Not Designated for Publication

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA07-1150

SHANNON WEST APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** November 12, 2008 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT, [NO. JV2006-76] HONORABLE STACEY ZIMMERMAN, JUDGE AFFIRMED

DAVID M. GLOVER, Judge

In this dependency-neglect proceeding, appellant Shannon West appeals from an order awarding permanent custody of her sons, B.W. (born November 24, 1992), and C.W. (born December 13, 1997), to their father, Curtis West. We affirm.

Appellant had custody of both boys and their siblings, R.W. and E.W., following a 2000 divorce from Curtis West. On January 18, 2006, the Arkansas Department of Human Services (DHS) placed a seventy-two-hour hold on all four children after appellant was arrested for domestic battery. According to a DHS affidavit, appellant whipped the youngest child, C.W., fifty to sixty times with a one-inch-thick leather strap, causing severe bruising to his buttocks. C.W.'s siblings stated that they too had been spanked with the strap in the past.

The Washington County Circuit Court granted emergency custody of the children

to DHS, found probable cause for their removal, and adjudicated them dependent-neglected. The adjudication order stated that appellant was "an unfit mother to all of her children" and subjected C.W. "to horrific injury by beating him." Appellant was ordered to participate in individual counseling; have a hair follicle test; and complete a financial affidavit. Both she and Curtis West were ordered to cooperate with DHS; keep DHS informed of their whereabouts; and follow the recommendations of their psychological evaluations.

The court's first review order, dated July 28, 2006, continued custody of all four children in DHS and established a goal of reunification. The court found that appellant had complied with the case plan and court orders but that Curtis West had not. Appellant was directed to take her medications as prescribed; follow the recommendations of her psychological evaluation and drug-and-alcohol assessment; abide by the terms of her probation; and pay $62 per week child support. The court ordered both parents to refrain from using illegal drugs; to submit to random drug screens; to maintain stable employment and safe housing; and to demonstrate the ability to protect the children and keep them safe from harm.

On August 9, 2006, the court heard a motion to intervene filed by E.W.'s biological mother, Kim Nero. This was the first hearing at which Curtis West, a Faulkner County resident, appeared. The court ordered home studies on Nero's and West's residences and directed West to pay his customary child support to DHS. West was allowed supervised visitation with R.W. and B.W.

Following a permanency-planning hearing on December 13, 2006, the court declared

Curtis West to be in partial compliance with court orders. However, the court found that appellant was unfit to have custody, noting that her mental-health needs had not stabilized; that she had not proved she was addressing her mental-health issues or attending counseling; that she had not paid child support; that she had attempted suicide in August 2006; that she was untruthful in court; and that she had not demonstrated that she remedied the conditions that caused C.W.'s removal. Consequently, the court established a goal for C.W. of termination of appellant's parental rights. The goal for B.W. remained reunification with a parent.[1]

DHS subsequently filed a petition to terminate appellant's parental rights to C.W. but withdrew the petition for reasons not shown in the record. Following a review hearing on February 7, 2007, the court found Curtis West in compliance with the case plan and court orders but found that appellant still had not complied. The court observed that appellant

> blames her behavior on others, she has not resolved the issues which brought the children into care, she has lied to the Court, she has not followed the terms of her probation, in that she is residing with a convicted felon, has used illegal drugs and is not current on her child support. Mother continues to be unstable in housing and continues to have unstable personal relationships.

Based on these findings, DHS filed a second petition to terminate appellant's parental rights to C.W., but that petition was also withdrawn.

On August 8, 2007, the court held a permanency-planning hearing and entered an

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[1] R.W. would eventually reach his majority and be placed in another planned permanent living arrangement; E.W. would be placed in the permanent custody of Ms. Nero. Appellant does not appeal from either of these dispositions, so the remainder of our opinion will be directed solely to the court's rulings regarding B.W. and C.W.

order granting permanent custody of B.W. and C.W. to Curtis West. The order gave appellant semi-monthly, supervised visitation and directed her to pay child support of $37 per week. Appellant now appeals from that order.[2]

We review equity matters, such as juvenile proceedings, de novo. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007). However, we do not reverse the trial court's findings of fact unless they are clearly erroneous. *Id*. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id*. We give due deference to the superior position of the trial court to view and judge the credibility of the witnesses. *Id*. This deference to the trial court is even greater in cases involving child custody, as a heavier burden is placed on the trial judge to utilize to the fullest extent his or her powers of perception in evaluating the witnesses, their testimony, and the best interests of the children. *Id*.

