

ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-21-622

AMBER RAYNOR

APPELLANT

Opinion Delivered May 25, 2022

V.

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[NO. 73JV-21-160]

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

HONORABLE MARK PATE, JUDGE

AFFIRMED AS MODIFIED

KENNETH S. HIXSON, Judge

Appellant Amber Raynor appeals from an order adjudicating her son JJ dependent-neglected. On appeal, Amber argues that the evidence was insufficient to support a finding of dependency-neglect. We affirm as modified.

The facts are as follows. Amber had custody of JJ from the time he was born on November 16, 2019, until August 1, 2021. JJ’s putative father is Trenton Johnson. On August 1, 2021, JJ’s putative father and maternal grandmother took JJ from Amber. On the following day, a report of physical abuse—apparently made by JJ’s paternal grandmother—was made to the Arkansas State Police maltreatment hotline. The report was communicated to appellee Arkansas Department of Human Services (DHS), and as a result of extensive bruising to JJ’s bottom and lower back, DHS took an emergency hold on JJ on August 3, 2021.

On August 4, 2021, DHS filed a petition for emergency custody and dependency-neglect, alleging that JJ was at substantial risk of serious harm as a result of abuse, neglect, and parental unfitness. DHS attached to the petition the affidavits of Hayley Allen, an investigator with the Arkansas State Police Crimes Against Children Division (CACD), and DHS family service worker Ben Raiford.

In Ms. Allen's affidavit, she stated that the hotline report alleged that JJ had extensive bruising in multiple stages of healing on his bottom and lower back and that the offender was unknown. JJ was taken to the hospital, where the injuries were confirmed and there was a determination of suspected abuse. When questioned about the bruising, Amber explained that JJ received the injuries from falling on a log while he was with her boyfriend, Dusty Lackey. Ms. Allen gave the opinion that JJ's health and safety were in danger due to the allegations involving abuse and that JJ should remain in DHS custody pending further hearings in the matter.

In Mr. Raiford's affidavit, he stated that DHS has a history with the family, which included Amber's two older children who are no longer in her custody. However, while there had been true findings of inadequate supervision in the prior cases, there were no findings of physical violence or abuse.

With respect to DHS's removal of JJ, Mr. Raiford's affidavit states:

On 8/3/21, FSW Raiford received a request from CACD investigator Hayley Allen. Allen explained that there were concerns of physical abuse on JJ and provided current pictures of significant bruising in multiple stages of the healing process. FSW made contact with Amber Raynor and inquired how JJ would have gotten these bruises. Amber stated that JJ had fallen on a pile of logs and cast iron. FSW explained to Amber that the bruises were more spread out than a fall would allow as well as more severe. FSW explained the bruises were different ages as well. FSW inquired again if

it was possible that something else had happened. Amber stated again that he had gotten the bruises from falling.

Mr. Raiford stated that JJ was removed from Amber's custody because JJ's health and safety were in danger due to alleged physical abuse.

On August 4, 2021, the trial court entered an ex parte order for emergency custody. On August 5, 2021, the trial court entered a probable-cause order finding that the emergency conditions that necessitated removal of JJ from Amber's custody continued such that continued DHS custody was necessary. In the probable-cause order, the trial court specifically found that "the mother caused serious physical injury to the child or made a plausible threat to cause severe physical injury as the juvenile has significant bruising in multiple stages of the healing process."

An adjudication hearing was held on September 30, 2021. CACD investigator Hailey Allen was the first witness to testify. Ms. Allen stated that a report was made to the child-abuse hotline regarding injuries to JJ's bottom. JJ's maternal grandmother took photographs of the injuries, and JJ was taken to the hospital. Ms. Allen did not examine JJ, but she viewed the photographs, which showed extensive bruising to JJ's bottom and lower back.¹ Ms. Allen asked Amber how these injuries occurred, and Amber replied, "By falling onto a pile of chopped wood with metal horse heads in it while he was in the care of [my] boyfriend, Dusty [Lackey]." Amber gave this explanation because that is what her boyfriend had told her. Ms. Allen stated that there was a true finding against both Amber and Dusty for failure to protect and inadequate supervision and that there was a pending criminal case against

¹These photographs were admitted at the adjudication hearing.

