

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-1125

RANDY WELLS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered February 22, 2012

APPEAL FROM THE BAXTER
COUNTY CIRCUIT COURT,
[NO. J-11-499]

HONORABLE MARK THOMPSON
FRYAUF, JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Randy Wells appeals from the order of the Benton County Circuit Court adjudicating his adopted daughter, N.W., dependent-neglected due to sexual abuse. On appeal, Wells argues that the trial court erred in finding that N.W.'s allegations of sexual abuse by him were proven by a preponderance of the evidence. We affirm.

On June 8, 2011, a report was made to the Child Abuse Hotline that N.W. had been the victim of sexual abuse by Wells. According to the affidavit attached to the petition for emergency custody and dependency-neglect, an investigator with the Crimes Against Children Division interviewed N.W. and arranged a physical examination of her on June 9. N.W. disclosed that Wells had fondled her breasts and genitals and penetrated her vagina with his fingers. The physical exam also allegedly showed abrasions to the genital area. The affidavit further stated that N.W.'s mother had immediately expressed her disbelief in the



allegations and had indicated that N.W. was a pathological liar. DHS exercised an emergency hold on N.W. at that time, although her seventeen-year-old brother, who also denied the allegations, was permitted to remain in the home.

An order for emergency custody was entered on June 14, 2011, and probable cause for removal was found at a hearing held on June 21, 2011. The adjudication hearing was held on August 2, 2011. Sue Stockton, a registered nurse and certified sexual-assault examiner who had performed more than 1,500 exams, testified that she examined N.W. on June 9. Neither of N.W.'s parents were present during the examination. Stockton first obtained a history from N.W., who stated that her adoptive father had touched her all over, usually in the mornings before school, and that he had placed his finger in her vagina. N.W. told Stockton that she usually put her face under her pillow and tried to pretend that she was asleep when the abuse occurred.

Stockton next performed a physical examination, which revealed two unusual findings that she indicated were nonspecific to sexual abuse. The first finding was "posterior labial adhesions," which Stockton testified was scar tissue on N.W.'s labia minora, where the labia had adhered together at the bottom of the posterior edge. According to Stockton, this condition is suspected to be caused by friction and is typically found in toddlers who are wearing diapers; it is a highly unusual finding in a thirteen-year-old girl. Stockton testified that this finding was consistent with, and lent credibility to, N.W.'s allegations of touching and rubbing on her genital area, although there could be other possible explanations for the adhesions. The second nonspecific finding was that N.W. had unusually small genital



structures. Stockton testified that the significance of this finding was that it would be extremely painful for N.W. if anyone tried to put an object through her hymen into her vagina and that there would be a lot of bleeding.

N.W. testified that her father first touched her inappropriately when she was eleven years old. She stated that she had been swimming and that she had fallen asleep afterward watching television with her mother on her parents' bed. N.W. woke up and stated that her father was on the other side of the bed and that he was touching her breasts and her vaginal area, at first over her clothing and then underneath. She testified that he was "moving around, and feeling, and rubbing" with his hands for ten to fifteen minutes and that he stopped when she kept moving away from him and closer to where her mother was lying asleep. N.W. stated that Wells continued to touch and rub her inappropriately on her breasts and vagina for the next two years, at least once or twice a week, and that his hand might have gone inside the lips of her vagina, although she was not sure because she did not know what that felt like. She also stated that the touching would hurt and that she would pull away. The last time that it happened was at the end of May, according to N.W., when Wells came into her bedroom in the morning while she was still asleep. She saw him in his pajama pants and then hid her face under her pillow as she usually did while he abused her. She stated that her mother was in the house but that her brother had left for work.

According to N.W., she had started to tell her mother about the abuse on multiple occasions but always stopped herself because she felt guilty and did not want to hurt her mother, who would often say that Wells meant everything to her and that he was her life.



N.W. also stated that she was afraid that her family would not have a place to live without Wells because her mother was unable to work. She testified that she finally told a teacher, with whom she had a close relationship, on June 8, 2011, because she was overwhelmed with stress and realized that she could not stop the abuse herself. Although she stated that her mother did not believe her accusations, N.W. testified that she was telling the truth about Wells.

The trial court entered its adjudication order on August 16, 2011, and found that N.W. was dependent-neglected due to sexual abuse by Wells and also due to her mother's failure to provide appropriate shelter, food, and care after she became aware of the abuse. The court specifically found the testimony of both Stockton and N.W. to be consistent and credible. The court further found that the sexual abuse by Wells had been proven by clear and convincing evidence and that it constituted aggravated circumstances under Ark. Code Ann. § 9-27-341. Wells has timely appealed from the adjudication order.

Adjudication hearings are held to determine whether the allegations in a dependency-neglect petition are sustained by the proof, and the allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Supp. 2011). On appeal, we will not reverse the trial court's findings unless they are clearly erroneous. *Ward v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 550. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Blanchard v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 785, 379 S.W.3d 686. In determining whether a finding is



clearly erroneous, the appellate court gives a high degree of deference to the superior position of the trial court to judge the credibility of the witnesses. *Id.*

Under Ark. Code Ann. § 9-27-303(18)(A)(iii) (Supp. 2011), a dependent-neglected juvenile includes a child who is at substantial risk of serious harm as a result of sexual abuse. “Sexual abuse” includes sexual contact by a caretaker to a person younger than eighteen years of age. Ark. Code Ann. § 9-27-303(51)(C)(i). Sexual contact is defined as any act of sexual gratification involving touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile, or the breast of a female juvenile. Ark. Code Ann. § 9-27-303(52)(A)(i). Direct proof that the act was done for sexual gratification is not required if it can be inferred from the attendant circumstances that the desire for sexual gratification was a plausible reason for the act. *Blanchard, supra*; Ark. Code Ann. § 9-27-303(52)(B).

Wells argues that DHS failed to prove N.W.’s allegations by a preponderance of the evidence and that the trial court therefore erred in its finding of sexual abuse. He contends that N.W.’s testimony should be closely examined and her credibility questioned because the physical findings were either absent or highly suspect in this case. Wells points to Stockton’s testimony about N.W.’s unusually small genital structures; he argues that the type of abuse described by N.W. would cause her extreme pain and bleeding according to Stockton, yet there was no report of bleeding or evidence of an acute injury.

However, N.W. testified that the abuse hurt and that she would try to pull away. Also, according to Stockton, N.W. described the sexual abuse as “touching” or “rubbing,” which she stated would be consistent with the nonspecific findings from her examination of



N.W. While Wells also contends that N.W.'s uncertainty in her testimony regarding certain details of the abuse is inconsistent with other evidence showing that she was an intelligent, articulate teenager, as stated earlier, the trial court is in a superior position to evaluate the credibility of the witnesses, and the court in this case expressly found the testimonies of Stockton and N.W. to be both credible and consistent with each other. In essence, Wells's argument would require us to act as a super fact-finder and to second guess the trial court's credibility determinations, which we will not do. *Blanchard, supra; Ashcroft v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 244, 374 S.W.3d 743. Thus, the trial court's finding that N.W. was dependent-neglected as a result of sexual abuse by Wells is not clearly erroneous, and we affirm.

Affirmed.

HART and BROWN, JJ., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha B. McNulty, Office of Chief Counsel; *Chrestman Group, PLLC*, by: *Keith L. Chrestman*, for appellees.