

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA12-993

STEVE WHITE

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and T.W., MINOR  
CHILD

APPELLEES

**Opinion Delivered** March 6, 2013

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT  
[NO. JV-2012-83]

HONORABLE EDWIN KEATON,  
JUDGE

AFFIRMED

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**BRANDON J. HARRISON, Judge**

Steve White appeals the circuit court's order that adjudicated his minor daughter, T.W., dependent-neglected. He argues that the Department of Human Services (DHS) failed to prove allegations of sexual abuse by a preponderance of the evidence. We affirm.

In April 2012, DHS exercised a seventy-two-hour hold on T.W. Soon thereafter it filed a petition for emergency custody of T.W. and alleged that she had been neglected, abused, sexually abused, subjected to parental unfitness, and subjected to aggravated circumstances under Ark. Code Ann. § 9-27-303 (Supp. 2011). That same day, the court entered an ex parte order for emergency custody of T.W. On 27 May 2012, the court made a finding of probable cause and scheduled an adjudication hearing that was held in June 2012.



The day of the hearing, DHS clarified that the allegation in this case was that White had sexually abused T.W. by “making her get up in front of him naked and touching different body parts of hers while she’s naked.” T.W., who was twelve years old when the hearing occurred, testified that her dad started doing “sexual things” to her in December 2011 and, in the course of her testimony, recounted numerous instances of sexual abuse by her father.

The court ruled from the bench and described the allegations as “unusual” and “bizarre” and stated that it would take “some kind of imagination . . . to come up with that.” The court credited T.W.’s testimony, and it inferred sexual gratification on the father’s part based on the evidence. The court concluded that T.W. was a dependent-neglected juvenile and granted DHS’s request for a finding of aggravated circumstances.

On 23 August 2012, the court entered an adjudication order, which again found that T.W. was credible. The court set the goal of the case as reunification with a concurrent plan of relative placement. White timely appealed that order.

A dependent-neglected juvenile is one at substantial risk of serious harm because of, among other things, sexual abuse or neglect. *See* Ark. Code Ann. § 9-27-303(18)(A)(iii) and (v) (Supp. 2011). Dependency-neglect allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Supp. 2011). We will not reverse the circuit court’s findings unless they are clearly erroneous. *Seago v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733. In reviewing a dependency-neglect adjudication, we defer



to the circuit court's evaluation of the credibility of the witnesses. *Id.* And in an adjudication hearing, the focus is on the child, not the parent; at this stage of a proceeding, the juvenile code is concerned with whether the child is dependent-neglected. *Id.*

White contends that the circuit court erred in adjudicating T.W. dependent-neglected. He first notes that he "does not dispute that the acts described by T.W., if true, would meet the definitions of sexual abuse and constitute aggravated circumstances." He also acknowledges that the circuit court's determination rested solely on whom to believe. White nonetheless argues that T.W. was not credible and the circuit court's findings were speculative.

He specifically contends that the court based its credibility finding solely on the "bizarre" nature of T.W.'s testimony and that "this leap in logic from 'bizarre' to 'true' is unjustified." He also argues that it is equally plausible that T.W. fabricated her story to retaliate against her parents for disciplining her. White also mentions a lack of evidence corroborating T.W.'s testimony, and he notes certain inconsistencies in T.W.'s testimony.

DHS argues that the circuit court heard all the evidence, including any evidence that might affect T.W.'s credibility, and ultimately believed her testimony. DHS stresses that making credibility determinations is the circuit court's job and to second-guess this finding, as White suggests, would require us to act as a "super fact-finder," which we will not do. *See Lynch v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 149, at 5 (stating that this court will not second-guess credibility determinations made by the circuit court).

We affirm because the court expressly stated that T.W. was credible, and by White's



own admission, T.W.'s testimony supported findings of both sexual abuse and aggravated circumstances.

Affirmed.

VAUGHT and WOOD, JJ., agree.

*Leah Lanford*, Arkansas Public Defender Commission, for appellant.

*Tabitha Baertels McNulty*, County Legal Operations, for appellee.

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