

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 12-18

DESARAE GREGORY and MATTHEW
GREGORY

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and N.G., S.G., and
C.G.1, Minors

APPELLEES

Opinion Delivered May 23, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. JV-2011-384]

HONORABLE VICKI SHAW COOK,
JUDGE

DISMISSED WITHOUT PREJUDICE

WAYMOND M. BROWN, Judge

The dependency-neglect case giving rise to this appeal began in May 2011, when the Arkansas Department of Human Services (DHS) took appellants' children, N.G., S.G., and C.G.1, into protective custody following the death of C.G.2¹ and allegations of neglect and parental unfitness. The circuit court adjudicated the children dependent-neglected and in July 2011 granted temporary custody to the paternal grandparents, Jimmy and Karen Gregory. The goal of the case was set as reunification with a concurrent plan of permanent guardianship, relative placement, or adoption. Following a review hearing on October 12, 2011, the circuit court found that the children had been subjected to aggravated circumstances pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(a)(3)(B) (Repl. 2009),

¹According to a CASA report in the record, C.G.'s cause of death was ruled possible SIDS (Sudden Infant Death Syndrome).



granted DHS permission to file a petition for termination of parental rights (TPR), and set the next hearing for permanency planning and TPR.

The only issue on appeal is whether the evidence was sufficient to support the trial court's review order setting a TPR hearing six months after the case was opened. However, we cannot reach the merits because the order appealed from is not a final, appealable order.

Discussion

Arkansas Supreme Court Rule 6-9 (2011) provides that the following orders may be appealed from in dependency-neglect proceedings:

- (A) adjudication order;
- (B) disposition, review, no reunification, no review, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b);
- (C) termination of parental rights; and
- (D) denial of right to appointed counsel

When a review order does direct entry of a final judgment as to one or more issues, Arkansas Rule of Civil Procedure 54(b) (2009) requires the court to execute a certificate setting forth specific factual findings in support of its determination that there is no just reason to delay entry of a final judgment. We note that the Rule 54(b) certificate attached to the review order in this case is facially deficient in that it fails to set forth any factual findings regarding



the matter of why a final judgment should not be delayed.² Ultimately, however, the sufficiency of the certificate is irrelevant because both Rule 6-9 and Rule 54(b) apply only to orders that are, in some way, final as to an issue or a party,³ and the review order appealed from in this case does not contain any kind of final judgment. On the contrary, the review order specifically provided that the goal of the case would continue to be reunification, ordered DHS to continue providing services to the family, and ordered appellants to obtain counseling and work the case plan until the permanency-planning/TPR hearing could be held.

The issue of whether an order is final and subject to appeal is jurisdictional in nature.⁴ Because the review order on appeal here does not contain anything that constitutes a final judgment as to any issue or party, we are without jurisdiction to consider the merits of this appeal and, therefore, dismiss without prejudice.

Dismissed without prejudice.

VAUGHT, C.J., and MARTIN, J., agree.

²Our supreme court has made it clear that the trial court must factually set forth reasons explaining why a hardship or injustice would result if an appeal is not permitted. *Franklin v. Osca, Inc.*, 308 Ark. 409, 825 S.W.2d 812 (1992).

³For example, the supreme court has held that an order awarding permanent custody is a final, appealable order, even if the order leaves other issues unresolved, and no Rule 54(b) certificate is necessary. *West v. Ark. Dep't of Human Servs.*, 373 Ark. 100, 281 S.W.3d 733 (2008). *Cf. Ark. Dep't of Human Servs. v. Denmon*, 2009 Ark. 485, 346 S.W.3d 283 (permanency-planning order held not final and appealable where it granted permanent custody to aunt but rejected TPR request and kept reunification as goal of case).

⁴*See, e.g., Zollicoffer v. Beebe*, 2010 Ark. 329.



Cite as 2012 Ark. App. 364

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Tabitha McNulty, DHS Office Chief Counsel, for appellee.