

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-550

JARED M. ROSE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered OCTOBER 6, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[JV-2009-701-6-4]

HONORABLE LEON N. JAMISON,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Jared Rose, father of daughters O.R. and L.R., appeals the circuit court's March 1, 2010 review order in this dependency-neglect case. The review order awarded permanent custody of the sisters to the maternal grandparents, Geraldine and Elmer Brewton, making no provision for visitation with the girls' paternal aunt, Mary Ann Romine.¹ Rose raises two points on appeal. First, he contends that the custody award is null and void because the circuit court was not presented with a home study of the Brewtons' home, as required by

¹The parties stipulated at the hearing that Rose was facing long-term imprisonment and that the issue of permanent custody would be determined by the circuit court.

statute.² Second, he challenges the sufficiency of the evidence that it was in the children's best interest to award the Brewtons permanent custody. We affirm.

Rose's point concerning the lack of a home study is not preserved for our review. Rose did not object at the review hearing about the lack of a home study. Moreover, although the Brewtons had previously been awarded temporary custody in the probable-cause order and the adjudication order, Rose did not appeal the adjudication order as allowed by Ark. Sup. Ct. R. 6-9. An issue is not preserved for appellate review if it was not presented to the trial court at the earliest opportunity. *Burkhalter v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 520.

This case began when the Department of Human Services (DHS) sought emergency custody of the sisters, ages fourteen months and eight years. The affidavit in support of the petition stated that the department had exercised a seventy-two-hour hold of the juveniles on July 7, 2009, after the Pine Bluff Drug Task Force reported observing "many meth items" in a drug bust at the Rose residence. Rose and his wife were charged with manufacturing drugs with intent to deliver, possession of controlled substances, and endangering the welfare of a minor. The affidavit stated that the emergency hold was due to environmental neglect, incarceration of the parents, and the children's having no caregiver.

²A relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the juvenile's best interest to be placed with the relative caregiver. Ark. Code Ann. § 9-27-355(c)(1) (Repl. 2009). Subsection (c)(4)(A) states that "a written approved home study" must be presented to the court before the award is made.

On July 9, 2009, the circuit court granted the Brewtons emergency custody. The court found that there was probable cause to believe the juveniles were dependent-neglected, that it was contrary to their welfare to remain with their parents, and that immediate removal was in the juveniles' best interest and necessary to protect their health and safety. In the July 15, 2009 probable-cause order, the circuit court placed temporary custody with the Brewtons, finding it necessary to continue out-of-home placement because the emergency conditions necessitating removal continued. At the adjudication/disposition hearing on September 15, 2009, the court determined that the juveniles were dependent-neglected and that continued custody in the Brewtons was in the best interests of and necessary to the protection of the juveniles' health and safety. The goal of the case was reunification of the children with their parents. Two weeks after the probable-cause hearing, the mother died.

The review hearing was conducted on February 22, 2010. Witnesses included O.R.'s therapist, Karen Appleget; the Brewtons; Rose's sister, Mary Ann Romine; and appellant Rose. Elmer Brewton was eighty-one years old at the time, and Geraldine Brewton was sixty-five. Romine was thirty-nine and married to a forty-year-old man. An approved home study for them was introduced into evidence, and both Romine and Geraldine Brewton testified that a home study for the Brewtons had been approved in the past.

Karen Appleget testified that she had been O.R.'s therapist for four months, since just before her mother's death, and that the child's anger, anxiety, tearfulness, and irritability over the loss of her mother had decreased. Appleget had helped with the transition into the Brewtons' home, where the child was doing very well and forming secure, healthy

attachments to her grandparents. Appleget said that the Brewtons had participated in family sessions with her and always seemed to act on her suggestions. It was Appleget's opinion that the child did well with her grandparents psychologically and felt secure, and that removing her would cause psychological harm.

