

Cite as 2011 Ark. App. 342

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CA10-368

MISTY PORTER

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** May 11, 2011APPEAL FROM THE LITTLE RIVER  
COUNTY CIRCUIT COURT  
[NO. JV-2007-61-2]HONORABLE CHARLES YEARGAN,  
JUDGE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

Appellant Misty Porter appeals from an order terminating her parental rights in her three children, S.P., J.P., and M.P. She argues that she had no obligation to comply with the case plan and court orders because the Arkansas Department of Human Services (DHS) did not prove, at the termination hearing, the reason for the children's removal. We disagree with appellant's argument and affirm the termination order.

DHS placed a seventy-two-hour hold on the children in 2007 after receiving a hotline report that appellant's live-in companion, Obie Riley, had sexually abused and threatened ten-year-old S.P. The DHS affidavit stated that appellant learned of the abuse and reported it to the police, then left home with the children, only to return the next day. At that point, S.P. ran away from home but was later found and transported to the DHS office.

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Based on these events, the circuit court granted DHS emergency custody of the children. The order named Obie Riley as the father of M.P., and Robert Jackson as the father of S.P. and J.P. All parents waived a probable-cause hearing and the court adjudicated the children dependent-neglected, finding that the allegations in the DHS petition were true and correct. The court set a goal of reunification and permitted visitation as recommended by counselors (though S.P. refused visitation with either parent). The court also required appellant to, among other things, obtain a psychological evaluation and attend counseling.

Proof from the termination hearing would later reveal the following. From the outset of the case, appellant was unwilling to undergo the psychological evaluation, missing eight appointments in the process. She finally relented approximately six months into the case but acted inappropriately with the psychologist and sabotaged her assessments by providing double answers or no answers. The evaluating psychologist diagnosed appellant with an adjustment disorder and personality disorder and determined that, although appellant did not want psychological help, returning the children to her without therapy would be dangerous. Consequently, appellant began counseling but attended only five of nine appointments before ending therapy altogether.

Appellant also led a violent and unstable home life in the months after the children were removed. She told DHS that, on separate occasions, Riley had threatened to kill her, pulled a gun on her, held a knife to her throat, and almost burned down the house. She was initially receptive to DHS's exhortations to obtain a restraining order or move to a women's

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shelter, but she always returned to Riley, despite his threats toward her and his indifference to the children, as shown by his lack of compliance with the case plan and his attendance at very few hearings. At one point, the court ordered appellant to have no contact with Riley, and she obtained a ten-year restraining order against him. Within months, however, she resumed living with him and continued to cohabit with him at the time of the termination hearing.

Appellant additionally maintained an uncooperative attitude with DHS and CASA personnel, exhibiting, by turns, overt aggression and inappropriate affection. She was further observed behaving improperly with her three-year-old son during visitation when she rubbed her foot between his legs and kissed him on the mouth in a way that was unsuitable between mother and son.

These circumstances prompted DHS to file a petition to terminate appellant's parental rights. Witnesses at the termination hearing recounted the above events, and the court heard testimony that S.P.'s time away from home had transformed her from an aggressive, unsupervised ten-year-old child who smoked, drank alcohol, and missed school, to one who was interested in school and in maintaining her grooming and appearance. The proof also showed that appellant had variously believed or disbelieved the sexual-abuse allegations against Riley and that S.P. had been "horrified" when her mother returned to Riley after the abuse allegations were made. Additionally, a DHS supervisor testified that she understood that Riley

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passed a lie-detector test with regard to the allegations.<sup>1</sup> Neither S.P. nor any other witnesses testified about the details of the alleged abuse.

At the close of the evidence, the court remarked that, while the sexual-abuse claim “was never shown conclusively nor proven to the Court,” Riley’s passing the lie-detector test with regard to that claim did not “do away with all these other problems.” Accordingly, the court terminated appellant’s parental rights based on her lack of cooperation in therapy; her continuing cohabitation with Riley in violation of court orders; her hostility and erratic behavior toward DHS and CASA; and the violence and chaos in her home. The court found that termination was in the children’s best interest and that grounds for termination existed, including that appellant manifested an incapacity or indifference to remedying other factors or issues that arose subsequent to the filing of the dependency-neglect petition. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2009).<sup>2</sup>

In this appeal, appellant does not challenge the circuit court’s finding that termination was in the children’s best interest. Instead, she contends that, while she admittedly failed in several respects to follow the court orders and the DHS case plan, she was not obligated to

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<sup>1</sup> Results from a polygraph examination are inadmissible in Arkansas courts. Ark. Code Ann. § 12-12-704 (Repl. 2009). The court in this case recognized as much and initially sustained DHS’s objections to admitting the test. But, after the test was mentioned by several witnesses, the court allowed the DHS worker to testify as to her understanding of its outcome.

<sup>2</sup> The court also terminated the two fathers’ parental rights. They are not parties to this appeal.

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do so because there was no proof at the termination hearing that the incident that caused the children's removal, the sexual abuse of S.P., actually occurred.

Appellant's argument fails for several reasons. First, the adjudication hearing is the proceeding at which the circuit court must determine whether the allegations in the DHS petition are substantiated by the proof. Ark. Code Ann. § 9-27-327(a)(1) (Repl. 2009). The circuit court in this case found, in its adjudication order, that the allegations in the DHS petition were true and correct. Appellant did not appeal from that order, though she could have done so. Ark. Sup. Ct. R. 6-9(a)(1)(A) (2010). When an appellant does not appeal from an adjudication order, the court's findings in that order are no longer open to challenge and are precluded from review in an appeal from a subsequent order. *Johnson v. Arkansas Department of Human Services*, 2010 Ark. App. 763; *Dowdy v. Arkansas Department of Human Services*, 2009 Ark. App. 180, 314 S.W.3d 722.

Secondly, appellant's claim that the Arkansas State Police found the sexual-abuse allegation against Obie Riley to be "unsubstantiated" is not supported by the document on which she relies. The report she cites involves an incident between her and another child, J.P., not between S.P. and Obie Riley.

Finally, our law recognizes that grounds for termination are not delineated, in every instance, by the reasons for the child's removal from the home (although those reasons must be substantiated at the adjudication hearing). Rather, once a child is removed, other issues

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may reveal themselves, and those issues may warrant parental rehabilitation before the child can be returned. To that end, one statutory ground for termination is

[t]hat other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate that parent's circumstances that prevent return of the juvenile to the custody of the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2009).

That statute applies in this case. Even though the children were removed based on a report of sexual abuse, subsequent issues arose concerning the chronic violence in appellant's home; her continuing cohabitation with the man who not only perpetrated the violence but was indifferent to the dependency-neglect proceedings that involved his child; her threats toward agency workers; and her need for counseling. Appellant failed to remedy those matters and in fact defiantly refused to address them, despite DHS's provision of appropriate services. Thus, her conduct meets the elements of the statute, and we cannot say that the circuit court clearly erred in relying on this ground to support termination of appellant's parental rights. *See Porter v. Arkansas Department of Human Services*, 2010 Ark. App. 680, \_\_\_ S.W.3d \_\_\_ (affirming a termination order based on the "subsequent-factors" ground, even though the parent argued that he did not cause the child's initial removal from the home). Given appellant's lack of an argument that termination was not in the children's best interest, this concludes our review of the termination order. *See Burkhalter v. Arkansas Department of Human*

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*Services*, 2010 Ark. 520; *Fredrick v. Arkansas Department of Human Services*, 2010 Ark. App. 104,

\_\_\_ S.W.3d \_\_\_.

Affirmed.

ROBBINS and GLOVER, JJ., agree.