

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-200

RIKKI ROBERTS DAVIS
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN
APPELLEES

Opinion Delivered June 27, 2012

APPEAL FROM THE SEVIER
COUNTY CIRCUIT COURT
[NO. JV 2010-7-1]

HONORABLE CHARLES A.
YEARGAN, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant, Rikki Roberts Davis, appeals from an order of the Sevier County Circuit Court terminating her parental rights to her children: N.D., born June 23, 2007; M.D., born October 14, 2008; G.D., born October 6, 2009; and B.D., born September 28, 2010.¹ She argues only one point on appeal: that the circuit court’s decision to terminate her rights rather than grant permanent custody to relatives was not based on clear and convincing evidence that termination was in the children’s best interest. We find no error and affirm the circuit court’s order.

This case began in June 2008, when the Arkansas Department of Human Services (DHS) opened a protective-services case on the family for environmental neglect and

¹The court also terminated the parental rights of Thomas Jefferson Davis, the children’s legal father, and of N.D.’s putative father, Shannon Wells, but neither has filed an appeal from the decision.



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inadequate supervision. DHS took custody of the children on January 27, 2010, because the condition of the home had deteriorated to such an extent that it posed a risk to the children. There were spoiled bottles inside the house, broken glass outside the house, trash piles, roaches, and cigarette smoke in the house that caused significant respiratory problems for the children. After removal of the children, both parents also tested positive for methamphetamine and marijuana. N.D., M.D., and G.D. were all adjudicated dependent-neglected on March 30, 2010. B.D., who was born on September 28, 2010, stayed in Mr. Davis's custody until February 2011, after an incident involving his drinking alcohol around the children and failing to properly supervise B.D.² All four children were placed with relatives of appellant and Mr. Davis.

On September 9, 2011, the circuit court entered a permanency-planning order in which it determined that, while "mindful of the available permanency planning dispositions," it was in the best interest of the children to change the goal of the case to termination of parental rights and authorization of a plan for adoption. The court noted that the case had been open for almost two years at the time of the hearing and that the parents, who had separated, still were not viable options for safe placement of the children. The court found that the parents had not fully complied with the case plan and orders of the court and stated that both parents and counsel stipulated to change the goal to adoption. Appellant did not appeal from this order.

²B.D. was adjudicated dependent-neglected on December 9, 2010.



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Following a termination hearing, the court entered an order terminating appellant's parental rights on December 8, 2011. In its order, the court set forth in great detail the evidence that led to termination, including that, at the time of the hearing, the parents had been receiving services from DHS for over three years and the children had been out of the home for almost two years. The court found by clear and convincing evidence that it was in the best interest of the children to terminate parental rights and that three statutory grounds existed.

Appellant does not challenge the statutory grounds or argue that the court's numerous detailed findings of fact are clearly erroneous. She contends only that the children were already in the custody of relatives who planned to adopt the children after termination of parental rights, and that the court should have continued this arrangement through a permanent-custodial placement instead of terminating her parental rights. Because the court did not do this, she argues that its decision to terminate her rights was not based on clear and convincing evidence that termination was in the children's best interest. The crux of her argument is that it is in the children's best interest for her to have some continuing contact with them.

A DHS family service worker, Jennifer Clark, testified at the hearing that, after witnessing numerous supervised visitations, she was concerned about appellant's ability to care for all four children at one time. She also testified that appellant did not have adequate, stable housing. On cross-examination, she said that permanent custody was not a better



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solution than termination because N.D., who showed signs of autism, needed a stable environment in order to progress. Only adoption would provide that. She recommended termination and adoption as the most stable, safe solution for all four children. She testified that there was potential harm to the children if the parents could continue coming to court to contest custody.

Sherry McGowan, a DHS program assistant, testified that she had concerns with appellant's ability to take care of all four of her children. She relayed an instance in which appellant left the children in McDonald's to go get ice cream without informing either her or Ms. Clark, who were both supervising the visitation. She also testified that appellant failed to recognize safety issues with the children, describing a visit to the park in which appellant allowed her then ten-month-old son to put sticks, grass, gravel, and other items into his mouth.

Melinda Cree, the acting advocate for the children, testified that CASA's recommendation was termination of parental rights and adoption by the relatives who had custody of the children. She said that ensuring a permanent placement was of utmost importance. She did not believe that permanent custody with the relatives would accomplish this goal because appellant would still be the children's mom, which created a risk of potential harm by having the children returned to her in the future.

The relatives serving as foster parents testified that they preferred adoption over permanent custody for the children's and the family's stability. They feared constant



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upheaval for the children if the parents' rights were not terminated. The circuit court said at the hearing that it had considered permanent custody but decided that all of the children needed a "forever home," which adoption would provide.

An order terminating parental rights must be based on clear and convincing evidence that termination is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). Additionally, proof must establish at least one of several statutory grounds. Ark. Code Ann. § 9-27-341(b)(3)(B). We will not reverse a termination order unless the circuit court's findings were clearly erroneous. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 331, 255 S.W.3d 505, 507 (2007). We give a high degree of deference to the trial court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, at 11, 314 S.W.3d 722, 728.

In her sole point on appeal, appellant argues that the court's finding that termination was in the best interest of her children was clearly erroneous. Specifically, she contends that Ark. Code Ann. § 9-27-338(c)(3) prohibits a plan for termination and adoption if the juvenile is being cared for by a relative and termination is not in the best interest of the juvenile. First, the statutory section relied on by appellant is the statute governing the court's permanency-planning hearing, which in this case occurred on August 11, 2011, and about which the court entered a permanency-planning order on September 9, 2011. In that order the court changed the goal to termination of parental rights and adoption. Appellant did not



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appeal from that order. Moreover, the court’s permanency-planning order states that appellant “stipulated to the change in goal to adoption.”

Second, appellant does not challenge the court’s determination that she was in no position to have her children returned to her. The court stated that it had considered permanent custody, but it found that the children needed the permanent home that adoption would provide. All DHS workers involved with the case and the relatives who had custody of the children and were planning to adopt them testified that termination and adoption, not permanent custody, was, in their opinions, in the best interest of the children. All testified that the children needed termination and adoption for safety and stability.

Credibility is a matter for the circuit court. *Dowdy*, 2009 Ark. App. 180, at 11, 314 S.W.3d at 728. The goal of section 9-27-341 is to provide permanency in a child’s life in circumstances in which returning the child to the family home is contrary to the child’s health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the child’s perspective. *Anderson v. Ark. Dep’t of Human Servs.*, 2011 Ark. App. 526, at 10, 385 S.W.3d 373, 380. The circuit court’s determination that termination was in the children’s best interest in this case was not clearly erroneous. Accordingly, we affirm its order.

Affirmed.

PITTMAN and HOOFFMAN, JJ., agree.

Deborah R. Sallings, Ark. Pub. Defender Comm’n, for appellant.

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