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ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-23-737

DUSTIN HILL

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered April 17, 2024

APPEAL FROM THE PIKE COUNTY
CIRCUIT COURT
[NO. 55JV-21-13]

HONORABLE TOM COOPER,
JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

Dustin Hill appeals the circuit court's order dismissing his motion to set aside the order that terminated his parental rights. He asserts that the court abused its discretion in granting the dismissal because (1) he was not properly served with either the petition for dependency-neglect or the petition to terminate parental rights, (2) the circuit court incorrectly found that it did not have jurisdiction to reconsider or vacate its prior termination order, and (3) public policy favors the protection of parental rights. We affirm the order of dismissal.

The Arkansas Department of Human Services (DHS) exercised custody of MC1 and MC2 on 10 February 2021 after their infant sibling, MC3, passed away, and the state crime lab discovered illicit substances present in MC3's body. The affidavit supporting DHS's petition for dependency-neglect stated that Kassandra Jordan, the children's mother, faced

criminal charges, and the whereabouts of the children's putative father, Hill, were unknown, although he was last known to be in Ohio. The affidavit also noted that visitation would not be appropriate for Hill due to a previous true finding of sexual abuse naming MC1 as the victim and Hill as the offender. On 12 February 2021, the circuit court entered an ex parte order for emergency custody of the children.

On 24 February 2021, DHS advised the court that it had contacted the Office of Child Support Enforcement (OCSE) in an effort to obtain Hill's contact information but was unsuccessful in obtaining any further information as to Hill's whereabouts. DHS asked the court to issue a warning order notifying Hill of the adjudication hearing set for 19 April 2021. The circuit court issued an order for service by warning order, and the warning order was published on 28 February and 7 March 2021. On 30 April 2021, DHS filed an affidavit of service and averred that more than thirty days had elapsed since the warning order was first published.

In the adjudication order filed on 30 April 2021, the circuit court found that Hill had not presented evidence proving he had established significant contacts with the children and that his rights as a putative parent had not attached. The children were adjudicated dependent-neglected due to abuse, neglect, and parental unfitness.

Jordan eventually consented to the termination of her parental rights on 18 October 2021. On 18 November 2021, the circuit court entered an order terminating the parental rights of both Jordan and Hill. The order noted that the court had previously found that Hill had not established significant contacts sufficient for his rights as a putative father to attach "because even though Mr. Hill was served through publication on February 28, 2021

and March 4, 2021, he has not attempted to make contact with the Department or the juveniles. No further notice is required pursuant to section 9-27-316(h)(4)(D) of the Arkansas Code.”

On 20 May 2022, Kimberly and Daniel Cortez, the children’s foster parents (and their maternal aunt and uncle), filed a petition to adopt MC1 and MC2. The circuit court granted the adoption and ordered the case closed on 27 July 2022. The case-closure order made the following finding: “Court hereby transfers the adoption to the Probate Division and closes its case, and no further reviews shall be conducted in this matter. The Arkansas Department of Human Services shall close its case.”

On 13 October 2022, Hill moved to reopen the case for reconsideration. He asserted that he had been adjudicated the father of MC1 and MC2 on 15 March 2019 and that the adoption had proceeded without legal notice to him. Hill attached as an exhibit an “order after hearing” in a separate case, 55DR-19-8, in which the same circuit court had found that he is the father of MC1 and MC2.

The circuit court granted the motion, finding good cause to reopen the case “for investigation and reconsideration as to the legality of notice” to Hill. In January 2023, Hill moved to vacate the order terminating his parental rights, to set aside the adoption, and to reinstate his parental rights. Hill asserted that he has an open domestic-relations case that was initially filed on 13 February 2019, that his initial request for custody of the children was dismissed without prejudice on 17 December 2019, and that the matter was reopened in March 2021 when he filed another motion for custody. Hill acknowledged that he was made aware of the dependency-neglect case at a hearing on his motion for custody held in

July 2021, but he argued that “he did not know that they were terminating his rights and adopting out his children until August of 2022. Having never been served, he reasonably did not believe the Court could take such action against the children’s legal father.”¹

Hill argued that DHS had not exercised due diligence in attempting to serve him; a simple search of the court’s records would have revealed his custody case against the children’s mother. DHS would have known that he had been adjudicated the children’s father and could have contacted his attorney of record to obtain contact information. Instead, DHS made only two inquiries, to the OCSE and the children’s mother, in its attempt to locate contact information.

Hill further argued that a DHS caseworker had spoken to him on the phone on or about 16 August 2021, so DHS had some contact information, and he would have provided his address upon request.² He had intended to travel to Arkansas for a hearing on 17 August 2021, but no hearing took place on that date, and he received no other information from DHS until approximately one year later, when he learned that his rights had been terminated via communication that he initiated.

