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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-712

CARLOS JOHNSON APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** November 10, 2010 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. JV-08-698] HONORABLE MARK HEWETT, JUDGE AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Carlos Johnson appeals the order entered by the Circuit Court of Sebastian County terminating his parental rights to his daughters, M.J. (DOB 5-11-2007) and D.J. (DOB 4-11-2008). Appellant presents three issues for reversal. He contends (1) that the circuit court erred in relying on the ground of abandonment based on a ruling made by the court in the adjudication order; (2) that the circuit court's finding of abandonment is clearly erroneous; and (3) that the circuit court erred in finding that termination was in the children's best interest. We affirm.

Appellant and Amber Vance are the parents of M.J. and D.J. On October 21, 2008, the Arkansas Department of Human Services (DHS), appellee, removed the children from their custody on an emergency basis. The record discloses that appellant left the fifteen-month

and six-month-old girls alone in a hotel room with the volume of the television elevated so that their cries could not be heard. The children's clothes were ill-fitting and described as being soiled beyond laundry repair. In an order dated January 6, 2009, the circuit court adjudicated the children as dependent-neglected due to abandonment by appellant and environmental neglect by both parents. The court set reunification as the goal of the caseplan.

The circuit court conducted a permanency planning hearing in May 2009. In the order from that hearing, the court found that DHS had made reasonable efforts to provide services to achieve reunification but that appellant and Vance had not complied with the requirements of the caseplan. The circuit court added termination of parental rights as a concurrent goal of the caseplan. On September 21, 2009, DHS filed a petition seeking the termination of appellant's and Vance's parental rights.[1] As grounds for termination, DHS alleged abandonment and the failure within one year to correct the conditions that caused the removal of the dependent-neglected children, despite meaningful efforts on the part of DHS to achieve reunification.

At the termination hearing held on January 29, 2010, appellant, age twenty-five, testified about his criminal history. He had convictions for possession of marijuana with intent to deliver, possession of drug paraphernalia, and leaving the scene of an accident. In California, where he previously resided, appellant had been convicted of possession of

[1] Vance voluntarily relinquished her parental rights in a consent executed on October 29, 2009.

methamphetamine and possession of a deadly weapon. Appellant testified that he was presently housed in the Arkansas Department of Correction for a parole violation and his convictions for endangering the welfare of the children, based on his leaving them alone in the motel room. Appellant stated that he had signed up for parenting classes while he was in prison and that he was to be released on parole in two months. He said that he had not yet formulated a parole plan and that he had no idea where he would live. Appellant considered returning to California and stated that he planned to contact his sister to see if she might help him care for his daughters. Appellant asked the court to postpone the termination of his rights so that he might have the opportunity to prove that he could provide for the girls.

Robbie McKay, the assigned caseworker, testified that the children were placed in the same foster home and that the family had expressed an interest in adopting them. She and Joyce Caudill, the CASA advocate for the children, recommended the termination of appellant's parental rights.

In his closing remarks, counsel for DHS urged the circuit court to terminate appellant's rights on the ground of abandonment, based on the finding made to that effect in the adjudication order, which appellant did not appeal. The circuit court agreed with counsel and also found that termination was in the children's best interest. The court commented that the children were adoptable and that the children would be at risk of harm if appellant were allowed more time to prove that he was capable of caring for the children. The circuit court based this determination on appellant's lack of judgment in leaving the children unattended

and on his extensive criminal history. The court found that there was little likelihood that appellant could comply with the requirements of a caseplan within a reasonable time frame as viewed from the standpoint of the children. Appellant brings this appeal from the order incorporating the circuit court's findings and decision.

An order terminating parental rights must be based upon a finding by clear and convincing evidence that (1) termination of parental rights is in the best interest of the children, considering the likelihood that the children will be adopted if the parents' rights are terminated and the potential harm caused by returning the children to the parents' custody; and (2) at least one ground for termination exists. *Burkhalter v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 520. A parent's abandonment of a juvenile is one such ground. Ark. Code Ann. § 9-27-341(b)(3)(B)(iv) (Repl. 2009). We review termination-of-parental-rights cases de novo. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008). However, we will not reverse the circuit court's finding of clear and convincing evidence unless that finding is clearly erroneous. *See Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007). 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.*

Appellant's first argument is that the circuit court erred in concluding that its finding of abandonment in the adjudication order was "law of the case." However, our examination of the record reveals that appellant raised no objection to the circuit court's ruling. In the

absence of a contemporaneous objection, we are precluded from addressing this point on appeal. *See Lamontagne v. Ark. Dep't of Human Servs.*, 2010 Ark. 190, 366 S.W.3d 351; *Buehne v. Buehne*, 2010 Ark. App. 390.

As his second issue, appellant contends that the circuit court's finding of abandonment is clearly erroneous. We are also unable to reach the merits of this argument. The circuit court's finding of abandonment was made in the adjudication order, and appellant did not bring an appeal from the order pursuant to Rule 6-9(a)(1)(A) of the Rules of the Supreme Court and Court of Appeals. We have held many times that a parent's failure to appeal the rulings made in an adjudication order precludes appellate review of those findings in an appeal from a subsequent order. *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005); *Ashcroft v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 244, 374 S.W.3d 743; *White v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 609, 344 S.W.3d 87; *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722; *Causer v. Ark. Dep't of Human Servs.*, 93 Ark. App. 483, 220 S.W.3d 270 (2005).

Appellant's final point is a challenge to the circuit court's finding that termination was in the children's best interest. He asserts that his extensive criminal history and his lack of judgment shown at the outset of the case are not dispositive of his ability to care for the children once he is released from prison. Under the potential-harm inquiry of the best-interest analysis, the focus is on the *potential* harm to the health and safety of a child that might result from continued contact with the parent. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark.

App. 841, 372 S.W.3d 403. Furthermore, the potential-harm analysis should be conducted in broad terms. *Banks v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 53. Also, the intent of our termination statute is to provide permanency in a juvenile's life in all circumstances where return to the family home is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective. Ark. Code Ann. § 9-27-341(a)(3). Moreover, a child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. *Dozier v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 17, 372 S.W.3d 849.

In the case at bar, the children were very young when they were removed from appellant's custody, and they had resided in foster care for well over one year. Their need for permanency and stability is evident. The record reveals that appellant had little regard for the children's well-being while they were in his custody. He stands convicted of the crime of endangering their welfare. Appellant, at age twenty-five, also possesses multiple convictions for other criminal offenses. Past behavior is correctly viewed as a predictor of potential harm that may likely result if a child is returned to the parent's custody. *See Dowdy*, *supra*. Appellant's demonstrated lack of judgment reflects poorly on his capacity to care for the children, and his propensity to engage in criminal behavior does not speak well of his ability to provide stability for the children. The circuit court's finding that termination of appellant's

parental rights was in the children's best interest is not clearly erroneous. Accordingly, we affirm the court's decision.

Affirmed.

ABRAMSON and BROWN, JJ., agree.