

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-1058

JASON and KRISTEN CHAMBERS
APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and minor children
APPELLEES

Opinion Delivered February 2, 2011

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. JV-2010-385 A&B]

HONORABLE VICKI S. COOK,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Jason and Kristen Chambers appeal from an order adjudicating their two children, J.C. and K.C., dependent-neglected. The only issue on appeal is whether there was sufficient evidence to support the adjudication. The circuit court did not err in adjudicating the children dependent-neglected, as the record supports a finding that they were at substantial risk of neglect or parental unfitness. We affirm.

DHS filed a petition for emergency custody on May 18, 2010, supported by an affidavit signed by Sheena Gerrard, stating that the Chamberses were living in a tent in the yard of a house occupied by the children's grandmother, Rebecca Chambers, and their great-grandmother, Nellie Chambers, while the children lived in the home; that Kristen, who was pregnant, was drinking alcohol; and that the Chamberses could not adequately care for the children because

they were getting drunk, sleeping until noon, and possibly using drugs. Ms. Gerrard stated that she went to the house on May 13, 2010, and visited with Nellie Chambers while the parents were at a doctor's appointment; that the home was fully furnished, with all utilities in working order; and that the children had plenty of food and clothing. Ms. Gerrard said that, on May 14, 2010, the parents came to the DHS office with J.C.; that both tested positive for THC and methamphetamine in drug tests administered at that time; that they denied using alcohol and methamphetamine but admitted using THC; and that Kristen refused to go to Potters Clay.

The circuit court entered an order for emergency custody on May 20, 2010, and it entered a probable-cause order five days later. The court ordered the Chamberses to follow the court orders and case plan; to stay in weekly contact with DHS; to remain clean and sober at all times; to submit to and pass random drug and alcohol tests; to complete parenting classes and individual counseling; to obtain and maintain stable employment and housing for at least six months; to attend all scheduled hearings; to submit to psychological evaluations and follow all recommendations; to submit to drug and alcohol assessments and follow all recommendations, including in-patient treatment; and to attend ninety AA/NA meetings in ninety days, to obtain sponsors and to provide proof of attendance. The court also ordered the Chamberses to attend the children's PACE evaluations at UAMS. Kristen gave birth to another child on July 12, 2010.

The court held an adjudication hearing on July 21, 2010. Kristen testified that she and her husband had been living at their current residence, a three-bedroom apartment, for about a month; before that, they had lived at another residence for two weeks, and before that, in the

grandmothers' back yard for two weeks while they waited for public housing. Kristen stated that they were living in the back yard because they had gotten kicked out of their previous house and admitted that the tent was not an appropriate place for her children. She did not contest the validity of the drug screen administered at the DHS office on May 14, 2010, and admitted that, when she went there with the child in the car, she had an illegal substance in her body. She testified that Rebecca and Nellie had control over the children "most of the time," but did not have legal custody and did not refuse her requests to spend time with the children. Kristen admitted that she and Jason could have taken the children at any time and that Nellie and Rebecca did not know that they had used drugs. Kristen admitted that she and her husband had taken methamphetamine at a party and had previously smoked marijuana occasionally, even when she was pregnant. Kristen said that, except for when she was in the hospital, she and Jason had attended NA every day; that they had completed their parenting classes and had done everything they had been ordered to do; and that she and the new baby had tested negative for drugs. She explained that Jason had last worked at a full-time job in January 2010 and had not sought a full-time job because the requirements of the court order consumed his time. She said that Jason had completed his GED classes online the night before the hearing; that she had a high school diploma; and that, although she had worked at three or four jobs, most of the time she had been a "stay-at-home mom." She denied using drugs when the children were around.

