Not Designated for Publication

DIVISION II

CA08-891

December 3, 2008

HARRIET CLODFELTER APPELLANT	AN APPEAL FROM MISSISSIPPI COUNTY CIRCUIT COURT
v.	[NO. JV2007-56]
	HONORABLE BARBARA HALSEY, JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	AFFIRMED

Harriet Clodfelter appeals from an order terminating her parental rights to C.C. (born November 17, 1991), S.C. (born June 2, 1994), and A.C. (born May 3, 1996). She argues that the Arkansas Department of Human Services (DHS) failed to establish appropriate permanency-placement plans for the three girls. We affirm.

DHS obtained emergency custody of the children in April 2007, based on a report that appellant failed to protect them from sexual abuse. The circuit court adjudicated the children dependent-neglected, and appellant signed a safety plan, agreeing there would be no contact between the children and the alleged offender, Keith (also known as Kenneth) Roussell. The children completed a successful trial placement with appellant and returned to her custody on July 3, 2007. Shortly thereafter, appellant and the children moved to Missouri.

On August 31, 2007, a Missouri juvenile officer sought protective custody of S.C. His application stated that S.C. and her siblings were in an alcohol-related car accident with

appellant and Kenneth Roussell and that S.C. was found "in a bedroom with Kenneth Roussell, who is 34 years old, who had no clothing on and stated he had slept with the child." DHS obtained the officer's report and filed an emergency change-of-custody petition in Mississippi County Circuit Court. The court granted the petition, found probable cause for the children's removal, and adjudicated them dependent-neglected. The dependency-neglect order also relieved DHS from providing reunification services and established the following permanency-placement goals: "parental rights will be terminated and the goal will be adoption, with concurrent goals of permanent custody and Another Planned Permanent Living Arrangement (APPLA)."

At the termination hearing, DHS case worker Karen Phillips testified that C.C., aged sixteen, and A.C., aged twelve, were together in foster care and doing well. S.C., aged thirteen, was in a treatment facility and having behavioral problems. Phillips testified that DHS wanted to work on adoption for S.C. and A.C., and that their adoption was likely. She further said that DHS recommended a permanent-placement plan for C.C. of APPLA. C.C. testified that she would like to maintain contact with her mother. S.C. testified that she wanted to return to her mother, and A.C. testified that she did not want to be adopted.

The circuit court terminated appellant's parental rights, noting that the children's desire to return to their mother and their belief in her ability to care for them was "unrealistic and contrary to the evidence." The court approved permanency plans of adoption for S.C. and A.C., and APPLA for C.C. Appellant now appeals from the termination order, but she does not challenge the sufficiency of the evidence to support termination. Instead, she argues that

termination was improper because DHS "failed to establish that it had appropriate permanency placements for the juveniles."

A circuit court may consider a termination petition only if it finds there is an appropriate permanency-placement plan for the juvenile. Ark. Code Ann. § 9-27-341(b)(1)(A) (Repl. 2008); *Phillips v. Ark. Dep't of Human Servs.*, 85 Ark. App. 450, 455, 158 S.W.3d 691, 695 (2004). Appellant argues that DHS's plan of adoption for S.C. and A.C. is not appropriate because it is based on little more than the possibility of their being adopted. However, Karen Phillips testified that the girls' adoption was likely, and the court considered the likelihood of adoption in assessing the children's best interests. Furthermore, evidence of a permanency-placement plan exists when DHS shows that it is *attempting* to clear and prepare the juvenile for permanent placement. *See Posey v. Ark. Dep't of Human Servs.*, 370 Ark. 500, 508, 262 S.W.3d 159, 166 (2007); *Griffen v. Ark. Dep't of Human Servs.*, 95 Ark. App. 322, 325, 236 S.W.3d 570, 572 (2006); *Moore v. Ark. Dep't of Human Servs.*, 95 Ark. App. 138, 141, 234 S.W.3d 883, 885 (2006); *see also* Ark. Code Ann. § 9-27-341(a)(2) (Repl. 2008) (stating that the termination statute shall be used "only in cases in which the department is attempting to clear a juvenile for permanent placement").

Appellant also argues that termination of her parental rights in C.C. is improper because C.C.'s permanency-placement plan of APPLA is incompatible with termination. In 2005, the legislature added APPLA to Arkansas Code Annotated section 9-27-338 (Repl. 2008), as a permanency-planning goal in place of "independence," which had replaced long-term foster care. *See* Act 1191 of 2005 and Act 1503 of 2001. The statute now gives a circuit court the option of:

(c)(6)(A) Authorizing a plan for another planned permanent living arrangement that shall include a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive.

(B) Another planned permanent living arrangement shall be selected only if:

(i) The juvenile cannot be reunited with his or her family;

(ii) Another permanent plan is not available; and

(iii) Either:

(*a*) A compelling reason exists why termination of parental rights is not in the juvenile's best interest; or

(*b*) The juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile.

Appellant contends, based on the above statutory language, that APPLA is authorized only where termination is *not* in the juvenile's best interest. Therefore, she claims, termination and APPLA cannot be used together to form a permanency plan.

Our courts have not yet addressed the implications of APPLA on permanency planning, and we are unable to do so in this case. Appellant did not argue below that APPLA was inappropriate in conjunction with termination. It is well-established that we will not consider an argument raised for the first time on appeal. *See Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 55, 208 S.W.3d 241, 242 (2005).

Accordingly, we must affirm the order terminating appellant's parental rights.

Affirmed.

BIRD AND MARSHALL, JJ., agree.