

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CA13-52

HEATHER PENN

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES AND MINOR  
CHILD

APPELLEES

Opinion Delivered May 15, 2013

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[NO. JV-11-202]

HONORABLE BARBARA ELMORE,  
JUDGE

AFFIRMED

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## KENNETH S. HIXSON, Judge

This is an appeal from Lonoke County Circuit Court's fifteen-month review order, which awarded permanent custody of N.P. (born February 15, 2006) to his maternal grandfather, Randy Penn, and his wife, Darlynda Penn. Heather Penn, N.P.'s biological mother, appealed, contending that sufficient evidence did not exist to support the court's finding that it was in N.P.'s best interest to award custody to Randy and Darlynda. We affirm.

On July 25, 2011, the Lonoke County Circuit Court entered an emergency order removing N.P. from his mother's home. Extensive bruises were found on N.P., and appellant had taped his mouth shut with duct tape.<sup>1</sup> On August 1, 2011, a probable-cause

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<sup>1</sup>Appellant was charged in criminal court for the harm inflicted to N.P. and was placed on probation.



order was entered in which the parties stipulated that emergency conditions necessitated the removal of N.P. from the custody of his mother.

On August 22, 2011, after an adjudication hearing, the parties stipulated that N.P. was dependent-neglected and that the allegation in the petition was true and correct that appellant had neglected N.P. N.P. remained in the custody of the Department of Human Services. Appellant was ordered to complete parenting classes, maintain stable housing, participate in staffings, maintain contact with DHS, attend individual counseling, complete a psychological evaluation, maintain stable employment, attend visitation with N.P., comply with the case plan, and complete anger-management classes.

On April 3, 2012, a review order was entered, and the court awarded temporary custody of N.P. to Randy and Darlynda. The court noted that appellant had a boyfriend and that if he were to be involved in the case, a background check would need to be completed on him.

On June 12, 2012, a review order was entered in which the court found that the appellant had completed some of the requirements, that she needed to complete domestic-violence classes, and that the boyfriend was not to have any contact with N.P.

After a permanency-planning hearing, the court entered an order finding that appellant still needed to complete domestic-violence classes and that a caseworker was trying to get payment resolved. The court increased her unsupervised visitation to two overnight visits per week depending on her work schedule. The court noted that the boyfriend was not to be around N.P. because a background check had not been completed on him.



A fifteen-month review was held, and Lakisha Tatum, a family-service worker for DHS, testified that, despite the goal of reunification being established at the permanency-planning hearing, Tatum now thought it was in N.P.'s best interest to have permanent custody placed with appellant's father and stepmother. Tatum stated that appellant was given the paperwork for her boyfriend's background check but that she had not returned the paperwork. Concerning the domestic-violence classes, Tatum testified that appellant had missed some classes. Concerning visitation, Tatum stated appellant needed to be more consistent. Tatum testified that "At this point at the 15-month review, stability for N.P. is paramount. Mom isn't exhibiting stability at this point. I do believe it's in N.P.'s best interest to be put in the permanent custody of the grandparents."

Randy Penn testified that he had custody of his grandson, N.P., for several months and that if he were awarded custody of N.P., he would continue to be supportive of the relationship between N.P. and appellant. He stated that N.P. needed stability and that if he and his wife were awarded custody, he would give N.P. stability.

Appellant testified that she was working at Wendy's and that her schedule was not consistent but that she had planned to ask off on Thursdays so that she could attend domestic-abuse classes. She said that she had complied with all other court orders. She stated that she had missed some visitation times because her truck had broken down and because of bad weather. She said she had dated her boyfriend for one year and acknowledged a three-week delay in turning in background information on him but said that she had recently turned it in. She said that they were planning on getting married. Appellant stated that her



boyfriend does not live with her but spends about three nights a week at her home. She said if she needed someone to babysit N.P. while she worked, her mother would be willing to do so. However, she said that because her mother's name is on the Central Registry, she was not currently approved to babysit. She acknowledged that N.P. has stability in Randy's custody.

At the end of the hearing, the court adopted DHS's recommendation that permanent custody be awarded to Randy and Darlynda and in doing so made the following findings: (1) appellant was ordered to attend domestic-violence classes that DHS was to pay for and that she had missed five of the classes; (2) the psychological evaluation and therapists advised her not to date her current boyfriend and she did not listen; (3) appellant said she would not be around her boyfriend but now she has plans to marry him and that her decision-making was not in N.P.'s best interest; and (4) N.P. needs stability now.

Appellant argues that the finding by the court awarding custody of N.P. to his maternal grandparents was not supported by sufficient evidence. The burden of proof in dependency-neglect proceedings, including reviews and permanency-planning hearings, is preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Supp. 2011). The standard of review is de novo, but the appellate court will not reverse unless the circuit court's findings are clearly erroneous. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, 385 S.W.3d 367. The appellate court gives due regard to the circuit court's opportunity to judge the credibility of the witnesses and will not reverse the circuit court's ruling in a dependency-neglect case, unless the ruling was clearly erroneous. *Id.* A finding



is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

In the fifteen-month review hearing, evidence was presented that appellant had not completed the domestic-violence classes as directed. In fact, Tatum testified that, had appellant diligently attended the domestic-violence classes once they began, she would have had a different outlook on the prospect of reunification. Further, appellant admitted that she showed poor judgment in having a relationship with her boyfriend and that she was also slow in returning paperwork to DHS to complete a background check before the fifteen-month review hearing.

The court was strenuous in stating that N.P. needed stability now. Testimony was presented by Randy Penn that N.P. was given stability in his home. The court found that based on appellant's choices, N.P. would not be given a stable environment in her home.

We cannot say that the circuit court's findings were clearly erroneous. Of paramount concern for the court was N.P.'s need for stability. Giving due regard to the circuit court's opportunity to judge the credibility of the witnesses, as we must, we cannot say that the court erred in awarding custody of N.P. to his maternal grandfather and his wife.

Affirmed.

GLADWIN, C.J., and BROWN, J., agree.

*Therese M. Free*, for appellant.

*Tabitha Baertels McNulty*, Office of Chief Counsel, for appellee Arkansas Department of Human Services.

*Chrestman Group, PLLC*, by: *Keith L. Chrestman*, for appellee N.P.