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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-23-503

MAREL TORRES-PACHECO

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered January 24, 2024

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72JV-22-95]

HONORABLE DIANE WARREN,
JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Appellant Marel Torres-Pacheco (Pacheco) appeals the decision of the Washington County Circuit Court terminating her parental rights to her three children on the basis that the termination did not serve the purpose of the Juvenile Code since the girls were placed with their grandmother, thus making termination unnecessary. We affirm.

I. Factual History

Pacheco is the mother of MC1, born 12/11/17; MC2, born 08/30/19; and MC3, born 08/06/20. Arnolando Velez is the father of MC1 and MC3 but not the biological father of MC2. This case first came to the attention of the Arkansas Department of Human Services (Department) when it was notified that MC1 had been seriously burned and had been treated at Arkansas Children's Hospital in Little Rock for those burns. Pacheco first attempted to say that MC1 had a rash on her bottom, but doctors at Children's Hospital

diagnosed the redness as a burn. This finding ultimately resulted in Pacheco's pleading guilty to second-degree battery of MC1 and being placed on sixty months' probation. At the time of removal, Pacheco was living in a hotel with the children. Pacheco and Velez had a violent, tumultuous relationship: Velez hit Pacheco, cursed her, and humiliated her on many occasions. Pacheco obtained a protective order against Velez because he abused her while she was holding MC2. Additionally, there were multiple petitions for protective order filed by Elisee Doradea, Pacheco's mother, on behalf of the children for Pacheco's treatment of the children, including that she hit them in the face, failed to feed them, and yelled at them calling them names. Ms. Doradea reported that she had tried to keep an eye on the children and that she had witnessed MC1 and MC2 with scabs on their knees and welts and bruises on their necks, backs, arms, thighs, cheeks, and chins. She also noticed that patches of hair were missing on MC3's head. In March 2021, the circuit court granted Ms. Doradea guardianship of the children, but the guardianship was dissolved a few months later in July 2021. The last protective order filed was filed by Pacheco's younger brother based on the severe burns to MC1. A final order of protection was granted on December 6, 2021, with the court entering a no-contact order between Pacheco and the children. The children were placed by the Department in the custody of Ms. Doradea.

II. *Procedural History*

On March 14, 2022, the Department filed a petition for ex parte emergency custody and dependency-neglect of the juveniles, and on March 15, 2022, the circuit court entered an ex parte order for emergency custody.

On March 17, the circuit court held a probable-cause hearing wherein it found that probable cause existed for the emergency order to remain in place. The circuit court found that there was a no-contact order between Pacheco and the juveniles, so no visitation would be authorized; however, the court authorized supervised visitation should the no-contact order be lifted. Additionally, the circuit court found that unsupervised visitation was not appropriate because of the seriousness of the allegations and the physical violence perpetrated against the placement provider and further ordered Pacheco to not talk disparagingly about her mother in the presence of the juveniles.

On March 26, the circuit court held an adjudication hearing, accepted the parties' stipulation, and made a dependency-neglect finding based on parental unfitness due to Pacheco's arrest for second-degree battery against MC1. The court also ordered that the case goal be reunification with a fit parent. Additionally, the court authorized supervised visitation once the no-contact order was resolved and ordered the adults to be civil for the benefit of the children. Further, the circuit court ordered Pacheco to abide by the case plan as presented and noted that she understood what was being asked of her and agreed to the case plan. Specifically, she was to maintain stable and appropriate housing and employment; complete parenting classes; participate in individual counseling and any recommended family therapy as requested; and demonstrate she could care for her children without hurting them.

On July 19, 2022, the circuit court held a review hearing. At this hearing, the circuit court ordered that the case plan goal remain reunification with a fit parent and that the

juveniles remain in the custody of the Department. The court also found Pacheco had not appeared for the hearing, had made minimal progress, and had not demonstrated substantial progress in remedying the conditions that caused removal. Additionally, the circuit court ordered visitation to be supervised and that there was a no-contact order still in place regarding MC1.

On December 6, 2022, the circuit court held a permanency-planning hearing. At this hearing, the circuit court continued the goal of reunification with a fit parent and found that adoption was the most appropriate concurrent permanency plan. The circuit court also ordered that the juveniles remain in the Department's custody. Additionally, the circuit court found Pacheco to be in partial compliance with the case plan and found that she had not made significant and measurable progress. Further, the circuit court suspended visitation between the juveniles and Pacheco due to their adverse reaction to visiting with their mother, finding that reunification was unlikely to occur due to their reactions.

On February 13, 2023, the Department filed a petition to terminate Pacheco's parental rights to all three juveniles. On March 14, 2023, the circuit court held a termination-of-parental-rights hearing after which it took the matter under advisement. Pacheco executed a relinquishment-of-parental-rights document but rescinded it within ten days as allowed by law.

On May 5, 2023, the circuit court entered an order granting the Department's petition to terminate the parental rights of both Pacheco and Velez. Pacheco filed a timely appeal from the decision of the circuit court.

III. Failure to Preserve Argument for Appeal

Pacheco does not argue that the children should be returned to her nor does she contest the statutory grounds for termination but argues that the children could have been placed in the permanent custody of or under the guardianship of her mother. There is no indication that Pacheco ever raised this alternative permanency argument to the court, including at the permanency-planning hearing where the court found that the goal should continue to be reunification, and if these efforts prove unsuccessful, the best permanency goal for the children would be adoption. *Bryant v. Ark. Dep't of Hum. Servs.*, 2011 Ark. App. 390, 383 S.W.3d 901 (holding that the relative-placement argument was not preserved for appeal when there was no indication in the transcript of the termination hearing that the argument was raised and where the appellant did not bring forth the record for the permanency-planning or fifteen-month-review hearings).

In the present case, although Pacheco argues that she would prefer the children to be placed either through permanent custody or guardianship with her mother, she did not make the less restrictive relative-placement argument she now makes on appeal to the circuit court at the termination hearing, and she failed to raise the alternative-placement argument in the permanency-planning hearing in which the goal was changed to the concurrent goal of reunification and termination of parental rights and adoption. For this reason, we hold that Pacheco's argument on this issue is not preserved for our review and affirm. *Cole v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 481, 611 S.W.3d 218.

Affirmed.

KLAPPENBACH and MURPHY, JJ., agree.

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

Kaylee Wedgeworth, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor children.