

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-13-169

MARISOL HERNANDEZ
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR CHILD
APPELLEES

Opinion Delivered June 26, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
ELEVENTH DIVISION
[NO. 60JV2012-1788]

HONORABLE ELIZABETH A.
BRANSCUM BURGESS, JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Marisol Hernandez appeals the circuit court’s decision to adjudicate minor S.D. dependent-neglected. We affirm the circuit court’s determination.

On 25 September 2012, Marisol Hernandez gave birth to S.D. The Arkansas Department of Human Services (DHS) placed a 72-hour hold on S.D. immediately after she was born because her seven older siblings were already in DHS custody due to neglect. A couple days after placing the hold on S.D., DHS filed a petition for ex parte emergency custody and dependency-neglect, with supporting affidavits.

On 1 October 2012, the circuit court entered an ex parte order for emergency custody, concluding that S.D. was “at risk of harm because the juvenile’s seven (7) siblings

are currently in the legal custody of DHS.” During the subsequent probable-cause hearing, the circuit court ordered that S.D. remain in DHS’s custody.

In early December 2012, the court held a dependency-neglect adjudication hearing, during which it stated, “the court need not wait until a child has been abused or neglected to offer . . . some type of protection to the child and offer the protection that the State can provide.” The circuit judge also said, “I’m not willing to just take that chance to see whether or not it happens.”

In its adjudication/disposition order, the court found “by a preponderance of the evidence that [S.D.] is dependent-neglected as a matter of law.” The court explained its decision this way

[I]n a case such as this where this [c]ourt has made finding of neglect and parental unfitness regarding these parents and their other children less than two months ago, which involved failing to have the children’s nutritional, medical and dental needs met. [S.D.’s] medical conditions and diagnoses put her at risk of harm if not treated appropriately by her caregivers. . . . [S.D.] has particular feeding and medication requirements, including measuring and thickening formula, and a number of doctor appointments. The [c]ourt wants to ensure that the mother knows how to provide for [S.D.’s] medical needs; this issue seems to be neglected with the other children, and the court does not want to take the chance for that neglect to happen to [S.D.] and put her at further risk of harm. . . . Custody with the mother places [S.D.] at substantial risk of serious harm.

Hernandez timely appealed the order that adjudicated S.D. dependent-neglected. On appeal, Hernandez argues that there was insufficient evidence to adjudicate S.D. dependent-neglected. She essentially contends that S.D. was not exposed to dependent-neglect conditions because S.D. was not yet born when the conditions existed that led to S.D.’s siblings being removed from their parents’ custody. The record supports

Hernandez's point. For reasons we explain below, the pivotal legal point for this appeal's purpose is that the circuit court could adjudicate S.D. dependent-neglected based on what happened to S.D.'s seven older siblings.

DHS must prove by a preponderance of the evidence that S.D. was dependent-neglected. Ark. Code Ann. § 9-27-325(h)(1) & (2)(B) (Supp. 2011). A dependent-neglected juvenile is one at substantial risk of serious harm because of neglect or parental unfitness to the juvenile herself or to a sibling. Ark. Code Ann. § 9-27-303(18)(A) (Supp. 2011). Our case law and statutes support a circuit court's finding of dependency-neglect for any sibling of a child who has suffered neglect or abuse—because the abuse or neglect of one sibling can establish that another sibling is at substantial risk of serious harm, even when the other siblings have not been actually abused or neglected. *Eason v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 507, at 9. Whether a parent is legally unfit to care for a child for a period of time is not solely based on a parent directly injuring a child. *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 368, 43 S.W.3d 196, 199 (2001).

We review a dependency-neglect finding de novo, but we do not reverse the circuit court's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Churchill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 530. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was made. *Id.*

Here, seven of Hernandez’s children were taken into DHS custody before S.D. was born and adjudicated dependent-neglected shortly after S.D. was born, and that determination was not appealed. We grant to Hernandez that the evidence that S.D., herself, was dependent-neglected—most of which the circuit court recited in its order—is a close question because Hernandez has never had any meaningful custody over S.D. since her birth. Nonetheless, the circuit court acted within its statutory authority to declare S.D. dependent-neglected given her seven older siblings’ prior legal fate; the additional evidence concerning S.D.’s current medical difficulties also supported the court’s concern about the child’s future well being.

Given the conclusive finding that S.D.’s older siblings were dependent-neglected, and the additional evidence of S.D.’s medical needs, the circuit court’s finding that S.D. was dependent-neglected was not clearly erroneous or clearly against the preponderance of the evidence. Ark. Code Ann. § 9-27-303(18)(A); *Eason*, 2012 Ark. App. 507, at 9.

Affirmed.

GLADWIN, C.J., and WALMSLEY, J., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha Baertels McNulty, DHS Office of Policy and Legal Services; and *Chrestman Group, PLLC*, by: *Keith Chrestman*, for appellants.