

Cite as 2010 Ark. App. 827

ARKANSAS COURT OF APPEALSDIVISION I
No. CA10-805

CASANDRA MCCANN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered December 8, 2010APPEAL FROM THE JOHNSON
COUNTY CIRCUIT COURT,
[NO. JV-2010-12]HONORABLE KEN D. COKER, JR.,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Casandra McCann brings this appeal from an order adjudicating her children dependent-neglected. We find no error and affirm the circuit court's decision.

Appellant is the mother of three children, D.M. and B.M., involved in this appeal from Johnson County, and A.C., who was the subject of a dependency-neglect proceeding in Pulaski County. D.M., a son, was born on December 21, 2002; B.M., a daughter, was born on October 25, 2000; and A.C., another daughter, is thirteen years old. The Pulaski County case began in October 2008 after A.C. was a victim of sexual abuse; the Pulaski County Circuit Court ordered A.C. to be taken into foster care because appellant did not have an appropriate home and had failed a drug screen. In February 2010, the Pulaski County Circuit Court ordered DHS to file a proceeding to take B.M. and D.M., who were living with

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appellant's mother, into foster care because of appellant's unfitness. DHS filed the petition for emergency custody on February 5, 2010. The court entered an order granting the petition the same day. The court found probable cause after a hearing on February 11, 2010.

At the adjudication hearing held on March 29 and April 6, 2010, Dr. Paul Deyoub, a forensic psychologist, testified about his psychological examination of appellant in October and November 2009 in the Pulaski County proceeding. The court admitted his report of the examination into evidence. In his report, Dr. Deyoub related appellant's social history and described her as belligerent, hysterical, unstable, unreliable, and untruthful. Dr. Deyoub testified that he had diagnosed appellant with methamphetamine and cannabis dependency, depression, and borderline personality disorder. He stated that appellant had failed to complete drug treatment and had begun using drugs as soon as she was expelled from rehab. He stated that she was lying about her drug use; although she may have tested positive for only marijuana when A.C. was removed from her custody, he did not believe her statement that she first used methamphetamine after being kicked out of rehab on October 31, 2009, because her teeth were decayed and she was with her husband, whom he knew to be a methamphetamine addict. Dr. Deyoub said that appellant had problems with emotional control, rage, anger, and instability, behaviors that he often saw in methamphetamine users and in people with the same personality disorder. In any event, he said, she was unfit with or without methamphetamine; because appellant was not a fit parent for A.C., she was not fit to have custody of the two younger children, who were more vulnerable. He also stated that

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all three children would be subjected to the same kind of instability in the future, and that, even with intensive reunification services, he doubted appellant's ability to achieve sufficient stability to become an adequate parent.

Appellant called Jimmie Wooding, a social worker, as a witness. She stated that she had provided counseling to appellant every two to three weeks since February 2008. Ms. Wooding did not disagree with Dr. Deyoub's opinion that appellant has a personality disorder (she was not sure what type), nor did she question the psychological tests that he administered to her. She disagreed with him, however, about appellant's fitness as a parent; she said that, after counseling appellant for over two years, she did not believe that appellant was unfit. She stated that appellant had sought counseling of her own volition and had made meaningful progress. Ms. Wooding testified that, although appellant had suffered a drug relapse after three years of being sober, appellant had recognized her problem and had gotten into residential treatment quickly; the facility, however, was not equipped to offer treatment to persons (like appellant) who had been prescribed Xanax. Ms. Wooding testified that she was not concerned about appellant's ability to be a fit parent to B.M. and D.M., in spite of the problems she had experienced in her relationship with A.C. Ms. Wooding testified that, other than having bad teeth, appellant did not have any physical characteristics of a methamphetamine user. She further opined that having borderline personality disorder does not necessarily render someone an unfit parent. Ms. Wooding believed that she was better able than Dr. Deyoub to assess appellant's fitness as a parent because she had spent more time with her in a therapeutic setting.

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On May 4, 2010, the Johnson County Circuit Court entered an adjudication order finding D.M. and B.M. dependent-neglected. The court found the children to be at substantial risk of serious harm as a result of parental unfitness and stated that appellant could have supervised visitation, contingent on her passing a drug test before each visit. It directed appellant to complete individual counseling; to submit to random drug screens; to obtain and maintain stable and appropriate housing; to submit to a substance-abuse evaluation and comply with all recommendations; and to complete a medication evaluation with a physician and to follow all recommendations. Appellant then brought this appeal.

Appellant challenges the sufficiency of the evidence to support the trial court's determination that the children were dependent-neglected and asserts that the trial court erred in placing more weight on Dr. Deyoub's testimony than on that of Ms. Wooding. 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 Our juvenile code defines a "dependent-neglected juvenile" as any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: abandonment, abuse, sexual abuse, sexual exploitation, neglect, parental unfitness, or being present in a dwelling or structure

¹Ark. Code Ann. § 9-27-237(a)(1) (Repl. 2009).

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

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during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.³

We will not reverse the circuit court's findings unless they are clearly erroneous.⁴ In reviewing a dependency-neglect adjudication, we defer to the circuit court's evaluation of the credibility of the witnesses.⁵ The focus of an adjudication hearing is on the child, not the parent.⁶ At this stage of a proceeding, the juvenile code is concerned with whether *the child* is dependent-neglected.⁷ 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.⁸

Appellant contends that her counselor's testimony was more persuasive than Dr. Deyoub's. We give a high degree of deference to the trial court because of its far superior position to observe the parties before it and to judge the witnesses' credibility.⁹ The assignment of the weight and credibility to expert testimony is within the scope of the trial

³Ark. Code Ann. § 9-27-303(18)(A) (Repl. 2009).

⁴*Seago v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 767, ___S.W.3d___.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Williams v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 95, 257 S.W.3d 574 (2007).

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court's discretion.¹⁰ We will not reverse the trial court's decision regarding the credibility of an expert witness absent an abuse of discretion.¹¹

The undisputed facts of this case more than adequately support a finding that appellant's children were dependent-neglected. At the time that DHS took B.M. and D.M. into custody, they were living with their maternal grandmother—who appellant claimed did a poor job as a parent—because appellant wanted to avoid having DHS take them into custody, as it had A.C. Appellant and her methamphetamine-addicted husband had lived with a family friend for over a year, during which time the friend had molested A.C. After her husband was arrested, appellant lived in a trailer with no electricity while A.C. lived with a relative. Appellant failed a drug test and did not have a job. She was kicked out of rehabilitation early and admitted to immediately using methamphetamine again. This history of chaotic relationships and living situations soundly supported Dr. Deyoub's prognosis that appellant's chances of achieving stability were poor. We hold that the trial court did not abuse its discretion in affording greater weight to Dr. Deyoub's opinion and that its finding that the children were dependent-neglected was not clearly against the preponderance of the evidence.

Affirmed.

HART AND BAKER, JJ., agree.

¹⁰ *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001).

¹¹ *Id.*