

## ARKANSAS COURT OF APPEALS

DIVISION II

No. CA10-499

MARK SMITH

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and MINOR  
CHILDREN

APPELLEES

**Opinion Delivered** OCTOBER 6, 2010

APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[NO. JV 2008-211]

HONORABLE GARY ARNOLD,  
JUDGE

AFFIRMED

---

### **M. MICHAEL KINARD, Judge**

Mark Smith appeals from the order of the circuit court terminating his parental rights in his children, H.S. and M.S. On appeal, Smith argues that the circuit court's decision to terminate his parental rights is clearly erroneous. We affirm the order of the circuit court.

In 2007, appellant was imprisoned after being convicted of first-degree battery, second-degree domestic battery, false imprisonment, and first-degree terroristic threatening. At the time appellant began serving his sentence, H.S., born in 2005, and M.S., born in 2006, were in the custody of their mother, who was not married to appellant. On November 5, 2008, the Arkansas Department of Human Services (DHS) exercised an emergency hold on the children. On November 7, 2008, DHS filed a petition for emergency custody and dependency-neglect. In the affidavit that accompanied the petition, DHS stated that it took custody of the children because the mother, children, and an unrelated adult male were found

in a home with an inactive meth lab, and the mother and adult male were arrested. On November 7, 2008, the circuit court entered an order granting custody of the children to DHS.

On November 24, 2008, the circuit court entered an order finding probable cause to believe that the children were dependent-neglected and continuing custody of the children with DHS. In the order, appellant was ordered to submit to DNA testing to establish paternity. On January 9, 2009, the circuit court entered an order adjudicating the children dependent-neglected. The circuit court entered a judgment of paternity that appellant was the biological and legal father of the children. Following a review hearing on April 17, 2009, the circuit court continued custody of the children with DHS. On May 22, 2009, the circuit court entered a permanency planning order changing the goal of the case from reunification to termination of parental rights and adoption. On June 29, 2009, DHS filed a petition to terminate appellant's and the mother's parental rights. The scheduled termination hearing was postponed as to appellant and went forward as to the mother, whose parental rights were terminated following the hearing. The mother is not a party to this appeal.

The termination hearing pertaining to appellant's parental rights was conducted on January 15, 2010. Appellant testified at the termination hearing that he was living with a man named S.A. Potter, in whose home he had lived prior to being incarcerated. During the time he lived in that home with the children and their mother prior to his incarceration, the mother would leave the home, use drugs and return to the home. Appellant would watch

the children during those times. Appellant testified that the last time he saw his children was approximately eighteen months before his termination hearing. Appellant also testified that he was self-employed as a business partner with S.A. Potter. Appellant stated that he planned to live with Potter until Potter died. At the time of the hearing, appellant had been out of prison for less than a month. Appellant testified that he did not contact DHS following his release from prison. While he was incarcerated, appellant took a parenting class, a substance-abuse class, and received his GED. Appellant stated that a DHS caseworker told him that his current home was appropriate for the children.

Ebony Mance, the family-service worker assigned to the case, testified that DHS was recommending that appellant's parental rights be terminated because of the length of time the children had been in foster care, the lack of involvement from appellant, and the fact that the children did not know appellant. Mance testified that she had no contact with appellant prior to the termination hearing except for two prior court dates. Mance further testified that the only contact she had with appellant's mother was one occasion on which appellant's mother asked her what needed to be done to get a home study. Mance stated that the children have improved since they have been in foster care. Mance stated that she did not have much information regarding appellant's living arrangement and that she believed there was a possibility of harm to the children if they were returned to appellant due to appellant's history of aggression and domestic abuse. Mance gave an opinion that the children would be harmed

by waiting longer for permanency. Rebecca Kincannon, an adoption specialist, testified that the children were adoptable.

S.A. Potter testified that appellant's financial arrangement with him was going to continue into the future. Kathryn Davidson, the children's initial foster mother, testified that the children lived with her from November 2008 until September 2009 and that the children never asked about their father during that time. Appellant did not call or send letters to the children while they lived with Davidson.

The circuit court terminated appellant's parental rights in an order entered on February 26, 2010. Appellant filed a notice of appeal on March 5, 2010.

An order forever terminating parental rights must be based on clear and convincing evidence that termination is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009). Additionally, DHS must prove at least one statutory ground for termination by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3)(B). Our statute provides, as a ground for termination, that the child has lived outside the home of the parent for a period of twelve months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile. Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(a). In order to find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)(b). We do not reverse a termination order unless the circuit court's findings were clearly erroneous. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

Appellant's argument on appeal is that there was insufficient evidence to support the grounds for termination of appellant's parental rights. The circuit court's termination order lists several grounds, including failure to provide support or maintain meaningful contact. The termination order can be affirmed upon this ground. In his brief, appellant faults DHS for not providing services while he was incarcerated or giving him more information regarding what was expected of him in order to get his children back. Appellant further argues that his imprisonment was not grounds for termination. The supreme court has held that imprisonment of a parent is not conclusive on the issue of termination of parental rights. *See Crawford v. Ark. Dep't of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997). However, appellant's parental rights were not terminated because he was in prison. His parental rights were terminated because the children were in foster care for over a year, and the circuit court found that he failed to maintain meaningful contact with the children. The evidence at the termination hearing showed that appellant made no effort to contact the children or be involved in their lives for approximately eighteen months prior to his termination hearing. Further, there was no evidence introduced at the hearing to indicate that appellant was impeded from having contact of some kind with his children while he was in prison. While appellant's efforts at self-improvement while in prison are admirable, the evidence from the

termination hearing establishes that he made no effort to have any contact with his children or to do even the limited amount he could while incarcerated to be a part of their lives.

While appellant is correct in stating that the circuit court's order lists other grounds for termination that were not developed by DHS before the circuit court, DHS is only required to prove one statutory ground for termination. Ark. Code Ann. § 9-27-341(b)(3)(B) (Repl. 2009). The circuit court's finding that DHS proved that appellant failed to maintain meaningful contact with his children for over a year is not clearly erroneous.

The circuit court also determined, after hearing the evidence, that appellant's living and work situations were less than stable, and that the children would potentially be subjected to harm if they were returned to the father's care. The evidence at the hearing indicated that appellant is dependent upon S.A. Potter for both his employment and his living arrangements. We find that the circuit court's finding on the issue is not clearly erroneous. The order of the circuit court terminating appellant's parental rights is affirmed.

Affirmed.

ROBBINS and BROWN, JJ., agree.