¹On 26 July 2021, Hill appeared with his attorney for a hearing in domestic-relations case no. 55DR-19-8. At this hearing, Hill learned that DHS currently had custody of MC1 and MC2 and that there was an open dependency-neglect case that took priority over the domestic-relations case. The circuit court advised Hill to enter his appearance in the dependency-neglect case and request custody. The court also informed Hill that the goal in the dependency-neglect case had been changed to termination of parental rights, that a review hearing was set for 18 October 2021, and that Hill “certainly need[ed] to be there if [he had] any interest.” In response, Hill stated, “Yes, sir.”

²The DHS caseworker testified that she had received one phone call from Hill during the pendency of the dependency-neglect case, and in that phone call, “his primary concern [was] overturning the true findings for sexual abuse. He did not state any intention to be involved in the children’s lives.”

DHS filed a response to Hill’s motion and moved to dismiss his motion due to, inter alia, lack of jurisdiction over the subject matter and the persons. DHS explained that the circuit court has exclusive jurisdiction over proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen years of age. *See* Ark. Code Ann. § 9-27-306(a)(1)(B) (Supp. 2023). However, a dependency-neglect case is closed when the child is no longer dependent-neglected, and a circuit court may not reopen a closed dependency-neglect case prosecuted under the Arkansas Juvenile Code. *Young v. Ark. Dep’t of Hum. Servs.*, 2012 Ark. 334. Further, Ark. Code Ann. § 9-9-217(a)(2)(B)(i)–(ii) (Supp. 2023) provides that when an adoption is filed pursuant to the Juvenile Code, the file relating to the adoption shall be maintained separately, and the case is transferred from the juvenile clerk to the probate clerk.

In this case, the children ceased to be dependent-neglected as of 27 July 2022, when the circuit court granted the adoption and transferred the case to probate court. Therefore, DHS concluded, the circuit court lacked subject-matter jurisdiction to reopen the dependency-neglect case.

Hill argued in response that the circuit court had terminated his parental rights; therefore, the court also had jurisdiction to set aside the order that terminated his parental rights. He also noted that the appellate courts had implicitly recognized that a circuit court maintains jurisdiction to consider a motion to vacate or set aside a termination order. *E.g.*, *Newman v. Ark. Dep’t of Hum. Servs.*, 2016 Ark. App. 207, 489 S.W.3d 186 (reviewing a circuit court’s decision to deny a motion to set aside a termination order under an abuse-of-discretion standard).

On 17 February 2023, the circuit court granted DHS's motion to dismiss due to lack of jurisdiction and ordered the "dependency-neglect case shall remain CLOSED." Hill moved for reconsideration of the order and requested that the court set aside the dismissal order until the parties could appear before the court for a hearing.

On 27 April 2023, the circuit court granted the motion for reconsideration, set aside the 17 February 2023 order of dismissal, and announced its intention to set a hearing on the matter. The court thereafter convened a hearing on 12 September 2023. After hearing arguments from counsel and receiving multiple exhibits, the circuit court ruled,

Even if the service wasn't adequate, I still see the hearing, the DR hearing there on July, in July of 2021, the conversations between me and Mr. Hill and his attorney. To me, it seems clear that he is put on notice at that point that he should be at the next hearing and he was not. . . . I mean when I say at the hearing, "If you have an interest in this case you need to be at that hearing," that's pretty unequivocal, in my opinion. Finally, I just, the thing that I have struggled about this case, thinking about this case leading up to today. I just really, it concerns me, a public policy problem of setting aside an adoption a year and a half later. . . . I do think it is a violation of a public policy to set aside the adoption and move these children where they've been for all these months and also where they have been placed, even time before that. For all those reasons, I am going to rule for the Department.

The court also found that it lacked jurisdiction to reopen the case for the reasons previously argued by DHS.

The court's written order, issued 19 September 2023, stated in part,

3. Based on the evidence, arguments of counsel, pleadings filed herein, and considerations of public policy, the Court finds and orders that this matter is closed; that the movant Dustin Hill was provided sufficient notice of these proceedings including by warning order and actual notice; that the Court is not authorized to reopen this matter because the juveniles have been adopted, are no longer dependent-neglected, and are not in the Department's custody; and public policy does not support overturning the termination order or the subsequent adoption.

4. The requests and motions by Dustin Hill to reopen or reconsider this matter and to set aside the termination order are denied and dismissed; and the Order Granting Motion for Reconsideration entered on April 27, 2023 is vacated.

5. This matter is hereby closed.

Hill filed a timely notice of appeal from this order.

We first address the circuit court's authority to reopen the dependency-neglect case. Hill asserts that the circuit court's ruling that it was not authorized to reopen the case "creates a precedent that prohibits a parent that has had his/her rights terminated from obtaining relief from said order even where clearly done in violation of the law." He claims (without citation to authority) that he cannot assert his due-process rights as a parent in the probate (adoption) proceeding until his parental rights have been restored, so the circuit court must have the ability to reopen juvenile proceedings, reconsider the termination order, and restore those rights. Otherwise, a parent can seek to assert his rights only if he does so before his children are adopted; "[i]f he does not learn about the violation of his rights prior to the adoption, then he is effectively without recourse."

