

Cite as 2023 Ark. App. 462
ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-23-251

JERRY NOBLITT

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered October 18, 2023

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. 15JV-21-22]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED

WENDY SCHOLTENS WOOD, Judge

The sole issue in this termination-of-parental-rights case concerns Jerry Noblitt’s status as a parent. On January 18, 2023, the Conway County Circuit Court entered an order terminating Noblitt’s parental rights to his minor child (MC), who was born on May 13, 2019, finding three statutory grounds supported termination.¹ On appeal, Noblitt argues that the Arkansas Department of Human Services (DHS) failed to present sufficient evidence to prove a required element of each of these grounds—specifically, the element that he is a parent. We affirm.

¹The circuit court also terminated the parental rights of MC’s mother, Wendi Noblitt, but she is not a party to this appeal. Wendi is the biological mother of two additional children who were removed from her custody when DHS placed a hold on MC. Jerry Noblitt is not their parent, and the circuit court placed these children in the permanent custody of their biological father. These children and their father are not parties to this appeal.

Because Noblitt’s challenge is solely to his parental status and the court’s findings regarding that status, only a brief history of the case is necessary. DHS opened a protective-services case on the Noblitt family in January 2021 due to concerns of domestic violence and drug use in the home. This dependency-neglect case began on May 4, when DHS removed all three children from the Noblitts’ custody because circumstances had made continuation in their custody an immediate danger to the children’s health and physical well-being.

Noblitt was named as MC’s putative father in DHS’s initial petition, in the circuit court’s ex parte order for emergency custody, and in the probable-cause order. On July 1, the circuit court held an adjudication hearing, which Noblitt attended. On August 3, the court entered an adjudication order finding all three children dependent-neglected on the basis of the Noblitts’ stipulation, specifically finding that the children were at substantial risk of serious harm due to parental unfitness because of “the parents’ use of illegal or controlled substances which seriously affects their ability to supervise, protect, or care for” the children. The court also made the following relevant finding: “14. The Court specifically finds/Orders: Jerry Noblitt is hereby adjudicated the legal father of [MC].” Although Noblitt was identified in the caption of several subsequent orders as a “putative parent,” he was identified in the body of *every* order after the adjudication order—and treated by the circuit court—as MC’s “parent,” “father,” or “legal father.”

On October 25, 2022, the circuit court entered a permanency-planning order finding that Wendi had not complied with the case plan and orders of the court, continued to test positive on drug screens, was incarcerated, and demonstrated “very erratic” behavior. The

court found Noblitt had not complied with the case plan and orders of the court—specifically finding that he did not have stable housing or employment and had not submitted to random drug screens. The court changed the goal of the case from reunification to termination of parental rights and adoption.

DHS filed a petition for termination of parental rights naming Noblitt as the legal father, and the circuit court held a termination hearing on December 15. DHS entered certified copies of all previous orders of the court in the case, including the adjudication order, which contained the paragraph specifically adjudicating Noblitt as MC’s “legal father.” Noblitt also testified at the hearing that he is MC’s father.

On January 18, 2023, the circuit court entered an order terminating Noblitt’s parental rights and finding the following grounds by clear and convincing evidence: (1) twelve months failure to remedy, Arkansas Code Annotated section 9-27-341(b)(3)(B)(i) (Supp. 2023); (2) other subsequent factors, section 9-27-341(b)(3)(B)(vii)(a); and (3) aggravated circumstances, section 9-27-341(b)(3)(B)(ix)(a)(3). The court also found by clear and convincing evidence that termination of Noblitt’s parental rights was in MC’s best interest. Finally, the court specifically found that “Jerry Noblitt is a parent because he signed an acknowledgement of paternity and was named the legal parent at the adjudication hearing on July 1, 2021.” Noblitt brings this appeal.

The standard of review in appeals of termination of parental rights is *de novo*, but we reverse a circuit court’s decision to terminate parental rights only when it is clearly erroneous. *Ullom v. Ark. Dep’t of Hum. Servs.*, 340 Ark. 615, 621, 12 S.W.3d 204, 208 (2000); *Mitchell v.*

Ark. Dep't of Hum. Servs., 2013 Ark. App. 715, at 2, 430 S.W.3d 851, 853; *Brewer v. Ark. Dep't of Hum. Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a distinct and firm conviction that a mistake was made. *Elliott v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 526, at 5, 565 S.W.3d 487, 490.

