

Cite as 2009 Ark. App. 612

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-373

RICKY HOWELL,

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILD,

APPELLEES

Opinion Delivered 23 SEPTEMBER 2009APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT,
[NO. J-08-987-3]THE HONORABLE SUSAN
ANNAMARIE FOX, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

Ricky Howell obtained custody of his pre-school-age daughter, A.H., in 2008 after the girl's mother went to jail. About a year later, the circuit court adjudged A.H. dependent-neglected. Howell challenges that decision, as well as one of the court's evidentiary rulings.

We see no clear error in the circuit court's overall decision about A.H.'s situation. *Brewer v. Arkansas Dep't of Human Servs.*, 71 Ark. App. 364, 367-68, 43 S.W.3d 196, 199 (2001). At the adjudication stage, the juvenile code is concerned about whether the child is dependent-neglected: which parent committed the acts or omissions constituting neglect is not the issue. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, 283, 248 S.W.3d 498, 502 (2007). The evidence was

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overwhelming that A.H.'s living conditions were deplorable. The home had no heat, indoor water, or food. Fecal matter was "piled up" in the bathroom; the home's windows were boarded up; and the only "noticeable" sign of electricity was a single lightbulb. A.H. was hungry, dirty, and in serious need of dental and medical care.

Howell cannot avoid the legal consequences of these conditions because some of them were the fault of others. Ark. Code Ann. § 9-27-303(36)(A)(iv) (Supp. 2009). The circuit court considered what it characterized as Howell's testimony about his "frantic efforts to find his child," whom he claimed had been kidnapped by a family member, and being "laughed at by law enforcement" when he sought help. The court, however, found Howell's testimony incredible. *Brewer*, 71 Ark. App. at 367-68, 43 S.W.3d at 199. The evidence more than adequately showed, as the circuit court concluded, that Howell neglected A.H. by failing to take reasonable actions to protect her when he knew (or should have known) about the bad conditions in the homes of his relatives where he had sent A.H. Ark. Code Ann. § 9-27-303(36)(A)(iii) (Supp. 2009).

Howell is right on his evidentiary point. The circuit court abused its discretion by refusing to admit some police reports supporting his position because they were hearsay. Howell wanted these reports in evidence not for the truth of what they asserted (a grandmother had kidnapped A.H.), but to show that he reported the alleged

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kidnapping. Ark. R. Evid. 801(c); *Chapman v. Ford Motor Co.*, 368 Ark. 328, 337, 245 S.W.3d 123, 130 (2006). Howell, however, fails to challenge the circuit court's alternative ground for rejecting the reports—lack of foundation. This omission is fatal. When a party appealing from a ruling leaves an alternative, independent ground for the ruling unchallenged, the trial court's ruling must be affirmed. *Coleman v. Regions Bank*, 364 Ark. 59, 64, 216 S.W.3d 569, 573 (2005). Further, Howell can show no prejudice here because the evidence of neglect was overwhelming. Without prejudice, no evidentiary error justifies reversal. *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 447, 47 S.W.3d 866, 877 (2001).

Affirmed.

ROBBINS and BAKER, JJ., agree.