Hill argues that this court has previously recognized a circuit court's ability to consider a motion to set aside or vacate a termination order. For example, in *Newman, supra*, this court held that the circuit court had not abused its discretion in denying the Newmans' motion to set aside the order terminating their parental rights, and the decision contained no indication that the circuit court had lost jurisdiction to hear the matter. Hill also contends that the circuit court's ruling is contrary to the fundamental rights afforded to a parent by the United States Constitution. See *Troxel v. Granville*, 530 U.S. 57 (2000)

(recognizing the fundamental right of parents to make decisions concerning the care, custody, and control of their children).

DHS responds that the circuit court correctly ruled that it had no authority to reopen the dependency-neglect case.³ In *Young, supra*, a dependency-neglect proceeding was opened under the Juvenile Code after Young was involved in an accident while driving intoxicated, and her daughter MC1 was injured. The dependency-neglect proceeding was closed, however, and the case under the Juvenile Code was dismissed, when Danielle and Tim Sexton were granted permanent custody of MC1 and Young was granted visitation rights. The Sextons later filed an emergency ex parte petition to modify visitation, Young counterclaimed for custody, and the circuit court purported to reopen the closed dependency-neglect case under the Juvenile Code. The court ultimately ruled that custody remain with the Sextons and that Young's visitation be restricted to bimonthly supervised visits. The circuit court also ordered that the "reopened" dependency-neglect case be closed. 2012 Ark. 334, at 2.

On appeal, the Arkansas Supreme Court held, as a matter of first impression, that a circuit court may not reopen a closed dependency-neglect case prosecuted under the Arkansas Juvenile Code. The supreme court explained,

A dependency-neglect case is closed when the child is no longer dependent-neglected under the Juvenile Code (resolved in this case by a grant of

³DHS and the children's attorney ad litem filed a joint response; however, for simplicity's sake, we will refer to appellees collectively as DHS. Also, Ark. Sup. Ct. R. 4-2(a)(3) requires the appellee to follow the same sequence and arrangement of points as contained in the appellant's brief before stating additional points. The response filed by DHS does not comply with this rule, which added another layer of difficulty to an already complex case. We caution DHS to be mindful of this rule in the future as further violations may require us to order rebriefing.

permanent custody). The Juvenile Code provided jurisdiction while [MC] was dependent-neglected. There was no jurisdiction under the Juvenile Code to reopen the case.

.....

The 2009 permanency-planning order resolved the dependency-neglect issue and terminated the action under the Juvenile Code.

Id. at 1–3. However, because the circuit court did have jurisdiction to hear a general child-custody case, the *Young* court decided that reopening the dependency-neglect case was not reversible error and addressed the merits of the denial of Young’s request for custody.

DHS also notes that since *Young*, this court has held that a juvenile court is not barred from reopening a juvenile case in all circumstances, but to do so there must still be a dependent-neglected juvenile involved who has not achieved permanency. *See, e.g., Jurls v. Ark. Dep’t of Hum. Servs.*, 2023 Ark. App. 443, 676 S.W.3d 316 (holding that the circuit court did not lose authority after it closed a juvenile case as to one child because there was a remaining dependent-neglected juvenile in the case who had not achieved permanency); *Abram v. Ark. Dep’t of Hum. Servs.*, 2016 Ark. App. 437, 502 S.W.3d 563 (circuit court’s error in allowing DHS to file a dependency-neglect action under same docket number as a closed dependency case involving same parties was not reversible error that warranted reversal of order terminating mother’s parental rights; dependency-neglect action had been closed for less than a month when the new petition for emergency custody and dependency neglect was filed).

DHS asserts that, in this case, there is no dispute that the children were no longer dependent-neglected and had achieved permanency when Hill sought to reopen the case. The case that Hill cites in support of reopening the case, *Newman*, is readily distinguishable

because the original dependency-neglect case in *Newman* had never been closed. In fact, when the Newmans moved to set aside the termination, the written termination order had not yet been entered. DHS concludes that the circuit court correctly determined that it did not have the authority to reopen a closed dependency-neglect case in which the juveniles were no longer dependent-neglected and had achieved permanency.

We affirm the circuit court's ruling that it lacked authority to reopen the dependency-neglect case. According to *Young* and its progeny, once the children achieve permanency and the dependency-neglect case is closed, there is no jurisdiction under the Juvenile Code to reopen the case. Because we affirm on this basis, we need not address the other arguments raised by Hill on appeal.

Affirmed.

VIRDEN and BARRETT, JJ., agree.

Bradley D. Hull, for appellant.

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

Dana McClain, attorney ad litem for minor children.