

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-117

JACQUELYN CULCLAGER-HAYNES
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. JV-2009-1010-6]

HONORABLE EARNEST E.
BROWN, JR., JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an adjudication of dependency-neglect due to temporary abandonment. Appellant, the mother of the adolescent found to have been abandoned, argues that the evidence is insufficient to support the trial court's finding of abandonment. We affirm.

Adjudication hearings are held to determine whether the allegations in the petition are substantiated by the proof. Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009). A juvenile who is at substantial risk of serious harm resulting from abandonment is dependent-neglected. Ark. Code Ann. § 9-27-303(18)(A)(i) (Repl. 2009). An articulated intent to forego parental responsibility constitutes abandonment. Ark. Code Ann. § 9-27-303(2)(B).

Dependency-neglect allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Repl. 2009). Where the sufficiency of the evidence is

challenged on appeal from a dependency-neglect adjudication, we will not reverse the trial court's findings unless they are clearly erroneous. *Ashcroft v. Arkansas Department of Human Services*, 2010 Ark. App. 244. In reviewing a dependency-neglect adjudication, we defer to the trial court's evaluation of the credibility of the witnesses. *Id.* This deference to the trial court is even greater in cases involving child custody, as a heavier burden is placed on the circuit judge to utilize to the fullest extent his or her powers of perception in evaluating the witnesses, their testimony, and the best interests of the children. *Id.*

There was evidence that, against the advice of physicians, appellant decided to have her severely disturbed and violent child released from Pinnacle Point psychiatric hospital. Afterward, the twelve-year-old child threatened appellant with bodily harm, and consequently was held in juvenile detention for thirty days. Upon his release from the Juvenile Detention Center, appellant refused to take custody of him. A Department of Human Services worker testified that he warned appellant that her failure to take charge of her child following his release by the trial court from juvenile detention constituted abandonment and would be reported as such. Appellant nevertheless left the building, leaving the child in DHS custody. The child remained briefly in DHS custody and has since been returned to appellant's custody, with the goal being to maintain the child in appellant's home.

This appeal turns on appellant's credibility. Appellant denies that she was informed that her action would constitute abandonment and asserts that she thus lacked intent to abandon her child. However, the trial judge expressly stated that he did not believe appellant

because he himself had reviewed the options with appellant at the hearing held at the time of the juvenile's release and was convinced that she understood the ramification of her choice. The trial judge also expressly stated that he believed the testimony given by the DHS worker. Furthermore, even if appellant believed that she was not capable of caring for her child at home, she offers nothing to explain her inability or refusal to arrange for the child's readmittance to a psychiatric facility. Giving due deference to the trial judge's superior opportunity to determine the credibility of the witnesses, we cannot say that he erred in finding that the juvenile was dependent-neglected by virtue of abandonment.

Affirmed.

GLOVER, J., agrees.

GLADWIN, J., concurs.