In the present case, the trial court did not clearly err when it placed B.W. and C.W. in their father's permanent custody. Less than two years before the final hearing, appellant inflicted a "horrific" beating on C.W. by striking him fifty to sixty times with a leather strap. There was accompanying proof that appellant had trouble controlling her anger, attempted suicide in August 2006, and was diagnosed with post-traumatic stress and histrionic personalty disorders. There was no proof that Curtis West ever inflicted physical injuries on B.W. or

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[2] We certified to the supreme court the question of whether or not this was an appealable order. The court held that the order was appealable and remanded the case to us. *West v. Ark. Dep't of Human Servs.*, 373 Ark. 100, ___ S.W.3d ___ (2008).

C.W. or suffered any serious mental disorders. Furthermore, the court cited a litany of appellant's persistent problems, all of which bear on her ability to be a safe and effective custodial parent: not addressing her mental health issues; not paying child support; being untruthful with the court; residing with a convicted felon; not abiding by the terms of her probation; and taking drugs. While there was evidence that appellant was improving in the months leading up to the final hearing, there was also evidence that she did not begin her efforts in earnest until more than a year into the case.

The court also expressed concern that appellant placed her needs above the children's. The court noted an incident in which appellant was frustrated in her attempts to visit fourteen-year-old B.W. while he was in a trial placement with West. Appellant asked law enforcement authorities to physically put the child in her custody. When questioned about the incident, appellant said she had not thought of how it would make B.W. feel and admitted it would probably frighten him. In a similar vein, Curtis West testified that appellant spoke to B.W. the morning of the final hearing and asked if he did not want to see her or be around her anymore, which made the boy cry. B.W. testified that he was doing "great" with his father, and he thought it best if he did not see his mother. In determining the best interest of a child in a custody proceeding, the court may consider the child's preferences if the child is of a sufficient age and capacity to reason. Ark. Code Ann. § 9-13-101(a)(1)(A)(ii) (Repl. 2008).

Appellant argues that the trial court should have taken into account C.W.'s preference to live with her. Nine-year-old C.W. testified that he wanted to live with his mother rather

than his father because his father did not talk to him very much or do anything fun with him. But C.W.'s counselor testified that the boy was very confused about what he wanted, and, given the difference in C.W.'s and B.W.'s ages and maturity levels, the court was warranted in according greater weight to B.W.'s preference. Appellant also notes that West missed one of three family-counseling appointments. However, the court recognized that West owned a business in Faulkner County and was required to make the long drive to Fayetteville for the appointments.

Appellant further asserts that no adult was present during the day at West's home while B.W. was staying there the previous summer. The court determined that B.W. was mature enough to handle the situation. Additionally, West testified that his father-in-law was always close by because he was building a house next door. Appellant also points out that West had not enrolled B.W. in counseling during a two-month trial placement and had "not apologized to the boys for not being part of their lives." Suffice it to say that the court took note of West's stubbornness and inability to apologize but stated, "other than that, have I heard anything today about dad being mean to these children or hurting them or even remotely placing them in harm's way? No, I have not." The court understandably wanted to bring this twenty-month-long case to a close and place the children in the permanent custody of the parent who could best provide a safe, stable environment.

Appellant also argues that the terms of her visitation are too harsh—three hours, supervised, every other Sunday. We agree that the visitation is quite restrictive, given that two DHS witnesses recommended unsupervised visitation. However, we will not reverse a trial

court's visitation decision absent an abuse of discretion. *See Oldham v. Morgan*, 372 Ark. 159, ___ S.W.3d ___ (2008). In light of our standard of review and appellant's recent history of child abuse, manipulation, and a suicide attempt, we are compelled to hold that the court's visitation schedule does not constitute an abuse of discretion.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.