

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA12-1014

PATRICIA GANTT

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered April 3, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
TENTH DIVISION
[NO. JN-11-391]

HONORABLE JOYCE WILLIAMS
WARREN, JUDGE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant Patricia Gantt appeals from a Pulaski County Circuit Court order appointing Sheila Hayes¹ the guardian of Gantt's two children, C.D.1 and C.D.2. We affirm.

Gantt was involved in a violent and abusive relationship. In December 2010, Gantt and her boyfriend were involved in a physical altercation that was witnessed by C.D.2. Gantt entered a mental-health facility complaining of mental-health issues, and Hayes sought a guardianship over C.D.1 and C.D.2. On December 16, 2010, the court granted a temporary guardianship for a period of ninety days.

Before the expiration of the temporary guardianship, the Arkansas Department of Human Services filed a petition seeking immediate removal of the juveniles from their mother and obtained an ex parte order for emergency custody. The trial court subsequently found

¹ Hayes is the paternal aunt of C.D.1 and C.D.2.



probable cause, concluding that there was sufficient evidence of domestic violence taking place in the home and directing that the children should remain out of Gantt's care. Eventually, the trial court entered an order adjudicating the children dependent-neglected, finding that they were at substantial risk of serious harm due to their exposure to Gantt's abusive relationship. The trial court initially set reunification as the goal of the case and adopted a case plan to implement that goal. Fourteen months after the children had been removed from Gantt's care, the court changed the permanency goal to obtaining a permanent custodian for the juveniles. The Department petitioned to have Hayes appointed guardian over the children. A hearing on the petition was held on August 29, 2012, after which the trial court entered an order appointing Hayes as guardian of the children. Gantt filed a timely appeal of that order.

This court reviews guardianship proceedings de novo, but we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Fletcher v. Scorza*, 2010 Ark. 64, 359 S.W.3d 413. 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.* The trial court found that, although Gantt had complied with the case plan and court orders, her compliance was not enough and that she was not emotionally in a position to protect the children. The court also stated that it could not safely send the children back to Gantt as the children were not emotionally ready. These findings are supported by the evidence in the record. It is undisputed that the children had been exposed to Gantt's abusive relationship. This exposure traumatized both children. They suffered meltdowns and expressed concerns and nervousness



about having unsupervised visits with their mother. They also reported that they did not feel safe with their mother. These concerns resulted in a suspension of unsupervised overnight visits. The trauma was particularly acute for C.D.2. She had several documented breakdowns at school and at church and even expressed suicidal thoughts. When C.D.2 attempted to speak with Gantt about the abuse and its effects, Gantt postponed the discussion indefinitely. Admittedly, Gantt was able to extricate herself from that abusive relationship. However, its effect on the children was still evident months after the relationship ended. We give due regard to the opportunity and superior position of the trial court to determine the credibility of the witnesses and give special deference to the superior position of the trial court to evaluate the witnesses, their testimony, and the child's best interest. *Furr v. James*, 2013 Ark. App. 181, ___ S.W.3d ___. Based on this deference, the trial court's findings are not clearly erroneous.

Arkansas Code Annotated § 28-65-210 (Repl. 2004) provides:

Before appointing a guardian, the court must be satisfied that:

- (1) The person for whom a guardian is prayed is either a minor or otherwise incapacitated;
- (2) A guardianship is desirable to protect the interests of the incapacitated person; and
- (3) The person to be appointed guardian is qualified and suitable to act as such.

In appointing Hayes as the guardian for C.D.1 and C.D.2, the trial court determined that these requirements had been met. The court found that the children were minors, that a guardianship was desirable to protect the best interest of the children, and that Hayes was qualified and suitable to act as the guardian for the children.



Gantt argues that the trial court erred in appointing a guardian because there was no evidence that she was an unfit parent. Appositely, she alleges that the evidence supports her fitness. She completed parenting classes and domestic-abuse counseling. She also ended her abusive relationship, and she acted appropriately with the children during her supervised visits. Gantt also argues that the trial court erred in appointing a guardian because she was entitled to the natural-parent preference found in Arkansas Code Annotated section 28-65-204. Her arguments do not accurately reflect our guardianship laws.

This precise argument was rejected by the Arkansas Supreme Court in *Fletcher v. Scorza*, *supra*. In *Fletcher*, the supreme court explained that there was no fitness or unfitness requirement involving the natural-parent preference of section 28-65-204(a). The court reasoned that this preference does not automatically attach to a natural parent and is only one factor that a circuit court must consider in determining suitability. The court emphasized that the key factor in determining guardianship is the best interest of the child.

While Gantt attempts to frame this argument as an infringement of her rights as a parent, the natural-parent preference is merely one facet of this case. The primary focus of this case is whether it is in the best interest of the children to be placed back into her custody. The trial court specifically focused on what it considered to be the best interest of these children. This is clear from the court's comments from the bench as well as the findings in the order. The circuit court found that Gantt could not provide for the emotional needs of the children, and, as a result, that it was in the best interest of the children to have a guardian appointed. We hold that the trial court did not clearly err in finding that Gantt was not a suitable guardian



Cite as 2013 Ark. App. 217

for the children or that the guardianship was in their best interest.

Affirmed.

GLADWIN, C.J., and HARRISON, J., agree.

Floyd A. Healy, for appellant.

Tabitha Baertels McNulty, County Legal Operations, for appellee.