

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA10-1083

FRANCISCO VELAZQUEZ

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD

APPELLEES

Opinion Delivered MARCH 2, 2011

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. J2009-585-D/N]

HONORABLE JAY FINCH, JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Francisco Velazquez appeals from the circuit court's termination of his parental rights to his minor child, F.V., who was born on September 1, 2006. On appeal, Velazquez argues that termination of his parental rights was in error because the child had achieved permanency through a custodial placement with a relative. We affirm.

The Arkansas Department of Human Services (DHS) took custody of the child after the mother, who is not a party to this appeal, was arrested on drug-related charges. The circuit court held a probable-cause hearing on June 4, 2009, and found probable cause to believe that the child was dependent-neglected. On June 17, 2009, the circuit court granted custody of the child to appellant's sister and her husband. The circuit court adjudicated the child dependent-neglected on July 14, 2009. In a permanency-planning order entered on

January 19, 2010, the circuit court changed the goal of the case to adoption. On March 1, 2010, DHS filed a petition for termination of the parental rights of both parents. In the petition DHS listed the following grounds for termination: 1) that the child had been out of the custody of the parents for twelve months and the conditions that caused the removal had not been remedied and 2) that other factors arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the child to the parents would be contrary to the child's health, safety, or welfare.

At the termination hearing, the mother testified that appellant was arrested in May 2008, and the next time she saw him was in December 2008. From December 2008 until May 2009, appellant would see the child every other weekend. According to the mother, appellant took care of the child while he had the child.

Appellant testified that he was incarcerated from January until November 2007 on a possession-of-drug-paraphernalia charge. In May 2008, he was arrested on a parole violation, and he got out of prison in December 2008. He was arrested in September 2009 on another parole violation and was still in prison at the time of the termination hearing. The last time appellant saw the child was before the mother was arrested in May 2009. Appellant testified that he has talked to the child frequently on the phone since the child has been in his sister's custody. According to appellant, he wanted to have visitation with the child, but DHS never contacted him. He also said that he was never told that he had to pay child support. At the time of the hearing, appellant was enrolled in parenting classes. Appellant testified that, once

he was granted parole, which he anticipated would be within a month of the hearing, he would be paroled to his mother's house and he would be self-employed doing odd jobs. Appellant further testified that the last time he used any illegal drugs was in 2008.

Meghan Bruns, a family-service worker with the Division of Children and Family Services, testified that the child's aunt and uncle wanted to adopt him. She further testified that the recommendation of DHS was to terminate parental rights. Bruns stated that she believed adoption was the best permanent option for the child. Bruns testified that appellant had not demonstrated stable housing and employment. Bruns also testified that there was a period of time during the case in which appellant could not be located because he was incarcerated under a different name.

On July 1, 2010, the circuit court entered an order terminating both parents' parental rights. In the order, the court noted that appellant's whereabouts were unknown for much of the case, that he had not presented himself to the court prior to the filing of the termination petition, and that he was incarcerated at the time the termination order was entered. Appellant filed a timely notice of appeal to this court.

An order forever terminating parental rights must be based on clear and convincing evidence that termination is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). Additionally, DHS must prove at least one statutory ground for termination by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3)(B). Our statute provides, as a ground for termination, that the child has been adjudicated dependent-neglected

and has continued out of the custody of the parent for twelve months and, despite a meaningful effort by DHS to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). Our statute also provides that a termination petition may be granted if other factors or issues arose subsequent to the filing of the original petition that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). We do not reverse a termination order unless the circuit court's findings were clearly erroneous. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

Appellant's sole point on appeal is that termination of his parental rights was contrary to the law because the child had achieved permanency through the placement with relatives. For support, appellant relies upon Arkansas Code Annotated section 9-27-338(c)(3)(A) (Repl. 2009), which states that at a permanency-planning hearing, one of the permanency goals available to the circuit court is to authorize a plan for adoption and termination of parental rights unless "the juvenile is being cared for by a relative, including a minor foster child caring for his or her own child who is in foster care, and termination of parental rights is not in the best interest of the juvenile." Appellant also relies upon Arkansas Code Annotated sections 9-27-359(b)(1)(A) and (B) (Repl. 2009), which state that at the fifteen-month-review hearing,

the circuit court shall authorize the department to file a petition to terminate parental rights unless the child is being cared for by a relative or relatives and termination of parental rights is not in the child's best interest.

We note that in making his argument, appellant relies upon statutes that pertain to the permanency-planning hearing and a fifteen-month-review hearing and not the termination hearing itself. The bar in this case is that appellant failed to bring up the record of the permanency-planning hearing where the goal was changed to termination of parental rights. While a termination order might bring up all intermediate orders, appellant did not designate the permanency-planning hearing in his notice of appeal, effectively waiving an argument that would relate to the trial court's decision which seems to run contrary to the clear language of Arkansas Code Annotated section 9-27-338(c)(3)(A). It is appellant's burden to bring up a record that demonstrates error. *Cassidy v. Ark. Dep't of Human Servs.*, 76 Ark. App. 190, 61 S.W.3d 880 (2001).

Affirmed.

HART and BROWN, JJ., agree.