Jason did not contest the validity of the May 14, 2010 drug test. He admitted using methamphetamine on May 11, 2010, but denied using it before that time. He admitted that there

was nothing that his mother or grandmother could have done to prevent him from taking the children. Except for the day that they went to the DHS office, he denied ever driving with the children in the car while under the influence of THC or methamphetamine. He stated that, for the past six months, he had worked part-time at Dairy Queen; that he had not yet paid for his GED certificate; that he had completed parenting classes; that he had recently started outpatient treatment; and that he had tested negative for drugs on May 25, 2010.

At the end of the hearing, the court recognized how hard the Chamberses had tried and commended their progress; nevertheless, the court found that the children were dependent-neglected because the Chamberses had used methamphetamine when they had legal custody of the children. It stated that, although it was smart to place the children in the home of Jason's grandmother and great-grandmother, it was not smart to transport them while under the influence, or for Kristen to use drugs while she was pregnant. It added that, before the children were taken into custody, the Chamberses could have taken them at any time, even while using methamphetamine. The court entered an adjudication order on July 21, 2010, and the Chamberses filed notices of appeal from the adjudication order.

The only point on appeal is whether the circuit court erred in adjudicating the children dependent-neglected. The Chamberses argue that their "single failed drug test" on May 14, 2010, could not justify the court's finding that the children were dependent-neglected. They contend that, by leaving the children with Rebecca and Nellie, they had removed them from "any situation that could present immediate danger or a substantial risk of serious harm."

Adjudication hearings are held to determine whether the allegations in a petition are substantiated by the proof.¹ Dependency-neglect allegations must be proven by a preponderance of the evidence.² Arkansas Code Annotated section 9-27-303(18)(A)(v) and (vi) (Repl. 2009) defines a “dependent-neglected juvenile” as “any juvenile who is at substantial risk of serious harm” as a result of neglect or parental unfitness, among other things. We will not reverse the circuit court’s findings unless they are clearly erroneous.³ In reviewing a dependency-neglect adjudication, we defer to the circuit court’s evaluation of the credibility of the witnesses.⁴ The focus of an adjudication hearing is on the child, not the parent.⁵ At this stage of a proceeding, the juvenile code is concerned with whether *the child* is dependent-neglected.⁶ An adjudication of dependency-neglect occurs without reference to which parent committed the acts or omissions leading to the adjudication; the juvenile is simply dependent-neglected.⁷

The overall evidence demonstrated that the Chamberses had subjected their children to a substantial risk of serious harm. They had no home, having been evicted from their last residence, and were living in a tent and using drugs while relatives without legal custody cared

¹ Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009).

² Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009).

³ *Seago v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

for their children. Kristen used drugs while she was pregnant, and the parents transported one of the children while they were under the influence of drugs. There was nothing to prevent them from doing so again.

The Chamberses cite *Moiser v. Arkansas Department of Human Services*⁸ as support for their contention that leaving the children with the grandmothers was sufficient to avoid DHS's involvement. There, we reversed the circuit court's adjudication of dependency-neglect where relatives with appropriate homes were willing to take the child while the father was incarcerated. We noted that Arkansas Code Annotated section 9-27-303(17)(B) provided that a child would be considered "dependent" when the parent was incarcerated and there was no appropriate relative or friend willing and able to care for the child. But *Moiser* can easily be distinguished from the case at bar. The Chamberses were not incarcerated, and they could—and did—take the children while using drugs. In such situations, the juvenile code does not require a circuit court to refuse to find that children are dependent-neglected where an appropriate relative is available.

The record shows evidence that the parents were living in a tent in the father's grandmother's back yard; that they used drugs on several occasions before being brought to the attention of DHS; that the mother used drugs despite being pregnant; that they drove with the children while under the influence of drugs; and that, despite claiming otherwise, the parents could at any time take the children into their custody while under the influence of drugs. The

⁸ 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Cite as 2011 Ark. App. 91

record clearly supports a finding that the children were at substantial risk of neglect or parental unfitness. Therefore, we affirm.

Affirmed.

GLADWIN and HOOFFMAN, JJ., agree.