Dusty. There was also a true finding on an unknown offender for the injuries. When asked why she made a true finding on Amber, Ms. Allen stated, “Because she failed to provide supervision to keep the child safe, and she could not give me an explanation as to how these injuries occurred.” Ms. Allen stated that Amber and Dusty were living together when JJ’s injuries occurred, although she was unsure whether they were still together.

DHS family service worker Ben Raiford testified next. Mr. Raiford stated that Amber “gave me a very similar explanation that she gave to [Ms. Allen] that the child had fallen on a woodpile with cast iron on it.” Mr. Raiford agreed that because Amber was relying on Dusty’s story, Amber “doesn’t know whether that’s true or not.” Mr. Raiford did not talk to Dusty. Mr. Raiford placed an emergency hold on JJ due to the injuries to JJ’s bottom and lower back, which Mr. Raiford described as “several bruises in different stages of healing.”

Amanda Hensley is the DHS caseworker assigned to this case. Ms. Hensley stated that DHS was not recommending returning JJ to Amber’s custody at this time, and explained:

I just feel that Amber needs to show some stability, and I do have concerns that we do not know what exactly happened to JJ to cause that bruising. It’s severe bruising. You know, she has said he’s clumsy in the past, and I understand that children bruise. I understand that, but this is not—it does not appear to be that a child fell down. Like they had said earlier, it’s different ages of bruising. I think that there’s just some concerns.

Ms. Hensley voiced concern that “this bruising was ongoing and that nothing was done to protect JJ.” Ms. Hensley was also concerned that Amber did not understand the severity of JJ’s injuries and was not willing to accept that JJ had been abused.

Ms. Hensley stated that Amber was complying with the case plan and that the goal was to continue to work toward reunification. Ms. Hensley also stated that although Amber was living with Dusty at the time of JJ's removal, Amber moved out of that residence and now has her own apartment.

Amber testified on her own behalf. Amber stated that about a week before JJ was taken into DHS custody, there was an incident where JJ received some bruises after falling on some bikes at a babysitter's house. Amber stated that a few days later, on July 31, 2021, she had been at work while Dusty was watching JJ and that when she came home, Dusty told her that JJ had fallen on some wood and cast iron, which resulted in some "really bad" bruises. Amber stated that Dusty had watched JJ on numerous previous occasions without incident. On that day, Amber saw the major bruising on JJ's bottom, which she described as "awful." She stated, however, that although she is not a doctor, JJ did not seem to be hurting and was laughing and cheerful. Amber maintained that before that day she had no reason to suspect that JJ was being abused. Amber stated that after she found out about the true findings from the CACD investigation, she immediately separated from Dusty and no longer maintains contact with him. Amber testified that she believes JJ had been abused and that the bruising was caused by Dusty. Amber stated that she was complying with all of DHS's directives and is willing to do whatever it takes to get JJ back.

The trial court granted DHS's dependency-neglect petition from the bench, and stated:

In the Court's opinion, these photographs say volumes. I do not believe this occurred from a simple fall. It definitely appears to me to be child abuse. The testimony was that the mother believed Dusty's story that he had fallen on some wood and some iron or whatever and that there are previous bruising [sic] from a daycare situation

of falling on some bicycles. The mother didn't immediately seek medical attention for the child after seeing these things. She didn't call the police. For some reason, she didn't think it was important enough to do that. I'm not sure why. I do find the child is dependent neglected. The child was in in her care and supervision when this occurred.

....

I'm making a finding that she knew when she found out about the injuries—she was not able to determine that this was abuse and take action, and that she further endangered the child for not taking action once she looked at these—looked at the child after this occurred. That's what I'm finding. She placed the child in additional and continuous danger thereafter not recognizing the fact that this was physical abuse.

