

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 07-1355

ZOLA WILLIS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered MAY 21, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JN2006-1642]

HONORABLE JOYCE WILLIAMS,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Zola Willis argues that the trial court erred in terminating her parental rights in M.W. (born May 14, 2003). We disagree and affirm.

On August 7, 2006, the Arkansas Department of Human Services (DHS) exercised a seventy-two-hour hold on M.W.'s older sister, L.S., after L.S. reported being sexually abused by Christopher Willis, who was M.W.'s father and L.S.'s putative father. While L.S. was at the DHS office, appellant left town with Willis and her other three children, including M.W. They were later found in southeast Arkansas, and M.W. was taken into DHS custody on August 16, 2006, along with the other children. Christopher Willis was criminally charged.

On October 13, 2006, the trial court adjudicated M.W. and the other children dependent-neglected and found that Willis had sexually abused L.S. The court noted that appellant "has gone back and forth on whether or not she believes [L.S.]." Later, the court

set a goal of reunifying M.W. with appellant, and appellant was ordered to, among other things, cooperate with DHS; keep DHS informed of her places of residence and employment; maintain stable housing and employment; undergo a psychological evaluation; participate in individual and family therapy; and demonstrate the ability to protect M.W. and keep her safe.

On January 9 and 10, 2007, Dr. Paul Deyoub conducted a psychological evaluation of appellant. He found that appellant did not believe L.S.'s accusations of sexual abuse. He also doubted appellant's insistence that she was no longer seeing Christopher Willis. Dr. Deyoub recommended that appellant enter a family-treatment program and stated that she must prove herself capable of maintaining a safety plan that prevented Willis from seeing the children. Dr. Deyoub stated, "If [appellant] continues a regular marital relationship with Mr. Willis, I do not see that she will be able to regain custody of the children. . . ."

The court held a review hearing on January 26, 2007, and observed that appellant "testified again today she is not sure if she believes [L.S.'s] allegations or not." The court also found that appellant had refused to provide an address to DHS; lied to DHS about her address on another occasion; and was untruthful about her ongoing involvement and living arrangement with Willis. The court credited testimony from a landlord that appellant and Willis told her they would both be living in the same apartment. Appellant was ordered to participate in the family-treatment program.

Workers from the family-treatment program tried to contact appellant, but she did not return their calls until February 2007. She set up an appointment for February 13, 2007, rescheduled it, then was not heard from again until May 2007. Social Worker Jim Harper saw

appellant for about five sessions in May and June, but she did not show up for an appointment in July. According to Harper, appellant still did not believe that Willis had abused L.S.

The court held a permanency-planning hearing on July 26, 2007, and found that appellant had not attended therapy as required, had not kept DHS informed when she moved, and had not provided proof of stable income or housing. The court specifically mentioned Jim Harper's conclusion that appellant still believed that L.S. fabricated the abuse allegations. The court changed the goal of the case to termination of parental rights.

Near the time the permanency-planning order was entered, appellant notified Harper that she preferred a female therapist. Dr. Karen Worley was prepared to begin seeing appellant in early August 2007, but Dr. Worley was mistakenly told by DHS family service worker Elnora Perkins that appellant's parental rights had already been terminated. Once the error was corrected, Dr. Worley began seeing appellant in mid-September 2007.

The termination hearing was held on September 21 and 28, 2007. Dr. Deyoub testified that appellant did not believe that her husband sexually abused L.S. Dr. Deyoub said that, had appellant begun the family-treatment program in January 2007, she could have completed it by January 2008. But the fact that she had only attended five or six sessions and did not begin them until May 2007 indicated a poor prognosis for reunification. He also said that he was not yet confident that appellant would prevent Willis from having access to M.W.

On cross-examination, Dr. Deyoub acknowledged the possibility that appellant was going through denial, which would not be unusual. But, he said, denial is only a legitimate excuse "for a little while, not very long." Further, he said, he could not have been clearer in

his evaluation that appellant's relationship with Willis was incompatible with getting her children back. If indeed appellant was continuing to see Willis, he said, she had "made a choice" and was not doing what was necessary to reunite with her children.

