

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA12-946

NICOLE DAVISON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES, and M.D. and
C.W., MINORS

APPELLEES

Opinion Delivered February 27, 2013

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
WESTERN DISTRICT
[NO. JV 2007-175]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Nicole Davison appeals the termination of her parental rights as to her two children, M.D., born 4 July 2000, and C.W., born 3 April 2007. We affirm the termination.

In June 2007, the circuit court granted the Arkansas Department of Human Services's request to take emergency custody of M.D. and C.W. after Davison tested positive for methamphetamine. The court adjudicated the children dependent-neglected. The children were placed in foster care for the next eight months while DHS offered Davison the "full gamut" of services. Davison eventually regained custody of her children, and the circuit court closed the case.

Years later, in September 2011, DHS petitioned the circuit court for a change of custody when C.W. was not picked up from daycare one day and M.D. had called 911 after she had been left at home alone overnight. Before these incidents occurred, DHS had opened



an investigation for neglect because it had received several hotline calls about the children. The circuit court granted an ex parte order for emergency custody that placed the children under DHS care and found probable cause that the children were dependent-neglected. Davison did not attend the probable-cause hearing or the adjudication hearings that took place in September and October 2011. Davison admitted that she did not attend the hearings because she was on drugs.

In November 2011 the court found, by a preponderance of the evidence, that the children were dependent-neglected because they were at a substantial risk of serious harm due to abandonment and neglect. Davison was allowed supervised visits with the children.

In December 2011, DHS moved to terminate reunification services. Davison entered rehab in December 2011 and attended the 26 January 2012 hearing on the termination of reunification services. The circuit court stopped all reunification services but did not terminate DHS's obligations for home visits and random drug screens. The court also allowed Davison visitation in a therapeutic setting if DHS found it was in the best interest of M.D. and C.W. Davison completed rehab in early February 2012. On February 23, the circuit court authorized a plan for adoption and scheduled a termination-of-parental-rights hearing after finding that Davison was in jail for unpaid fines and had not maintained stable housing or stable employment as previously ordered. On 12 June 2012, the circuit court held a termination hearing. When the June 2012 termination hearing began, Davison had not seen the children since September 2011.



Caitlin Sammons, a DHS caseworker assigned to the case, testified that DHS was unable to contact Davison when it took M.D. and C.W. into custody after Davison left C.W. at daycare and M.D. at the house alone all night. Sammons said that Davison did not contact DHS until the children had been in DHS custody for a week and a half and that she told Davison over the phone that she would need to get into rehab before she could start visitation with the kids. Davison did not enter rehab until almost three months later. Sammons testified that Davison did not maintain regular contact with DHS and that Davison did not complete the required psychological evaluation, although Sammons explained to her that the evaluation was required for reunification. From January through June 2012, Sammons made one successful home visit with Davison. Sammons testified that she did not feel “there’s been any period of stability with Ms. Davison” and that she was concerned about reinitiating visits with Davison because the girls were doing well in foster care.

Terri Blanchard, the Foster Care Supervisor for Craighead County, testified about DHS involvement with Davison since 2007. That history included drug abuse, neglect, and jail-time for failure to pay old fines. Regarding this case, Blanchard said, “I feel the history is repeating itself this time.” Blanchard also testified that DHS had contacted an adoption specialist and the specialist thought that the children could move straight from the therapeutic foster home to an adoptive home. Blanchard and Sammons agreed that “these children are adoptable.” Blanchard also testified that it would be in the children’s best interest to terminate Davison’s rights—given the instability in Davison’s employment and housing, and that Davison had not had regular, random drug testing during the case.



Davison testified. She explained that she left the kids in her sister's care last September, and her sister did not pick them up from school and daycare like she told Davison she would. Davison also said that she knew her sister was using drugs at the time. According to Davison, the longest time she has held a job is a year and a half, which was from 2007-09. She testified that she works part-time making around \$465 every two weeks and was staying at the Women's Recovery Center to save money to get a two-bedroom apartment. Davison said that DHS had not requested that she provide income for her kids in any manner, and that she had many debts she had to repay. When asked by the court, Davison admitted that she could not adequately care for her children because she wasn't stable enough. She then asked for more time. "I can do all these things just given a little more time . . . I don't see what the hurry is to terminate my rights."

