

DIVISION II

CA06-1283

November 28, 2007

KENNIE BOLDEN
APPELLANT

v.

AN APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[JV-06-218-6]

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES
APPELLEE

HONORABLE THOMAS EDWARD BROWN,
JUDGE

AFFIRMED

Kennie Bolden seeks a reversal of the trial court's order adjudicating his minor daughter dependent-neglected based on her allegation of sexual abuse. In support of his appeal, Bolden argues that the State's finding of sexual abuse was not supported by the established methods for determining the credibility of witnesses. Bolden also argues that the State's evidence was not sufficient to support a finding of dependency-neglect. We affirm.

Prior to her 1995 marriage to Bolden, Carolyn Bolden had two children. Bolden adopted Carolyn's children following their marriage. In 2006, TB, Bolden's adopted fifteen-year-old daughter, alleged that he was sexually abusing her. TB moved in with her grandmother and the Arkansas Department of Health and Human Services later obtained emergency custody of her. Based on TB's abuse allegations, the circuit court held a probable cause hearing and found TB to be dependent-neglected. Bolden appeals from that order.

Bolden's first argument, that the finding of sexual abuse was not supported by the established methods for determining the credibility of witnesses, was not raised below.

Because we do not consider arguments that are raised for the first time on appeal, we will not address this argument. *Ark. Dep't of Health & Human Servs. v. Jones*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 31, 2007).

Bolden's second argument is that the finding of dependency-neglect was not supported by sufficient evidence. We review dependency-neglect cases de novo, but we will not reverse a circuit court's findings in such a case unless they are clearly erroneous or clearly against the preponderance of the evidence. *Id.* A finding is clearly erroneous when, although there is evidence to support the finding, after reviewing all the evidence, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Hopkins v. Ark. Dep't of Human Servs.*, 79 Ark. App. 1, 83 S.W.3d 418 (2002).

A youth who is at substantial risk of serious harm as a result of sexual abuse is considered dependent-neglected. *See* Ark. Code Ann. § 9-27-303(18)(A) (Supp. 2007). Sexual abuse is sexual contact by forcible compulsion by a person ten years of age or older to a person younger than eighteen years of age. Ark. Code Ann. § 9-27-303(50)(A)(i). Sexual contact is defined as the "touching, directly or through clothing of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile." Ark. Code Ann. § 9-27-303(51)(A)(i).

During the hearing, TB testified that she was sixteen and in the eleventh grade. She testified that Bolden engaged in a number of abusive acts during the six to eight months immediately preceding her removal. Among other things, Bolden came into her bedroom at least two nights a week between 10:00 p.m. and 11:00 p.m. and touched her breasts and

vagina while she was in bed. She said Bolden began abusing her when she was in the fourth grade. She also said that Bolden never penetrated her.

Bolden argues that TB's testimony was insufficient, especially considering all of the conflicting evidence, not the least of which was TB's statement to the state police investigator that her father never touched her vagina. There was evidence suggesting that Bolden never had the opportunity to visit TB alone in her bedroom. Carolyn testified that, during much of the time at issue, TB shared a bedroom with her brother and grandmother. She also testified that there were never any signs suggesting that Bolden abused TB. Carolyn asserted that TB was rebellious and did not want to submit to her parents' discipline. She said that, in the days preceding TB's abuse allegation, TB physically assaulted her after she attempted to discipline TB and, over Carolyn's and Bolden's objections, TB left their home and began taking birth control pills.

Although there is conflicting evidence, TB's testimony, alone, is sufficient to sustain a finding of sexual abuse. *See Davis v. State*, 362 Ark. 34, 207 S.W.3d 474 (2005); *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003). Inconsistencies in TB's testimony were matters of credibility for the fact finder to resolve. *See Davis, supra*. A review of the record indicates that the trial court resolved the issues of credibility in favor of TB. Therefore, we affirm.

Affirmed.

HART and GLOVER, JJ., agree.