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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-1382

CYNTHIA TAYLOR APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** APRIL 28, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. JJN-07-1061] HONORABLE WILEY A. BRANTON, JR., JUDGE AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Cynthia Taylor appeals from an order terminating her parental rights in five children: D.B.1, D.B.2, Q.K., B.K., and K.G. The circuit court found that termination was in the children's best interest and that the Arkansas Department of Human Services ("DHS") proved the following ground for termination:

> That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department 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*) (Repl. 2009). Appellant argues on appeal that DHS made no meaningful effort to rehabilitate her and correct the conditions that caused removal. We disagree and affirm.

A recitation of the factual and procedural history of this case is in order. On May 31, 2007, appellant asked DHS to assume custody of her four children, ages four through nine. (Appellant's youngest child was not yet born.) Appellant told DHS that her home had no food or utilities; that she was not in the right frame of mind to deal with the children; that she had yelled at and hit the children; and that the two oldest children had not been in school for months. DHS placed a seventy-two-hour hold on the children, and the circuit court granted emergency custody to DHS on June 4, 2007. Thereafter, the court held probable-cause and adjudication hearings, which appellant did not attend. On August 10, 2007, the court determined that the children were dependent-neglected and that appellant was uncooperative and appeared to have little interest in her children. The court established a goal of reunification and ruled that, "if [appellant] comes forward," DHS should offer the following services: supervised visitation, a psychological evaluation, a counseling referral, a medications assessment, random drug-and-alcohol screens, a drug-and-alcohol assessment in the event of a positive screen, parenting classes, transportation assistance, and DNA testing to determine the children's paternity. The court also ordered appellant to maintain stable housing and employment.

On December 12, 2007, the circuit court held a permanency-planning hearing and changed the goal of the case to termination of parental rights. The court found that appellant had "done nothing in this case to rehabilitate herself or her situation" but that she "showed up in Court today with a serious attitude, acting as if she knows everything and is smarter

than everyone else." The court ordered appellant to undergo a psychological evaluation, to submit to random drug-and-alcohol screens, to submit to in-patient drug rehabilitation, to attend parenting classes, and to establish stable housing and employment. The court also ordered DHS to provide appellant with transportation, drug-and-alcohol screens, and referrals for the listed services.

The court conducted a termination hearing on February 19, 2008, but declined to terminate appellant's parental rights at that time. The court found that DHS had not provided the services set out in the previous order and that, as a result, it was impossible to determine if appellant had made any progress in the case. The court resumed the goal of reunification and maintained that goal throughout the next several review periods, citing DHS's need to exercise greater diligence in furnishing certain services. However, in a permanency-planning order entered August 19, 2008, the court found that DHS had made a reasonable effort to achieve the goal of reunification, noting that DHS had provided a packet that included a case plan, documentation of referrals, drug-screen results, and a paternity test. Near this same time, the court also adjudicated the newborn K.G. dependent-neglected.

In its next permanency-planning order, dated January 8, 2009, the court allowed appellant to resume visitation, which had been suspended due to unfounded allegations of sexual abuse, and allowed appellant to forego in-patient drug rehabilitation, given her history of only a few positive drug screens. However, the court found that appellant had not undergone drug screens or therapy as ordered since the previous hearing and warned appellant

that, if she did not maintain therapy attendance and negative drug-test results, the goal of the case would be changed to termination of parental rights. The court also found that DHS had made reasonable efforts to finalize a permanency plan.

On April 7, 2009, the court changed the goal of the case to termination of parental rights. The court found that DHS had made reasonable efforts to provide reunification services but that appellant had missed family-therapy appointments, missed visits with her children, tested positive for drugs, was recently incarcerated, and had outstanding warrants for her arrest. After DHS filed a petition to terminate appellant's parental rights, the court held a termination hearing on August 25, 2009. By that point, the four oldest children had been out of appellant's custody for more than two years, and the youngest child for just over one year.

At the termination hearing, DHS witnesses testified that appellant had missed several family-therapy appointments in the months before the hearing and that, despite starting individual counseling in November 2008, she had not been regular in her attendance until the court changed the goal of the case to termination of parental rights four months earlier. The witnesses also testified that appellant did not maintain contact with DHS; that she had not notified DHS of her recent move to Conway; that she had not visited her youngest child since April 29, 2009; that she tested positive for marijuana earlier in 2009; and that she did not appear for a drug screen as promised following an August 20, 2009 staff meeting. DHS additionally provided testimony that it had referred appellant for numerous services in August

2008, including a drug-and-alcohol assessment, drug treatment, and medication management but that appellant did not partake of those services.

Psychologist Dr. Paul Deyoub testified that appellant had a personality disorder, which required long-term individual therapy to stand a chance of improving. Dr. Deyoub opined that appellant's prognosis for improvement was poor. Appellant's individual therapist, Helen Chambers, testified that appellant was making progress but that she could need as much as another year to recover from her psychological problems.

Appellant testified that she was living in Conway with her sister and her sister's five children in a three-bedroom home and that she had just started a new job the previous day. She admitted to missing more therapy appointments than she attended in 2008 and to missing some therapy appointments in 2009. She also acknowledged testing positive on a drug screen and failing to visit her one-year-old baby, who she felt was "rejecting" her. Appellant said that she was in no position to take the children but that she would like more time to work on reunification.

After the hearing, the court entered an order terminating appellant's parental rights.[1] The court found that the children were adoptable; that termination of appellant's parental rights was in the children's best interest; and that DHS proved grounds for termination. The court also determined that DHS made reasonable efforts to reunify the family and rehabilitate appellant but, despite DHS's meaningful efforts, appellant failed to correct the conditions that

[1]The court also terminated the parental rights of four putative fathers, but those terminations are not on appeal.

caused the children's removal. On appeal, appellant does not challenge the circuit court's best-interest finding or its finding that she failed to remedy the conditions that caused the children's removal. Her sole point of contention is that DHS failed to provide meaningful reunification services in a timely manner.

We note at the outset that appellant's argument is subject to a procedural bar. In two permanency-planning orders entered prior to the termination hearing—the order dated August 19, 2008, and the order dated April 7, 2009—he circuit court found that DHS had made reasonable efforts to reunify the family. Appellant did not appeal from those orders. We have held in dependency-neglect cases that an appellant's failure to appeal from earlier orders containing the finding complained of precludes our review of that finding. *See Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 366, 242 S.W.3d 282, 284 (2006) (refusing to consider an argument that DHS failed to make meaningful efforts to reunify the family where the appellant did not appeal from an earlier permanency-planning order finding reasonable efforts). *See also White v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 609, at 11, 344 S.W.3d 87, 92-93; *Jones-Lee v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 160, at 18–19, 316 S.W.3d 261, 271.

In any event, appellant's arguments do not warrant reversal on the merits. While DHS did not provide adequate services to appellant during the first year of the case, it did begin providing referrals by August 2008, approximately one year before the termination hearing. The circuit court determined at that point that DHS had resumed reasonable efforts to reunify

the family, and the court continued to make that finding during the remainder of the case. The court also gave appellant a full year before the August 2009 termination hearing in which to utilize services such as counseling, psychological evaluation, drug-and-alcohol assessment, drug treatment, medication management, drug screens, and visitation. Yet the evidence shows that appellant either failed to take advantage of many of those services or participated in them inconsistently. Under these circumstances, we decline to hold that the circuit court clearly erred in finding that DHS made a meaningful effort to rehabilitate appellant. The court may well have determined that, in the last year of the case, the fault lay not with DHS but with appellant.

Affirmed.

KINARD and MARSHALL, JJ., agree.