Noblitt challenges all three grounds for termination on the basis of DHS's alleged failure to prove the required element in each ground that he is a parent. Specifically, he argues that nothing in the record explains or supports the court's findings that he is a parent. Of relevance here, the Juvenile Code defines a "parent" as

- (C) A man:
 - (i) To whom the biological mother was married at the time of conception or birth;
 - (ii) Who has signed an acknowledgment of paternity pursuant to § 9-10-120;
 - (iii) Who has been found by a court of competent jurisdiction to be the biological father of the juvenile or to have otherwise established paternity; or
 - (iv) Who is listed as the parent on the birth certificate of the child.

Ark. Code Ann. § 9-27-303(41) (Supp. 2023). Although Noblitt recognizes that one who "has signed an acknowledgement of paternity" is a "parent" pursuant to section 9-27-303(41), he contends that the finding in the adjudication order that he "is hereby adjudicated the legal father" is insufficient to make him a "parent" under the Juvenile Code because there is nothing in the order explaining the court's basis for this finding. Regarding the specific finding that he is a parent in the termination order, he again argues that no evidence was introduced at the termination hearing to support the court's finding.

He cites *Tovias v. Arkansas Department of Human Services* as authority for his argument that there must be some basis in the record to support a circuit court's finding that a father has met the definition of a "parent." 2019 Ark. App. 228, 575 S.W.3d 621. He contends that, like the appellant in *Tovias*, Noblitt was found to be the legal father, but there was nothing in the record to explain or support the finding. We disagree with Noblitt that the case at bar is governed by our holding in *Tovias*.

In *Tovias*, at a hearing on a motion to terminate reunification services, the circuit court simply found that *Tovias* was the "legal father" of the child and ordered the clerk to add him to the style of the case. *Id.* at 3, 575 S.W.3d at 623. We specifically stated that there was no evidence in the record that he had signed an acknowledgement of paternity or had been found to be the biological father. *Id.* at 7, 575 S.W.3d at 625. Essentially, we could determine no basis in the record for the court's finding that *Tovias* was the legal father. In contrast, in this case, the circuit court specifically adjudicated Noblitt MC's "legal father" in the adjudication order, referred to him in every order thereafter as the legal father or parent, and made the following finding in the termination order: "Jerry Noblitt is a parent because he signed an acknowledgement of paternity and was named the legal parent at the adjudication hearing on July 1, 2021." The circuit court explained in its order exactly how it determined that Noblitt is a parent: that is, he signed an acknowledgement of paternity.

This case is more akin to our recent decision in *Campbell v. Arkansas Department of Human Services* in which we distinguished *Tovias* because the circuit court made a specific finding that *Campbell* was the legal father in its probable-cause order, basing the finding "on

the testimony, exhibits, and agreement of the parties.” 2023 Ark. App. 22, at 7, 659 S.W.3d 550, 554. In *Campbell*, the court treated Campbell as the legal father throughout the remainder of the case, and Campbell testified at the termination hearing that he was the father. In the case at bar, the court “adjudicated [Noblitt] the legal father of [MC]” at the adjudication hearing and made it clear in the termination order on what basis it had done so—“because he signed an acknowledgement of paternity.” Like the father in *Campbell*, the court treated Noblitt as the legal father throughout the case, and Noblitt testified at the termination hearing that he is MC’s father.

The fact that the acknowledgment of paternity was not introduced at the termination hearing is not determinative because, similar to *Campbell*, paternity had been established before the hearing. The court found that Noblitt was the father at the adjudication hearing, and the adjudication order was entered into evidence at the termination hearing. The court made two specific findings that Noblitt is the legal father and parent of MC and stated precisely the basis for these findings. Therefore, we reject Noblitt’s argument that the evidence was insufficient to prove the element of the statutory grounds that he is a parent. Accordingly, we affirm the circuit court’s order terminating Noblitt’s parental rights to MC.

Affirmed.

BARRETT and THYER, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Ellen K. Howard, Ark. Dep’t of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.