

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA12-221

HOLLIE HENDERSON and TOMMY
SMITH
APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN
APPELLEES

Opinion Delivered June 27, 2012

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. JV-10-85]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellants Hollie Henderson and Tommy Smith appeal from the order terminating their parental rights to their children, A.S., born July 9, 2010, and S.S., born July 20, 2011. Appellants argue that termination was not in the children’s best interest because there was a “lesser restrictive alternative” to termination. Appellants concede on appeal that they were in no position to reunify with their children at the time of termination but argue that the children should have been placed with their paternal grandmother instead of appellants’ parental rights being terminated. We affirm.

A.S. was removed from appellants’ custody on July 9, 2010, after she tested positive for cocaine at birth. Appellant Henderson also tested positive at that time. A.S.’s meconium was also positive for cocaine, indicating long-term exposure. A.S. was adjudicated dependent-



Cite as 2012 Ark. App. 430

eglected on September 2, 2010, and the goal of the case was reunification. A case plan was developed for appellants; however, they failed to comply with the case plan. S.S. was removed from appellants on July 20, 2011, after he, too, tested positive for cocaine at birth. His meconium also tested positive for cocaine. S.S. was adjudicated dependent-neglected on August 25, 2011. Appellants continued to test positive for cocaine throughout the case, and DHS was relieved from providing reunification services to them on August 25, 2011. The court entered a permanency-planning order on September 22, 2011, changing the goal to adoption and authorizing a plan for termination. DHS filed a petition for termination of appellants' parental rights on November 4, 2011. Appellants filed a response on November 29, 2011, denying the material allegations in the petition for termination and seeking to have the petition dismissed. The court terminated appellants' parental rights following the December 1, 2011 hearing. The termination order was filed on December 15, 2011. Appellants filed a notice of appeal on January 4, 2012. An amended notice of appeal was filed on January 10, 2012. This appeal followed.

Appellants do not argue that the evidence was insufficient to support termination of their parental rights but instead argue that the children should have been placed in Bertha Brockman's custody.¹ Appellants contend that Ark. Code Ann. § 9-27-341, the termination of parental rights statute, should be read "in conjunction with other provisions of the Juvenile

¹Appellant Smith's mother.



Cite as 2012 Ark. App. 430

Code and case law.” Appellants cite to Ark. Code Ann. § 9-27-355(c)(1)² to support their position that relative placement should be preferred over termination. This court rejected this same contention in *Davis v. Ark. Dep’t of Human Servs.*³ In *Davis*, we said that § 9-27-341 did not have language comparable to that contained in § 9-27-355(c)(1). We also held that § 9-27-355 concerns the initial placement of a juvenile after that juvenile is taken into DHS custody, not a placement when termination of rights had been requested.⁴ Thus, we find no error based on § 9-27-355(c)(1).

Appellants also contend that Ark. Code Ann. § 9-27-338(c)(3) includes “a notable exception to [the preferred goal of termination] if the children are being cared for by a relative.” Appellants’ reliance on this section is misplaced. Arkansas Code Annotated § 9-27-338(c)(3) provides that termination with the goal of adoption is not permitted where the child is being cared for by a relative and termination of parental rights is not in the best interest of the child. Here, the children were not being cared for by a relative, and the home study performed on Mrs. Brockman was denied. Since the termination of appellants’ parental rights is not clearly erroneous, we affirm.

Affirmed.

WYNNE and GLOVER, JJ., agree.

Leah Lanford, Ark. Pub. Defender Comm’n, for appellants.

Chrestman Group, PLLC, by: *Keith L. Chrestman*, attorney ad litem for minor children.

²This particular section dealing with relative-preference was amended by Act 591 of 2011 and is now found at Ark. Code Ann. § 9-28-105 (Supp. 2011).

³2010 Ark. App. 469.

⁴*Id.*; *Dubois v. Ark. Dep’t of Human Servs.*, 2011 Ark. App. 401.