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Cite as 2011 Ark. App. 481

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-158

	Opinion Delivered June 29, 2011
ELIZABETH KELLEY APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT [NO. JV-2007-76]
V.	
ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILD APPELLEES	HONORABLE CINDY THYER, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

Elizabeth Kelley appeals from an order terminating her parental rights in L.S., age seven. She argues that the Arkansas Department of Human Services (DHS) did not provide meaningful or appropriate rehabilitative services during the case. We affirm the termination order.

DHS obtained emergency custody of L.S. in March 2009 upon receiving information that the child was at a Walgreen's store more than a mile from her home with a man she professed not to know. The day was cold and snowy, and L.S. did not have appropriate clothing for the weather. Walgreen's employees notified DHS of the situation when the man asked for help cleaning up the child after a bathroom accident. DHS located appellant, who stated that the man was her roommate and would not hurt L.S. Upon being administered a

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drug screen, appellant tested positive for amphetamines, with a questionable positive for methamphetamine.

Following entry of the emergency-custody order, the circuit court found probable cause for L.S.'s removal and adjudicated her dependent-neglected. The court established a goal of reunification and directed appellant to, among other things, undergo a drug-and-alcohol assessment and follow recommendations; obtain safe and stable housing; obtain stable employment; and submit to a psychological evaluation and follow recommendations. Thereafter, a six-month review order found that appellant had partially complied with court directives but that she had not maintained stable housing and had been incarcerated twice since the previous hearing. The court maintained a goal of reunification and determined that DHS had made reasonable efforts to provide reunification services.

On March 2, 2010, the court entered a permanency-planning order that changed the goal of the case to termination of parental rights and adoption. The order recited that appellant had tested positive for drugs five times since the previous hearing and that, against DHS's advice, she was living with an individual named Jesse Randall. The court ordered appellant to remain drug-free and to document proof of her attendance at AA/NA meetings. The court also found that DHS had made reasonable efforts to finalize a permanency plan.

At the termination hearing, DHS family service worker Lauren Isbell testified that appellant had partially complied with the case plan but that there were several "red flags" with regard to her behavior. Isbell said that appellant had been incarcerated three times during the

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case; that she had tested positive for drugs more than a dozen times during the case, including just two months before the termination hearing; and that she had recently cohabited with Jessie Randall, whose name appeared on the child-maltreatment registry for physically abusing his children (and who, appellant's family indicated, was "still around" appellant). Isbell also testified that appellant underwent a forty-five-day rehabilitation program during a 2007–08 protective-services case; however, she said, the drug-and-alcohol assessor in the present case questioned whether residential treatment would be effective for appellant, in part because appellant was low-functioning. Isbell said that she forwarded appellant's psychological evaluation to the assessor to acquire a more definitive recommendation, and the assessor recommended that appellant be encouraged to attend NA meetings and undergo random drug screens. Isbell also testified that L.S. was a delightful child and that she believed L.S. would be adopted.

Appellant testified that she attended NA meetings as ordered by the court, but she produced no documentation of her attendance. She also stated that she continued to use drugs during the case due to "stress," although she understood that she was not supposed to do so. Appellant denied that Jessie Randall was still in her life, and she stated that she did not think that living with Randall would hurt her chances for reunification with L.S. She admitted to being aware that Randall had been in and out of prison a great deal and that he had a child in foster care, whom he did not visit.

Following the hearing, the court found that termination of appellant's parental rights was in L.S.'s best interest, considering the child's likelihood of adoption and the potential

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harm in returning her to appellant.[1] The court also set forth two statutory grounds for termination: 1) the child was adjudicated dependent-neglected and lived outside the home for more than twelve months and, despite DHS's meaningful efforts, the parent failed to correct the conditions that caused removal; 2) other factors or issues arose subsequent to filing the original dependency-neglect petition and, despite DHS's offer of appropriate family services, the parent manifested an incapacity or indifference to remedying those factors or issues.[2] In its termination order, the court listed numerous services provided by DHS during the case.[3] Appellant timely appealed from the termination order.[4]

For reversal, appellant argues that DHS made no "meaningful efforts" and offered no "appropriate family services" during the case because it failed to provide her with in-patient drug treatment. Appellant's argument is procedurally barred for two reasons. First, the record before us does not demonstrate that appellant raised this issue in circuit court. We will not address issues that are raised for the first time on appeal.[5] Secondly, appellant did not appeal

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[1]Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2009).

[2]Ark. Code Ann. §§ 9-27-341(b)(3)(B)(i)(*a*) & (vii)(*a*) (Repl. 2009).

[3]The services listed were foster home and therapeutic foster care; medical care; health screening; PACE evaluations; random drug screens; transportation; visitation; home visits; psychological evaluation referral; parenting classes; the "Clock Is Ticking" video; drug-and-alcohol assessment referral; and other case management services.

[4] The court also terminated the parental rights of L.S.'s putative father. He is not a party to this appeal.

[5] *Lamontagne v. Ark. Dep't of Human Servs.*, 2010 Ark. 190, ___ S.W.3d ___; *Friend v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 606, ___ S.W.3d ___.

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from prior orders in which the court found reasonable efforts by DHS. Appellant has therefore waived consideration of the reasonable-efforts issue in this appeal.[6]

Appellant argues that this court recently disregarded the above precedents in two no-merit appeals by ordering rebriefing on similar issues, despite the lack of an objection below or the lack of an appeal from prior orders.[7] Appellant misapprehends our rulings in those cases. We determined solely that, based on the particular facts of those cases, a merit-based appeal would not be wholly frivolous and that our analysis would best be served by full advocacy of the issues by all parties. That was the extent of our holdings, and they should not be viewed as a repudiation of any established precedent.[8]

We further note that appellant's argument would fail on the merits. DHS referred appellant for a drug-and-alcohol assessment and provided the services recommended by the assessment. Appellant offers no convincing argument that DHS was required to go beyond those recommendations, especially where she neither requested additional services nor objected to the services that DHS did provide. Therefore, even if we reached the merits, we could not conclude that the circuit court clearly erred in finding that DHS made meaningful efforts and offered appropriate family services.

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[6] *Fredrick v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 104, ___ S.W.3d ___; *Jones-Lee v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 160, 316 S.W.3d 261; *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

[7] *Martin v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 152; *Baker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 69.

[8] *See Baker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 400.

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Affirmed.

PITTMAN and GLADWIN, JJ., agree.