Before terminating a parent's rights, the circuit court must find, by clear and convincing evidence, that the termination is in a child's best interest and that at least one of nine statutory grounds exist. Ark. Code Ann. §§ 9-27-341(b)(3)(A), 341(b)(3)(B)(i)-(ix) (Supp. 2011). Here, the circuit court found that termination of parental rights was in the best interest of the children and that three statutory grounds existed: (1) Abandonment. Ark. Code Ann. § 9-27-341(b)(3)(B)(iv), (2) Other Factors or Issues Subsequent to the Filing of the Original Petition. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii), and (3) Aggravated Circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(i)-(ii).

In its best-interest analysis, the court considered the likelihood that M.D. and C.W. would be adopted and the potential harm to the safety of the children caused by returning



them to the custody of Davison. And the court said that it “could be really helpful for these children to know that the mother does love them.” Although the court decided that terminating Davison’s rights was in the children’s best interest, it arranged for DHS to meet with the girls’ therapist and Davison to work out a “really good and healthy visit for both of the girls.”

In its second statutory-ground finding the court found:

The mother did not make contact with the family service worker until the juveniles had been in care for one and one half weeks and was advised to begin rehab. The mother stated she was starting rehab that weekend. Three months passed before the mother again made contact was [sic] just entered rehab at that time. Completed rehab but has obtained only a one-bedroom apartment and has not obtained a job. The mother has not demonstrated a solid period of sobriety and does not have a valid driver's license. The juveniles were in foster care for over eight months in the prior case and have now been in foster care in this case for over seven months.

The mother did not remain drug free during the pendency of this case, which was also the case during the previous contact with the Department. The mother also was unable to obtain and maintain stable and appropriate housing for the family, and was unable to obtain and maintain long term employment. There was a presence of financial issues, incarceration and criminal issues, and driving without a driver’s license, an invitation to another stop and trip to jail accompanied by significant fines and costs.

The court decided that returning M.D. and C.W. to their mother was contrary to the children’s safety and welfare.

We review termination-of-parental-rights cases de novo. *Ratliff v. Ark. Dep’t of Human Servs.*, 104 Ark. App. 355, 360, 292 S.W.3d 870, 875 (2009). We will not reverse the circuit court’s finding of clear and convincing evidence unless that finding is clearly erroneous. *Id.*



A finding is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.*

First, we address DHS's argument that Davison does not challenge the circuit court's finding that statutory grounds (besides a best-interest analysis) existed to terminate. DHS contends that Davison only challenges the best-interest finding. The question is a close one on this record, but we have concluded that Davison has not abandoned a challenge to the circuit court's statutory findings under Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a):

other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

The circuit court did not make a firm and definite mistake by finding that section 9-27-341's "other factors" provision was satisfied. In a prior case, the children were placed in foster care for eight months, and the circuit court adjudicated the children dependent-neglected based on Davison's illegal-drug use. Here, instability and drug use fueled the court's decision to terminate parental rights. Davison was unable to visit the kids or do a trial placement with the children in the nine months since they had been taken from her. In both cases, Davison lost contact with DHS, which is inconsistent with the actions of someone who is trying to get her kids back. And despite the many services provided to Davison since 2007, she is not capable of being reunited with M.D. and C.W. Davison lacks stable housing and repeatedly failed to provide DHS with proof of her income. Most importantly, Davison



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herself agreed during the termination hearing that she could not take care of her children. She asked for more time to better her situation, but the circuit court did not commit a reversible error by deciding to terminate Davison's parental rights when it did. We therefore affirm the circuit court's order terminating Davison's parental rights as to M.D. and C.W.

Affirmed.

VAUGHT and WOOD, JJ., agree.

Janet Lawrence, for appellant.

Tabitha B. McNulty, Office of Chief Counsel, for appellee.

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