that she had discussed the possibility of obtaining a GED with K.A., and that when K.A. went into foster care, “they set it up so she could take the classes.” Lowe stated that when K.A. was in her custody, K.A. was going to

²Based on the affidavit, K.A. was living in Crittenden County with her stepfather and brother.

³K.A. had just been moved to St. Francis County from Monticello the night before the hearing.



school “very seldom.” She explained that she was at work a lot and could not make sure that K.A. was attending school. She said that she was notified about K.A.’s absences from school, but that she did not know exactly when. Lowe stated that the only problems she had with K.A. were the regular teenager discipline problems. She testified that once K.A. gets her GED, she can provide appropriate supervision for K.A. Lowe told the court that she never inquired into what trouble K.A. got into in Crittenden County.

Beatrice Isom, the foster care supervisor for St. Francis County, testified about the circumstances that led to DHS’s involvement in this case. She opined that K.A. should be returned to Lowe. According to Isom, Lowe’s position had changed and Lowe “now is more aware of K.A.’s problems and behaviors and what is expected of her.” Isom testified on cross-examination that K.A. would still be able to receive GED services if she was returned to Lowe.

The court filed an order on August 8, 2011, adjudicating K.A. dependent-neglected based on inadequate supervision.⁴ Lowe filed a timely notice of appeal. This appeal followed.

Lowe argues on appeal that there was insufficient evidence to support the court’s adjudication of K.A. as dependent-neglected. Adjudication hearings are held to determine whether the allegations in a petition are substantiated by the proof.⁵ Dependency-neglect allegations must be proved by a preponderance of the evidence.⁶ We will not reverse the

⁴The order also returned custody of K.A. to Lowe.

⁵Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009).

⁶Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009).



circuit court’s findings unless they are clearly erroneous.⁷ In reviewing a dependency-neglect adjudication, we defer to the circuit court’s evaluation of the credibility of the witnesses.⁸ 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.⁹ 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.¹⁰

Arkansas Code Annotated section 9-27-303(18)(A)¹¹ defines a “dependent-neglected juvenile” as any juvenile who is at substantial risk of serious harm as a result of abandonment, abuse, sexual abuse, sexual exploitation, or neglect. The definition of “neglect” in section 9-27-303(36)(A) includes acts or omissions of a parent that constitute the failure or refusal to provide the necessary education required by law as well as the failure to appropriately supervise the juvenile that results in the juvenile’s being left alone at an inappropriate age or in *inappropriate circumstances*, creating a dangerous situation or a situation that puts the juvenile at risk of harm. (Emphasis added.) The statutory definition of a neglected child does not

⁷*Seago v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733.

⁸*Id.*

⁹*Id.*

¹⁰*Albright v. Ark. Dep’t of Human Servs.*, 97 Ark. App. 277, 283, 248 S.W.3d 498, 502 (2007).

¹¹(Repl. 2009).



require proof of actual harm or impairment having been experienced by the child.¹² The term “substantial risk” speaks in terms of future harm.¹³

The court cited inadequate supervision to support its decision to adjudicate K.A. dependent-neglected. Evidence at the hearing revealed that K.A. was involved in a fight in Crittenden County that resulted in her receiving medical attention for a head injury. She subsequently had a criminal charge filed against her in Crittenden County Juvenile Court. In April 2011, K.A. was living with Lowe in St. Francis County, but she showed up at the hearing in Crittenden County alone. A background check revealed that K.A. was listed as a runaway from the state of Illinois. Therefore, an emergency hold was placed on her and she was put in foster care. Lowe testified at the adjudication hearing that she was having trouble with K.A. attending school on a regular basis, and that she did not know whether K.A. was going to school due to Lowe’s work schedule. Lowe also stated that she did not have any knowledge that her sixteen-year-old daughter had a case pending in Crittenden County until after K.A. was placed in foster care. Under these facts, we cannot say that the circuit court was clearly erroneous by adjudicating K.A. dependent-neglected. Therefore, we affirm.

Affirmed.

HART and HOOFFMAN, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha Baertels McNulty, Office of Chief Counsel; and *Melissa Richardson*, for appellees.

¹²See *Maynard v. Ark. Dep’t of Human Servs.*, 2011 Ark. App. 82, 389 S.W.3d 627.

¹³*Id.*