

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CV-13-1029

JENNIFER RAGSDALE

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

Opinion Delivered March 12, 2014

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[NO. JV-2012-191]

HONORABLE BARBARA ELMORE,  
JUDGE

AFFIRMED

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**JOHN MAUZY PITTMAN, Judge**

Jennifer Ragsdale appeals from a permanency-planning and closure order granting her parents permanent custody of her two-year-old child, R.R. Appellant argues that the trial court erred in doing so because the evidence showed that she had complied with the case plan and that she would, within three months, be fit to have the child returned to her.

We review findings in dependency-neglect proceedings de novo, but we will not reverse the trial court's findings unless they are clearly erroneous. *Contreras v. Arkansas Department of Human Services*, 2014 Ark. 51, 431 S.W.3d 297. We defer to the trial court's evaluation of the credibility of witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, based on the entire evidence, is left with a definite and firm conviction that a mistake has been committed. *Id.*

The question to be decided here is whether there was sufficient evidence for the trial court to find that placement pursuant to Arkansas Code Annotated section 9-27-338(c)(3)

(Supp. 2013),<sup>1</sup> which authorizes the circuit court to create a plan to return the juvenile to

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<sup>1</sup> (c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest, health, and safety of the juvenile:

(1) Placing custody of the juvenile with a fit parent at the permanency planning hearing;

(2) Returning the juvenile to the guardian or custodian from whom the juvenile was initially removed at the permanency planning hearing;

(3) Authorizing a plan to place custody of the juvenile with a parent, guardian, or custodian only if the court finds that:

(A)(i) The parent, guardian, or custodian is complying with the established case plan and orders of the court, making significant measurable progress toward achieving the goals established in the case plan and diligently working toward reunification or placement in the home of the parent, guardian, or custodian.

(ii) A parent's, guardian's, or custodian's resumption of contact or overtures toward participating in the case plan or following the orders of the court in the months or weeks immediately preceding the permanency planning hearing are insufficient grounds for authorizing a plan to return or be placed in the home as the permanency plan.

(iii) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to authorize a plan to return or be placed in the home as the permanency goal;

(B)(i) The parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that:

(a) Caused the juvenile's removal and the juvenile's continued removal from the home; or

(b) Prohibit placement of the juvenile in the home of a parent;  
and

the parent within three months of the permanency-planning hearing, was not in R.R.'s best interest. Such a plan is appropriate if (1) the parent is complying with the case plan and making measurable progress; (2) the parent is making significant progress toward remedying the conditions that caused the removal; and (3) the return of the juvenile will occur within three months. *Contreras, supra*.

Here, appellant had previously had her parental rights to another child removed because methamphetamine was being manufactured in the home. The initial removal in the present case also resulted from methamphetamine use and possible manufacture by appellant and her husband. At the time that the child was taken into the custody of the Arkansas Department of Human Services (ADHS, appellant appeared to be under the influence of methamphetamine but hysterically denied methamphetamine use to ADHS workers. After testing positive for methamphetamine use, appellant continued to deny having used the drug, attributing the positive test results to sleeping next to her husband (who admitted to methamphetamine use) and to medications that had been prescribed for her and that she had taken.

At the permanency-planning hearing, appellant admitted that she had been using methamphetamine at the time the child was removed, but denied that she had used it since that time, despite having twice tested positive for methamphetamine and declining to come

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(ii) Placement of the juvenile in the home of the parent, guardian, or custodian shall occur within a time frame consistent with the juvenile's developmental needs but no later than three (3) months from the date of the permanency planning hearing[.]

to the ADHS office for definitive laboratory tests on those occasions. At the hearing, appellant attributed the positive test results to allergy medication. With regard to employment, appellant testified that she had worked briefly at a gas station and had recently been caring for her husband's grandmother. She admitted that she was not making enough money to feed and house the child but stated that those needs would be provided by her husband's grandmother. Also relevant to the issue of stable housing was appellant's testimony that her husband had been arrested for drug use and was currently incarcerated. She stated that she intended to divorce him and that a divorce would have no effect on her ability to continue being the caretaker of her husband's grandmother. She testified that she intended to stay with her husband's grandmother indefinitely.

The trial court found that appellant's testimony regarding drug use and rehabilitation efforts had been untruthful. The court expressly found that appellant had not complied with the case plan or the orders of the court regarding drug use, stable housing, and stable employment, and that appellant had not made substantial progress toward remedying the conditions causing removal. Giving due deference to the trial court's superior position to assess credibility, we cannot say that the trial court clearly erred in finding that appellant was not complying with the case plan or making significant progress toward rectifying the issues that caused removal so as to allow the child to be returned within three months.

Affirmed.

WYNNE and BROWN, JJ., agree.

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

Cite as 2014 Ark. App. 159

*Tabitha Baertels McNulty*, Office of Policy and Legal Services, for appellee.

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