

Cite as 2010 Ark. App. 649

ARKANSAS COURT OF APPEALSDIVISION I
No. CA 10-155

JEANNE HUDGENS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered September 29, 2010APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. JV2009-0161-3]HONORABLE JOHN R.
LINEBERGER, JUDGE BY
ASSIGNMENT

REVERSED AND REMANDED

COURTNEY HUDSON HENRY, Judge

Appellant Jeanne Hudgens appeals an adjudication order entered by the Union County Circuit Court declaring that her son, J.M., was dependent-neglected based on a finding that she caused mental injury to the child. For reversal, appellant contends that the circuit court erred in denying her motion to continue the adjudication hearing that was scheduled prior to the expiration of the twenty-day period in which she had to answer the dependency-neglect petition filed by appellee, the Arkansas Department of Human Services (DHS). We find merit in appellant's argument and reverse and remand.

The record reflects that appellant gave birth to J.M. on December 10, 2002. Kirk Martin established paternity of the child in March 2005, and the circuit court awarded custody to appellant at that time. By an order dated August 14, 2008, the circuit court found a

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material change in circumstances and granted Martin's petition for a change of custody. The court granted appellant unsupervised visitation on alternating weekends and for an extended period during the summer.¹

In July 2009, DHS opened a protective services case amid allegations that Martin was sexually abusing J.M. On September 15, 2009, DHS filed the present petition seeking a determination of dependency-neglect due to mental injury based on the assertion that appellant was prompting the child to accuse Martin of abuse. The court scheduled the adjudication hearing for September 30, 2009.

At the hearing, appellant orally moved for a continuance. She advised the court that she had received service on September 19, 2009, just eleven days prior to the hearing, and she stated her understanding that the matter could not be heard because DHS had filed a "twenty-day" petition. She informed the court that she had not yet filed an answer to the petition and that, although she was represented by counsel, her attorney was not available for the hearing. In response, the attorney for DHS agreed that appellant had twenty days to respond to the petition but argued that appellant could not claim surprise because appellant had participated in the investigation conducted by the state police. The circuit court denied appellant's motion for a continuance, expressing its concern for the child. At the conclusion of the hearing, the circuit court found that J.M. was dependent-neglected and ordered appellant's

¹ We affirmed the circuit court's decision to change custody in *Hudgens v. Martin*, 2009 Ark. App. 462.

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visitation to be supervised. Appellant brings this appeal from the adjudication order setting forth the trial court's decision.

On appeal, appellant contends that the circuit court erred by denying her motion for a continuance. The granting or denial of a motion for a continuance is within the sound discretion of the circuit court, and that court's decision will not be reversed absent an abuse of discretion amounting to a denial of justice. *Ashcroft v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 244, ___ S.W.3d ___. In its brief, DHS concedes error. Exercising our own independent judgment, we hold that the circuit court abused its discretion by not granting a continuance.

Arkansas Code Annotated section 9-27-314 (Repl. 2009) grants DHS the authority to seek an emergency order when there is probable cause to believe that it is necessary for the protection of a juvenile. Admittedly, DHS did not proceed under the auspices of that statute in this instance. Instead, it filed a petition for dependency-neglect under the provisions of Arkansas Code Annotated section 9-27-310 (Repl. 2009). Rule 12(a)(1) of the Arkansas Rules of Civil Procedure allows a resident defendant twenty days in which to file an answer to a complaint. Both this court and the supreme court have held that a circuit court cannot reduce the time for filing an answer to a complaint and that a trial court errs by conducting a trial before the time for filing an answer has expired. *The Corner, Inc. v. State*, 257 Ark. 525, 518 S.W.2d 506 (1975); *Foster v. Whitlow*, 4 Ark. App. 319, 630 S.W.2d 559 (1982). The circuit court's concern for the child is understandable, but the court erred by hearing the

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petition prior to the expiration of twenty days. Accordingly, we reverse and remand for proceedings consistent with this opinion. Although appellant has raised other issues in this appeal, those issues are either moot or are being raised for the first time on appeal. Therefore, we do not address them.

Reversed and remanded.

GRUBER and BAKER, JJ., agree.