Dr. Karen Worley testified that she would know in three to six months the direction that appellant's therapy was going. She observed that appellant expressed sorrow at being separated from M.W. and that it was not unusual for women to go through a period of denial in this situation, up to six months if they did not undergo treatment. However, Dr. Worley stated that appellant was "not going to be able to do a lot of what she needs to do" if she continued to be involved with Willis.

Appellant acknowledged in her testimony that she was supposed to keep DHS informed of her living arrangements but did not do so. She admitted to having neither a fixed address nor sufficient income to take care of M.W. She also said that she stayed with Willis the night before the termination hearing and had done nothing to separate herself from him, despite having read Dr. Deyoub's evaluation and understood his recommendations, as well as the court's instructions, about separating from Willis. She said she did not believe that Willis molested L.S. and that she would not believe it until she received more counseling. Upon further examination, appellant stated that she would be willing to separate from Willis if that was what it took to get M.W. back, and she asked the court for more time and counseling to be able to do that. She said that her sessions with Worley were going very well.

Adoption specialist Lisa Saulsberry testified that M.W. was very adoptable and had several prospects, including her current foster family. Family service worker Elnora Perkins

testified that she made a mistake when she determined after the July 26, 2007 hearing that appellant's parental rights had been terminated. She apologized for her error.

Following the hearing, the trial court terminated appellant's parental rights. The court expressed disbelief regarding appellant's testimony that she had not lived with Willis during the case and noted that appellant spent the night before the termination hearing with Willis. The court also observed that appellant had no home or sufficient income to care for M.W.; that appellant deliberately withheld information from DHS about her address; that appellant still did not believe that Willis abused L.S.; and that appellant was not diligent in pursuing family therapy. Based on these findings, the court ruled that termination was in M.W.'s best interest and that four grounds for termination were proved by clear and convincing evidence, including the following: 1) M.W. was adjudicated dependent-neglected and continued out of appellant's custody for more than twelve months and, despite a meaningful effort by DHS to rehabilitate appellant and correct the conditions that caused removal, those conditions have not been remedied by appellant; 2) other factors or issues arose subsequent to the filing of the original dependency-neglect petition that demonstrated a return of M.W. to appellant was contrary to M.W.'s health, safety, or welfare and that, despite the offer of appropriate family services, appellant manifested an incapacity or indifference to remedying the subsequent factors or issues. Appellant appeals from that order.

Appellant argues that there was insufficient evidence that termination was in M.W.'s best interest and insufficient evidence of grounds for termination. We disagree. Appellant has one daughter who, based on the court's findings and the opinion of a psychological expert,

was sexually abused by Christopher Willis. Yet, appellant refused to believe the allegations and maintained a close relationship with Willis, even spending the night before the termination hearing with him. *See Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006) (upholding termination where mother would not commit to keeping her sexually-abusive husband away from her child); *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003) (upholding termination where mother stood by the perpetrator who abused her child). There was also evidence that, despite M.W.'s being out of appellant's custody for more than one year, appellant had no residence or income sufficient to take care of the child. She further demonstrated an untruthful and uncooperative attitude towards DHS and a casual if not neglectful approach to the therapy that Dr. Deyoub and the court regarded as critical to her regaining custody of her child. Given these factors, we cannot say that the trial court clearly erred in finding that termination was in M.W.'s best interest and that at least one of the above mentioned grounds was proven. *See Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *Sparkman, supra*.

Appellant argues that she needed more time in therapy to work through her denial. However, her past actions demonstrate an indifference or inability to participate in therapy on a regular basis. Furthermore, by the time of the termination hearing, M.W. had been out of appellant's custody for over a year, and appellant's therapist predicted it would take three to six months to determine the direction appellant's therapy was going. M.W. is a young child with a need for permanency and stability. *See Camarillo-Cox, supra*.

Appellant also cites the DHS's worker's August 2007 mistake in telling Dr. Worley that appellant's parental rights had already been terminated, which caused a one-month delay in appellant's therapy. While this was an unfortunate error, by that point, appellant had squandered several months of opportunity to engage in regular therapy and had only recently begun participating in therapy at all.

Affirmed.

GLOVER and BAKER, JJ., agree.