

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA09-1089

DONNA LEAF,

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HEALTH & HUMAN SERVICES AND  
MINOR CHILD,

APPELLEES

**Opinion Delivered** 10 MARCH 2010

APPEAL FROM THE OUACHITA  
COUNTY CIRCUIT COURT  
[NO. JV-2008-27]

THE HONORABLE LARRY  
CHANDLER, JUDGE

AFFIRMED

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**D.P. MARSHALL JR., Judge**

DHS opened this case when Donna Leaf's child, S.C., was a few months old. Leaf tested positive for marijuana, cocaine, and opiates when S.C. was born. Thereafter she continued to test positive for drugs. The circuit court adjudicated S.C. dependent-neglected and eventually removed S.C. from Leaf's custody. Leaf sought treatment, but continued to struggle with her drug habit. The circuit court terminated Leaf's parental rights. She appeals.

Leaf does not challenge the circuit court's best-interest finding. She argues instead that the statutory ground found by the circuit court is inapplicable. Echoing the statute, the circuit court found "[t]hat other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of

the juvenile to the custody of the parent, Donna Leaf, 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 or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent." Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2009). Leaf argues that her drug use—which has been the issue since the beginning of the case—cannot constitute a “subsequent” issue or factor under the statute. We do not read the statute, however, as narrowly as Leaf suggests.

On our *de novo* review of the whole record, *Lee v. Arkansas Dep't of Human Servs.*, 102 Ark. App. 337, 344, 285 S.W.3d 277, 281–82 (2008), we note the following post-petition facts that came to light at the termination hearing. After the court adjudicated S.C. dependent-neglected, Leaf entered and completed an in-patient drug rehabilitation program. Less than a year later, Leaf relapsed. After completing the in-patient program again, however, Leaf acknowledged that she had not complied with her out-patient treatment program. When asked whether she was worried about relapsing again because she had quit going to this treatment, Leaf responded, “I'm very much worried about it.” But she blamed her inability to attend on her work schedule: “I have to work when I have to work. I have to make a living, too, you know. I have to do what I've got to do.” At the end of the termination hearing, the court asked

Leaf whether she had used any illegal substances in the past 72 hours. Leaf said “[y]es,” she had used marijuana.

A DHS worker also testified that, although Leaf was scheduled to visit S.C. each week for an hour, every visit had been “unsuccessful.” For example, when a DHS worker told Leaf that she needed to take a drug test before visiting with S.C., Leaf refused, cursed at the DHS worker, threw things across the desk, and left. Leaf admitted these facts, saying that she “broke down” and was “hysterical.” DHS was unable to drug test Leaf, or perform a home visit, since Leaf’s most recent exit from the rehabilitation program (nearly two months before the termination hearing) because Leaf would not make herself available.

These circumstances go beyond the original issue of Leaf’s drug use. The relapse, the failure to complete out-patient treatment, the refusal to take drug tests, the failed visitation schedule, the continued drug use—all these issues arose after DHS filed the original petition. These circumstances reveal the recent extent of Leaf’s addiction and her inability to correct the developing circumstances that are keeping her from S.C. They are, to be sure, addiction-related in general. But these specific issues also arose after the petition’s filing. The statute is broad enough to cover this kind of case. And the circuit court’s subsequent-issues finding is not clearly erroneous. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a); *Johnson v. Arkansas Dep’t of Human Servs.*, 78 Ark.

Cite as 2010 Ark. App. 242

App. 112, 121–22, 82 S.W.3d 183, 189 (2002).

Affirmed.

ROBBINS and GLOVER, JJ., agree.