On October 1, 2021, the trial court entered an order finding JJ dependent-neglected, and the trial court stated:

The Court finds that the first contact of the Arkansas Department of Human Services (“the Department”) arose during an emergency where immediate action was necessary to protect the health, safety, and welfare of the juvenile and where preventive services could not be provided. *Specifically, the mother caused serious physical injury to the child or made a plausible threat to cause severe physical injury* as the juvenile has significant bruising in multiple stages of the healing process.

....

The juvenile is dependent-neglected as defined in the Arkansas Juvenile Code based on dependency-neglect and parental unfitness. Specifically, the Court finds that the allegations in the petition are true and correct and that the child had extensive bruising on his back. The mother claimed the child fell off logs and cast iron. The child is only twenty-months old. The mother said the child was with someone else. His caregiver is responsible for making sure he is not in a dangerous situation. *The Court cannot find the mother actually caused the physical injury*, but the mother placed the child in harm's way by not immediately leaving, seeking medical care, or calling the police.

(Emphasis added.) Amber now appeals from the adjudication order, arguing that there was insufficient evidence to support a finding of dependency-neglect.

The purpose of an adjudication hearing is to determine whether the allegations in the petition are substantiated by the proof. *Ark. Dep't of Hum. Servs. v. Hall*, 2021 Ark. App.

108, 618 S.W.3d 219. The burden of proof at an adjudication hearing is preponderance of the evidence. *Id.* In dependency-neglect cases, the standard of review on appeal is de novo, but the appellate court will not reverse the trial court’s findings unless they are clearly erroneous. *Hilburn v. Ark. Dep’t of Hum. Servs.*, 2018 Ark. App. 420, 558 S.W.3d 885. 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. *Hall, supra*. Moreover, in reviewing dependency-neglect adjudications, we defer to the trial court’s evaluation of the credibility of the witnesses. *Worrell v. Ark. Dep’t of Hum. Servs.*, 2010 Ark. App. 671, 378 S.W.3d 258.

A dependent-neglected juvenile is defined as any juvenile who is at substantial risk of serious harm as a result of abuse, neglect, or parental unfitness to the juvenile or a sibling of the juvenile. Ark. Code Ann. § 9-27-303(17)(A) (Supp. 2021). Additionally, a finding of dependency-neglect occurs without reference to whether a particular parent committed the acts or omissions that caused the dependency-neglect; rather, the juvenile is simply dependent-neglected. *Araujo v. Ark. Dep’t of Hum. Servs.*, 2019 Ark. App. 181, 574 S.W.3d 683. Further, only one ground is necessary to support a dependency-neglect finding. *Garner v. Ark. Dep’t of Hum. Servs.*, 2020 Ark. App. 328, 603 S.W.3d 858.

Under section 9-27-303(37)(A)(i), the definition of neglect includes “[f]ailure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused.” Subsection (37)(A)(iii) provides that neglect includes “[f]ailure to take reasonable action to protect the juvenile from . . . abuse . . . when the existence of this condition was known or should have been known.” “Abuse” includes

“[a]ny injury that is at variance with the history given” or [a]ny nonaccidental physical injury” caused by a parent, a person eighteen years of age or older living in the home with the child, or any person who is entrusted with the juvenile’s care by a parent. Ark. Code Ann. § 9-27-303(3)(A)(iv) & (v). As for the definition of parental unfitness, it is undefined in the Arkansas Juvenile Code. *Ark. Dep’t of Hum. Servs. v. Jackson*, 2021 Ark. App. 464, 636 S.W.3d 806.

In challenging the sufficiency of the evidence supporting the dependency-neglect finding, Amber asserts that from the trial court’s order, it is apparent that parental unfitness was the only ground on which the trial court adjudicated JJ dependent-neglected. Amber notes that parental unfitness is not defined in the Arkansas Juvenile Code and argues that there were insufficient facts from which to find parental unfitness. Relying on her own testimony, Amber asserts that she had no reason to believe Dusty would abuse JJ given that she had left JJ with Dusty multiple times without incident. Amber further asserts that after she saw JJ’s bruises, she believed that they may have been caused from a fall on a pile of wood and cast iron and that JJ did not appear to be in distress. Amber thus concludes that the trial court’s finding of dependency-neglect must be reversed.

