

ARKANSAS COURT OF APPEALS

D I V I S I O N I

No. CA 10-1029

JULIE CALAHAN and JEREMIAH
CALAHAN

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and
MINOR CHILD

APPELLEES

Opinion Delivered MARCH 2, 2011

APPEAL FROM THE MONROE
COUNTY CIRCUIT COURT
[NO. JV-2010-5]

HONORABLE ANN BEANE
HUDSON, JUDGE

MOTION TO DISMISS GRANTED

JOHN B. ROBBINS, Judge

Appellants Julie Calahan and Jeremiah Calahan appeal from an adjudication order entered on July 21, 2010, wherein the trial court found the parties' infant daughter, L.C., to be dependent/neglected. The appellees herein are the Arkansas Department of Human Services (DHS) and L.C. The appellants do not challenge the finding of dependency/neglect, and their sole argument on appeal is that the trial court erred in granting DHS's oral motion to terminate reunification services. The appellants argue that DHS failed to comply with the provisions of Ark. Code Ann. § 9-27-365 (Repl. 2009) because it did not file a written motion for such relief fourteen days prior to the adjudication hearing, nor did it provide notice to appellants of the grounds for the motion for no reunification services. Subsequent to appellants' filing of their brief on appeal, the appellees

filed a motion to dismiss the appeal. We agree that the appeal must be dismissed because there was no final order terminating reunification services.

L.C. was taken into DHS custody when she was born on February 16, 2010. DHS filed a petition for emergency custody on February 19, 2010, alleging that L.C. was dependent/neglected. Attached to its petition was an affidavit setting forth facts concerning a recent social-services case in Virginia involving two of L.C.'s siblings. The affidavit asserted that the appellants' eleven-month-old child, La.C., had died while in their custody as a result of shaking, and that Mrs. Calahan's two-year-old child, L.D., had sustained serious injuries requiring emergency surgery. The two-year-old child remained in foster care in Virginia when the appellants moved back to Arkansas. The trial court granted DHS's motion for emergency custody on February 19, 2010.

After a hearing held on February 22, 2010, the trial court entered a probable-cause order, finding that probable cause continued to exist that required removal of L.C. from the home. The probable-cause order was entered on February 25, 2010, and an amended probable-cause order was entered on March 29, 2010, which scheduled an adjudication hearing for April 27, 2010.

There was testimony at the adjudication hearing that the current goal for Mrs. Calahan's child in Virginia was adoption, and that a termination hearing had been set. Regarding the instant case involving L.C. in Arkansas, there was testimony that the Calahans had been cooperating with the case plan. The Calahans underwent psychological evaluations,

and a family-service worker visited their home several times. However, pursuant to the trial court's orders the Calahans had not been allowed any visitation with L.C., and they had not had any physical contact with her since the day she was born.

Mrs. Calahan acknowledged in her testimony that one of her children died in Virginia from shaken baby syndrome. She further acknowledged that her surviving child in Virginia suffered life-threatening injuries. Mrs. Calahan denied any knowledge of either incident, indicating that she and her husband were not present and that her children were in the care of either an uncle or a babysitter when the injuries occurred. Mr. Calahan also denied causing any injury to either of those two children.

At the conclusion of the adjudication hearing, counsel for DHS asked the trial court to fast-track the case and terminate reunification services. The trial court announced:

It's just too severe an outcome to allow the possibility of anything else happening a third time. And I can't be responsible for doing that. I won't be responsible for doing that. I have to do what is in the child's best interest. And I don't think it is in L.C.'s best interest for the parents to have any visitation or for the reunification efforts to go forward until what—I would like to say until something happens. But, I don't know what could possibly happen that could change these circumstances and take away the doubt.

The trial court also announced that it was making a finding of dependency/neglect based on the failure of the parents to protect their other children.

The trial court entered the adjudication order on July 21, 2010, finding L.C. to be dependent/neglected. The adjudication order also provided:

The Court finds by clear and convincing evidence that the Department cannot pursue a goal of reunification in this matter. The Department is authorized to file a Motion to terminate reunification of services.