According to Appleget, O.R. was absorbing anxiety and opinions of family members on her mother's side and did not want to hurt anyone's feelings. Appleget had observed the child's interactions with Romine and said that O.R.'s continued contact with her father's family would give her an extended support system both in the present and as the Brewtons aged; it would help with her anger toward her father; and she would see a positive side of that part of the family. Appleget said that eventually it would be in O.R.'s best interest to have a relationship with Romine. Appleget said that changing custody at the current time would not be beneficial. She was certain that custody should continue with the Brewtons. She recommended continued therapeutic intervention between the families, along with court orders to restrain each family from speaking negatively about the other and from discussing "custody and their feud issues."

Elmer Brewton testified that he'd had a little heart problem several years earlier but his health currently was great. At the time of the hearing, he drove a van two days a week to transport railroad hands in Arkansas and to nearby states. He testified that he and his wife had been given temporary custody of O.R. the first four years of her life but seldom saw her the next four years after her mother, the Brewtons' daughter, regained custody. He felt that Rose

had “destroyed” his daughter and that her loss was unnecessary, and he harbored bad feelings toward people she had associated with before her death.

Geraldine Brewton testified that if the court should grant the Brewtons permanent custody, O.R.’s counseling would continue. She knew that the therapist had recommended visitation for Romine but did not see how it would be a positive influence. Nor would she want the girls to live with the Romines should she die “today.” She said her heart would sink should visitation be ordered, but she would comply; she thought any contact should be facilitated by the therapist. She explained that she had made her dislike of O.R.’s father clear to the child, who was afraid of him, because “for me to be honest with O.R., I think that’s the best policy.”

Mary Ann Romine testified that the Brewtons had not cooperated with her side of the family in any way. She said that she would be willing to work with the counselor and the Brewtons. She would abide by any order prohibiting the girls from visiting Rose in prison, and she did not think he should ever have custody. She said that she had a relationship with O.R., who in turn had a good relationship with her cousins, and that Rose’s side of the family visited O.R. several times when she had been younger and in the Brewtons’ custody. Romine said that she and her husband were employed and that three children lived with them.

Jared Rose testified that he would be in prison from six to eighteen years. He asked that his sister receive custody and said he wanted a continued relationship with his daughters.

He said he had not been a “very outstanding” son or father, which had affected his wife. He said that the Brewtons had every right to have issues with him but should not project those feelings onto his children.

The court awarded permanent custody to the Brewtons, finding that it was in the juveniles’ best interests and necessary for their protection. The court found that return of custody to the parent was contrary to the juveniles’ welfare because the mother was deceased and the father was incarcerated. The Brewtons were ordered not to speak negatively to the children about their father or his side of the family; the Romines were not to speak negatively to the children; no one was to discuss with them the issues of custody and visitation; and the Brewtons were to continue O.R.’s therapy with Applegat. The court found that Applegat should take therapeutic steps with the Brewtons and Romines to try to better their relationship. The court made no decision regarding visitation with the Romines, leaving the issue up to Applegat and stating that the court would entertain a petition for visitation should she recommend visitation at some point.

The review order was filed March 1, 2010, and Rose timely filed his notice of appeal. He contends that there was insufficient evidence to show that it was in the children’s best interest to award permanent custody to the Brewtons, particularly without awarding visitation to their aunt, Rose’s sister, and using her as “backup placement” for the juveniles. We disagree.

Because juvenile proceedings are equitable in nature, our standard of review on appeal is de novo. *Hardy v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 751, 351 S.W.3d 182.

Cite as 2010 Ark. App. 668

However, we do not reverse the circuit court's findings of fact unless they are clearly erroneous. *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. *Hughes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 526.

Here, O.R.'s counselor testified that while in the Brewtons' care, O.R. was happy, and had progressed in dealing with grief and anger. The counselor emphatically recommended that custody remain with the maternal grandparents. The trial court weighed testimony from the counselor and each side of the family about previous and current relationships between them. The court ordered permanent custody with the Brewtons, with no visitation provision, to be in the juveniles' best interests and necessary for their protection at the time of the hearing. The court ordered the Brewtons to continue O.R.'s therapy with her counselor, ordered each side of the family to cease projecting negative feelings about the other toward the children, and left open the possibility of future visitation should the counselor recommend it. The court did not clearly err in its findings.

Affirmed.

HENRY and BAKER, JJ., agree.