Only one ground is necessary to support a finding of dependency-neglect, and the trial court found that JJ was dependent-neglected because he was at substantial risk of serious harm as a result of parental unfitness. For the foregoing reasons, we conclude that this finding was not clearly erroneous.

“Parental unfitness” is not specifically defined in the Juvenile Code, but case law is clear that it is not necessarily predicated on the parent’s causing some direct injury to the

child in question. *Young v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 270, 549 S.W.3d 383. Such a construction of the law would fly in the face of the General Assembly's expressed purpose of protecting dependent-neglected children and making those children's health and safety the juvenile code's paramount concern. *Bean v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 350, 498 S.W.3d 315. In *Brewer v. Arkansas Department of Human Services*, 71 Ark. App. 364, 43 S.W.3d 196 (2001), we upheld the trial court's finding of parental unfitness based on evidence that, even if the mother did not herself cause the child's noticeable injuries, the parent had failed to notice the obvious signs of abuse.

The testimony at the adjudication hearing as well as the photographs admitted into evidence showed severe bruising to JJ's back and bottom that were in various stages of healing. Amber concedes on appeal that JJ was being abused by her then boyfriend, Dusty. Amber also concedes that she witnessed JJ's injuries, which she described as "awful," but took no protective action. The record supports the trial court's finding that Amber knew or should have known of the abuse and failed to take reasonable action to protect JJ from the abuse. Accordingly, we uphold the trial court's finding of dependency-neglect based on parental unfitness.

Finally, Amber makes an alternative argument that, even if we affirm the finding of dependency-neglect, we should nonetheless reverse one of the findings made by the trial court in the adjudication order. Amber asks that we reverse the trial court's finding that *she* committed physical abuse against JJ—specifically that "mother caused serious physical injury to the child or made a plausible threat to cause serious physical injury." Amber relies on *Young, supra*, where we affirmed the finding of dependency-neglect but reversed the finding

of physical abuse as it related to the appellant mother because that finding was not supported by the evidence.

In *Young, supra*, we held that while the focus of an adjudication hearing is on the child, a parent must appeal adverse rulings; otherwise, the parent will be precluded from appellate review of those rulings in an appeal from a subsequent order, such as termination order. We have previously explained that

[t]he process through which a parent or parents travel when a child is removed from their home consists of a series of hearings—probable cause, adjudication, review, no reunification, disposition, and termination. All of these hearings build on one another, and the findings of previous hearings are elements of subsequent hearings.

Osborne v. Ark. Dep't of Hum. Servs., 98 Ark. App. 129, 136, 252 S.W.3d 138, 143 (2007) (quoting *Neves Da Rocha v. Ark. Dep't of Hum. Servs.*, 93 Ark. App. 386, 393, 219 S.W.3d 660, 664 (2005)).

The adjudication order contains the typewritten finding by the trial court that “mother caused serious physical injury to the child or made a plausible threat to cause severe physical injury.” Later in the same order, the trial court included the handwritten finding: “The court cannot find the mother actually caused the physical injury, but the mother placed the child in harm’s way by not immediately leaving, seeking medical care, or calling the police.” Clearly, the typewritten finding and the handwritten finding are inconsistent and contradictory, and even DHS was not alleging that Amber actually committed the physical abuse against JJ. Therefore, we affirm the trial court’s finding of dependency-neglect, but we modify the order to delete the finding that “mother caused serious physical

injury to the child or made a plausible threat to cause severe injury” because that finding is not supported in the record.²

Affirmed as modified.

GRUBER and WHITEAKER, JJ., agree.

Leah Lanford, Arkansas Commission for Parent Counsel, for appellant.

Andrew Firth, Ark. Dep’t of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.

²We also delete this same finding made by the trial court in the probable-cause order, which could not be appealed or challenged until the adjudication order was entered. *See* Ark. Sup. Ct. R. 6-9(a).