

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-322

TONYA CASARREAL

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered SEPTEMBER 22, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. JV 2008-128]

HONORABLE MARK HEWETT,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Tonya Casarreal appeals from the order of the Sebastian County Circuit Court terminating her parental rights to her daughter, A.H., born March 3, 2001.¹ In her single point on appeal she argues that the circuit court erred in admitting into evidence a transcript of A.H.'s testimony taken at a hearing where Casarreal and her husband were not represented by counsel. As part of that point, she also argues that she did not properly waive her right to counsel. We affirm the circuit court's termination order.

The Arkansas Department of Human Services (DHS) placed a seventy-two-hour hold on A.H. and C.C. on February 22, 2008, after A.H. made allegations that her stepfather had

¹Casarreal's rights to another daughter, C.C., are not involved in this appeal. Casarreal gave birth to another child during the pendency of this action. Her rights to this third child are likewise not involved in this appeal. Finally, the parental rights of any putative father(s) were also terminated; none have appealed.

sexually abused her. The circuit court issued an order for emergency custody on February 25, 2008.

At the April 7, 2008 adjudication hearing, the circuit court found the children dependent due to the unavailability of the parents to care for the juveniles. The court held the dependency-neglect determination in abeyance pending the resolution of any criminal charges against the stepfather based on the child's allegations. Prior to the resumption of the disposition phase of the adjudication hearing, Casarreal and her husband filed papers asking that a nonlawyer be permitted to act on their behalf as their advisor. Shortly after these papers were filed, Casarreal's retained counsel filed a motion to withdraw, citing a conflict of interest. After a hearing, the circuit court granted the motion to withdraw, and Casarreal was permitted to proceed pro se. A hearing was held on April 23, 2009, at which the court heard testimony from A.H. about the details of what her stepfather did to her. Casarreal was not represented by counsel at this hearing. Following this hearing, the court adjudicated A.H. dependent-neglected in an order entered on June 4, 2009. The order found that A.H. had been sexually abused by her stepfather.

On June 9, 2009, DHS filed its petition seeking to terminate Casarreal's rights to A.H. DHS asserted that the court had found A.H. dependent-neglected as a result of sexual abuse perpetrated by her stepfather and that such a finding constituted grounds for immediate termination of Casarreal's rights under Ark. Code Ann. § 9-27-303(18)(A)(iii) (Repl. 2009). Through counsel, Casarreal answered the petition for termination, denying the material allegations.

On November 6, 2009, the court held the termination hearing with Casarreal represented by counsel. DHS sought to introduce a transcript of A.H.'s testimony from the April 23, 2009 hearing. Casarreal objected to the admission of the transcript on the basis that she was not represented at that hearing. The court overruled the objection and admitted the transcript. Casarreal also signed a voluntary consent to the termination of her parental rights in open court. Part of Casarreal's motivation in executing the consent was to prevent the termination of her rights as to A.H. from being used as a basis to terminate her rights to her other children.² The court admitted the consent as an exhibit over DHS's objection.

The circuit court ruled from the bench and granted the petition to terminate Casarreal's rights to A.H. The court found that A.H. was adoptable, that the risk of harm to A.H. would be great if she were returned to Casarreal's custody, and that DHS had made reasonable efforts to provide reunification services to the family. The court found that two grounds for termination had been proven, the "twelve months failure to remedy" ground and that A.H. had been sexually abused by her stepfather. The court also noted that Casarreal executed a consent to the termination of her parental rights in open court. The court's order was entered on December 29, 2009. This appeal followed.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether

²See Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(4) (Repl. 2009).

the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* 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 made. *Id.* A heavy burden is placed on the party seeking termination. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Casarreal raises a single point on appeal—that the circuit court erred in admitting into evidence at the termination hearing a transcript of A.H.'s testimony taken at an earlier hearing where Casarreal was not represented by counsel. Essentially, she contends that because she did not have counsel at the hearing at which A.H. testified as to the abuse inflicted upon her, that lack of counsel so tainted the subsequent proceedings, including the termination hearing, that the termination order should be reversed. We disagree.

In *Jefferson v. Arkansas Department of Human Services*, 356 Ark. 647, 158 S.W.3d 129 (2004), the supreme court held that because the appellant failed to appeal the order from the adjudication hearing where she was not represented by counsel, any errors from being denied counsel could not be considered with respect to that particular order and did not taint the remainder of the case where counsel was subsequently appointed. As in *Jefferson*, Casarreal was represented at the termination hearing from which this appeal is taken. She also did not appeal from the order where she was not represented by counsel. We, therefore, cannot consider any

arguments about errors from that hearing.³

We must also affirm this case because Casarreal does not attack the circuit court's alternate ground, the "twelve month failure to remedy" ground that does not depend upon A.H.'s testimony. When an appellant fails to attack the circuit court's independent, alternative basis for its ruling, we will not reverse. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002); *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989); *Morehouse v. Lawson*, 90 Ark. App. 379, 206 S.W.3d 295 (2005).

Moreover, the circuit court had Casarreal's written consent, executed in open court with the benefit of counsel, when it entered the order terminating Casarreal's parental rights. Consent to the termination is one of the grounds authorized by the juvenile code and found by the circuit court. *See Ark. Code Ann. § 9-27-341(b)(3)(B)(v)(a)*. Casarreal does not argue that the consent was in any way invalid or that she withdrew her consent within the ten-day period provided by *Ark. Code Ann. § 9-27-341(g)*. Therefore, we cannot say that the circuit court was clearly erroneous in terminating Casarreal's parental rights based upon her voluntary consent to the termination.

Affirmed.

HENRY and BAKER, JJ., agree.

³Casarreal also argues that, to the extent that a person may waive the right to counsel, her waiver was not knowingly or intelligently made. Casarreal never argued to the circuit court that her waiver of counsel was ineffective. An appellant must raise an issue with specificity and make an argument to the circuit court for it to be preserved on appeal. *Porter v. Arkansas Dep't of Health & Human Servs.*, 374 Ark. 177, 286 S.W.3d 686 (2008).