The order scheduled a no-reunification hearing for July 20, 2010.¹

On July 30, 2010, DHS filed a motion to terminate reunification services and notice of hearing. As grounds for recommending no reunification services, DHS asserted that L.C. had been subjected to aggravated circumstances in that there was little likelihood that services to the family would result in successful reunification. DHS supported its motion with the following facts:

Jeremiah Calahan was found to have caused severe injuries to L.D., a sibling of L.C. by the Commonwealth of Virginia. Moreover, the Commonwealth of Virginia found that Julie Calahan failed to protect L.D. from serious physical injuries. In addition, after L.D. was removed from their home, L.C. suffered severe injuries that resulted in death while in the care of Jeremiah & Julie Calahan.

DHS's motion asserted that a hearing on the motion was scheduled for October 5, 2010, and that the Calahans were on notice that the matter would be heard on that date.

On July 30, 2010, which was the same day DHS filed its motion to terminate reunification services, the Calahans filed their notice of appeal from the adjudication order. On August 4, 2010, the Calahans filed an answer to DHS's motion to terminate reunification services. In their answer, the Calahans denied DHS's claim that reunification services should be terminated, arguing that they had appealed the adjudication of dependency/neglect, and

¹The adjudication order was evidently drafted on April 27, 2010, which was the day of the adjudication hearing.

therefore that no other action should be taken by the trial court until a decision by the court of appeals. On December 3, 2010, DHS and L.C. filed their joint motion to dismiss the Calahans' appeal.

In this appeal, the Calahans' singular point is that the trial court erred in granting DHS's oral motion to terminate reunification services. Arkansas Code Annotated section 9-27-365(a) (Repl. 2009) provides, in pertinent part:

(1)(A) Any party can file a motion for no reunification services at any time.

(B) The motion shall be provided to all parties in writing at least fourteen (14) days before a scheduled hearing.

(C) The court may conduct a hearing immediately following or concurrent with an adjudication determination or at a separate hearing if proper notice has been provided.

(2) The motion shall identify sufficient facts and grounds in sufficient detail to put the defendant on notice as to the basis of the motion for no reunification services.

Appellants contend that when DHS made its oral motion at the adjudication hearing, there was a failure to comply with the above statutory provisions because there was no written motion provided fourteen days before the hearing, and they were not put on notice of the grounds upon which the motion was based. Appellants rely on *Hardy v. Arkansas Dep't of Human Servs.*, 2009 Ark. App. 751, 351 S.W.3d 182, a case where we reversed and remanded for further proceedings because Ms. Hardy was not given the required notice before the trial court sua sponte entered a no-reunification-of-services order.² The Calahans argue that while DHS did file a written notice to terminate services in the instant matter on

²The no-reunification order in *Hardy* contained a Rule 54(b) certificate, making it immediately appealable.

July 30, 2010, the trial court had already terminated reunification services at the adjudication hearing contrary to the provisions of the statute. Therefore, appellants argue that this case should be reversed and remanded with instructions to reinstate reunification services.

We conclude that this case must be dismissed because there is not a final judgment ordering no reunification services. Where no final or otherwise appealable order is entered, this court lacks jurisdiction to hear the appeal. *Ford Motor Co. v. Harper*, 353 Ark. 328, 107 S.W.3d 168 (2003).

Pursuant to Supreme Court Rule 6-9(a)(1)(A), an adjudication order is appealable. In the present case the appellants have appealed from the adjudication order, but they do not challenge the adjudication of dependency/neglect. Instead, their only challenge is to the order of no-reunification announced at the hearing and alluded to in the adjudication order. However, there was no final decision from which an appeal could be taken on that issue.

The adjudication order authorizes DHS to file a motion to terminate reunification services, which contemplates a subsequent hearing and final determination. In response to that provision of the adjudication order, DHS filed a written motion to terminate reunification services, which gave the appellants the required fourteen-day notice and set forth the specific grounds in support of the motion. The trial court's decision was tentative, reserving the right to change its ruling at a later date; therefore, it did not conclude the Calahans' rights to the subject matter in controversy. See *Williams v. Arkansas Dep't of Human Servs.*, 2010 Ark. App. 672.

Cite as 2011 Ark. App. 165

A no-reunification order is appealable if the trial court directs entry of a final judgment in accordance with Ark. R. Civ. P. 54(b). *See* Ark. Sup. Ct. R. 6-9(a)(1)(B). In the present case, no no-reunification order has been entered, much less one with a Rule 54(b) certificate. Nor does the adjudication order contain a final disposition of that issue. Because there is no final, appealable order relating to the only issue now being raised, we are without jurisdiction to hear this appeal.

Appellees' motion to dismiss is granted.

PITTMAN and GRUBER, JJ., agree.