

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CA 09-1183

JEANNIE LIPSCOMB

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and B.S., a minor  
APPELLEES

**Opinion Delivered** March 17, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. JN 2009-1185]

HONORABLE JOYCE WILLIAMS  
WARREN, JUDGE

AFFIRMED

---

**M. MICHAEL KINARD, Judge**

Jeannie Lipscomb appeals the order of the Pulaski County Circuit Court that adjudicated her daughter, B.S. (born 9/14/98), dependent-neglected. We affirm.

The Arkansas Department of Human Services (DHS) placed an emergency seventy-two-hour hold on B.S. on June 4, 2009. On that date, DHS received a report of child maltreatment involving B.S. after appellant took her to Arkansas Children’s Hospital for treatment. According to the affidavit attached to the petition for ex parte emergency custody, the on-call assessor for DHS spoke with B.S., who stated that her stepfather, Fredrick Kidd, had sexually abused her. She stated that she had told her mother about the abuse but her mother said she did not believe her. The on-call assessor also spoke with appellant and the social worker and learned that appellant had suspected that her husband was sexually abusing her daughter and, in order to obtain “proof,” left B.S. alone with her husband; she

came back earlier than expected to find them sitting close together on the couch. They immediately moved to opposite ends of the couch when she walked in the door, with Kidd adjusting his pants. Based on this information, DHS took protective custody of B.S.

The court entered an ex parte order for emergency custody of B.S. on June 8, 2009, placing custody of B.S. with DHS. The court entered a probable cause order on June 10, 2009, finding that appellant failed to protect B.S. and that, even if B.S. did not tell appellant about the abuse, appellant still “strongly suspected something was going on and left her daughter in Mr. Fredrick Kidd’s care.” The court continued custody with DHS and set an adjudication hearing for July 16, 2009.

At the adjudication hearing, the court heard testimony from the Arkansas Children’s Hospital social worker who spoke to appellant when she brought her daughter to the hospital; the investigator with the Arkansas State Police, Crimes Against Children Division, who observed an interview with B.S. regarding the abuse; the DHS assessor who interviewed both appellant and B.S.; and B.S.

In an order filed August 3, 2009, the court found by a preponderance of the evidence that B.S. was dependent-neglected under Arkansas law because she was “at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: sexual abuse by the stepfather Fred Kidd, as a result of the mother’s failure to protect the juvenile.” The court specifically found that appellant suspected, for some unknown period of time, that her husband was sexually abusing B.S., but appellant did not

ask B.S. or confront Kidd about her suspicions. Instead, she left her daughter with Kidd and unexpectedly returned after a short time; she found Kidd and B.S. sitting close together on the couch, with Kidd zipping or adjusting his pants. During the time appellant was gone, Kidd sexually abused B.S. The court found credible B.S.'s testimony regarding the incident in which her mother came home and caught Kidd close to her on the couch. It also found credible B.S.'s testimony that she did not tell her mother about the abuse because Kidd told her not to tell and she was obeying him; and that the abuse happened more than five but less than ten times, but noted that it is difficult for a child who has gone through such trauma to have exact information regarding when and how it occurred. The court further found that while B.S. never told appellant about the abuse, appellant suspected the abuse and put her daughter in harm's way; the court found this to be "unfit." According to the court, appellant should have asked her daughter if anyone had ever touched her inappropriately, confronted her husband about her suspicions, and at the very least not allowed him to be alone with her daughter. Finally, the court agreed with DHS and the attorney ad litem's characterization of the incident as appellant using her child as "bait."

The court approved DHS's case plan. The court set the goal of the case as reunification with the mother, but set a concurrent goal of obtaining a permanent custodian, including permanent custody with a fit and willing relative. Appellant was granted supervised visitation at the DHS office. A review hearing was set for December 3, 2009.

Appellant appeals the adjudication of B.S. as dependent-neglected. She argues that the trial court erred in finding that B.S. was dependent-neglected because DHS did not prove that she failed to protect her daughter from abuse. An adjudication order in a dependency-neglect proceeding is an appealable order. Ark. Sup. Ct. R. 6-9(a)(1)(a) (2009). In dependency-neglect cases, the standard of review on appeal is de novo, but we do not reverse the judge's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Moiser v. Arkansas Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

At the adjudication hearing, DHS had the burden of proving by a preponderance of the evidence that B.S. was dependent-neglected. Ark. Code Ann. § 9-27-325(h) (Repl. 2009). A dependent-neglected juvenile includes any juvenile who is at substantial risk of serious harm as a result of sexual abuse, neglect, or parental unfitness. Ark. Code Ann. § 9-27-303(18)(A) (Repl. 2009). The statutory definition of "neglect" includes those acts or omissions of a parent that constitute "[f]ailure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known." Ark. Code Ann. § 9-27-303(36)(A)(iii) (Repl. 2009). Thus, it appears that appellant challenges the

court's finding that B.S. was at substantial risk of harm as a result of her mother's neglect—specifically, her mother's failure to protect her from sexual abuse by her stepfather.

We note that the finding of sexual abuse alone was sufficient to support a finding that B.S. was dependent-neglected. Under the definition of “dependent-neglected juvenile,” a juvenile who is at substantial risk of serious harm as a result of certain acts or omissions to the juvenile, a sibling, or another juvenile is dependent-neglected; the enumerated “acts or omissions” include sexual abuse. See Ark. Code Ann. § 9-27-303(18)(A). Appellant does not challenge the finding that B.S. was sexually abused. Although appellant is not the person who sexually abused B.S., the fact remains that B.S. was found to be at substantial risk of serious harm as a result of sexual abuse. Thus, she was dependent-neglected. See *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007) (stating that “[a]n 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”).

Even if appellant's argument were addressed, this case must be affirmed. The crux of appellant's argument is that her mere *suspicion* of sexual abuse does not give rise to the statutory requirement for neglect that she knew or had reasonable cause to know of the sexual abuse by Kidd. However, the trial court found that appellant had suspicions that the abuse was occurring and not only failed to prevent it, but actually facilitated the abuse by leaving her daughter home alone with Kidd. There was also evidence that B.S. had certain changes in behavior that should have further alerted appellant that something was going on. The

Cite as 2010 Ark. App. 257

court found that appellant “should have and could have taken some appropriate action when she first suspected the abuse.” A parent has a duty to protect a child and can be considered unfit even though she did not directly cause her child’s injury; a parent must take affirmative steps to protect her children from harm. *Sparkman v. Ark. Dep’t of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006); *Wright v. Ark. Dep’t of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

On this record, the circuit court’s finding that B.S. was dependent-neglected is not clearly erroneous.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.