

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CA08-207

JUNE 4, 2008

JO ANN BLACK

APPELLANT

v.

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES
APPELLEE

AN APPEAL FROM SALINE
COUNTY CIRCUIT COURT
[No. JV 2006-202]

HONORABLE PAUL LANCASTER,
SPECIAL JUDGE

AFFIRMED

On December 7, 2007, the Saline County Circuit Court terminated appellant Jo Ann Black's parental rights to her daughter, L.B., born April 20, 1998. Black argues that the circuit court erred in terminating her parental rights because appellee Arkansas Department of Human Services (DHS) failed to make reasonable efforts to provide reunification services. We affirm.

On September 10, 2006, DHS exercised a seventy-two-hour hold on L.B. According to the affidavit filed in support of the petition for emergency custody, L.B. was being sexually abused by Black's live-in boyfriend. Further, the affidavit stated that Black was doing drugs and having sex with L.B. present in the home. DHS filed its petition for

emergency custody on September 13, 2006. The court entered an order granting DHS emergency custody on the same day.

The circuit court later found that probable cause existed for removal of L.B. The court placed temporary custody with Denise Diaz, L.B.'s great aunt. Black was not to have any visitation with L.B. She was also ordered to submit to immediate drug testing and to enter residential treatment after admitting to using methamphetamine the night before the hearing.

On November 21, 2006, DHS filed a motion seeking to be relieved from providing further reunification services to Black. The motion cited the six-year history of involvement with the family and that Black had failed to secure stable housing, failed to maintain contact with DHS, failed to enter drug treatment, and failed all drug tests since L.B. was removed in September 2006.

On January 30, 2007, a permanency-planning hearing was held. The court found that the continuation of L.B. in the temporary custody of Denise Diaz was contrary to L.B.'s health, safety, and welfare and that L.B. could not be returned to Black's care. Accordingly, the goal of the case was changed to termination of parental rights. The title and body of the order indicate that DHS's motion to be relieved from providing services was considered at the same hearing. However, the order does not specifically grant the motion and relieve DHS from providing services.

Also on that day, DHS filed its petition for termination of Black's parental rights. As grounds, the petition alleged that L.B. had been out of Black's home for more than twelve months and the conditions causing the removal had not been remedied and that,

after the original petition, other issues arose which indicated that return of L.B. to her parents was contrary to her health, safety, and welfare and that Black had manifested the incapacity or indifference to remedy the subsequent issues.

Matt Catton, an investigator with the Arkansas State Police, testified that he investigated a complaint that L.B. was sexually abused. He said that L.B. also described her mother as using drugs and having sex in L.B.'s presence. Catton concluded that the allegation of sexual abuse was true.

Gloria Evans, the DHS caseworker at the time the case arose, testified that she developed a case plan where she offered Black transportation services and referrals for drug treatment and counseling. She said that Black went to one treatment facility for a week and left after a positive drug test. She also said that Black never submitted any information concerning her housing or employment. She said that she discussed Black's drug use with L.B., noting that, for an eight-year-old, L.B. had a great deal of knowledge about drug usage. Evans noted that Black tested positive for drugs in September and October 2006, but tested negative in January 2007. On cross-examination, Evans said that she made two referrals to get Black into a treatment facility but that no beds were available. When a bed was available, Black had disappeared.

Karen Rayford, the residential manager at Chance Sobriety Ministries, testified that her program ran between six and eighteen months and that Black completed three weeks at the facility before leaving of her own accord.

Cherye Limoges, a licensed psychotherapist, recommended that Black's parental rights be terminated because L.B. had been in and out of foster care and needed stability

that her mother could not provide. She stated that L.B. had “stabilized hugely” and made improvements since being placed in foster care. Limoges said that her therapy was to help L.B. with problems after being sexually abused. She said L.B. was able to describe in great detail someone having sex. She also said that L.B. had a lot of knowledge about drugs and drew various pictures of drug paraphernalia.

Kim Sowell, the DHS adoption supervisor for Saline County, testified that L.B.’s chances of being adopted were high because she was a nine-year-old child with minimal problems.

Amanda Firth, the CASA volunteer, recommended termination of Black’s parental rights, noting that L.B. needed permanency. She said that she did not consider Black’s situation in a treatment facility to be stable. She also noted that children were not allowed at the facility. According to Firth, Black was still focused on recovery, not on being a parent to L.B.

The current DHS caseworker, Jamie Thompson, also recommended that Black’s parental rights be terminated because Black was not committed to becoming clean and sober because, otherwise, she would not have left treatment after three weeks. She also said that she did not hear from Black from January 5, 2007, until sometime in April but did not know that Black was incarcerated for some of that time. She said that L.B. had been out of Black’s custody for over 700 days, including previous cases. She said that Black contacted her in April 2007 and that she informed Black that there would be no services or drug tests because the goal had been changed in January 2007 to no reunification. According to Thompson, an August 27 drug test given to Black was positive

for methamphetamines, which could have been the result of a prescription medication. However, tests conducted on September 19 and 28 were negative.

Jo Ann Black testified that she had become a house manager at Quality Living Center after previously being in another facility and the Pulaski County Jail. She explained that she left the first placement that DHS arranged because there was not a drug counselor available. She said that she could remain at the facility as long as she wanted. She said that she would have a home of her own from a former boyfriend if L.B. were returned to her. She said that she received transportation services and drug tests from DHS but that all of her treatment placements were obtained by herself.

The court ruled from the bench and granted the petition. The court noted that Black had made substantial progress in dealing with her addiction problem but not in other aspects of her life. The court noted that Black admitted that she was not prepared to leave the treatment facility and did not have adequate housing or income for herself and L.B. The court also found that there were no signs that things would improve if Black were given additional time. The court also found that L.B. needed permanency, which Black was unable to provide. Black timely filed her notice of appeal.

This court reviews termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proved

by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.*

In her sole point for reversal, Black argues that DHS failed to provide her with the services that would enable her to be reunited with her daughter and, therefore, termination was improper. Black is procedurally barred from making this argument. This court has held that, after a circuit court has made a finding that DHS has provided a parent with reasonable reunification services, if the parent does not timely appeal the circuit court's findings, those findings cannot be challenged later. *Moore v. Arkansas Dep't of Human Servs.*, 69 Ark. App. 1, 9 S.W.3d 531 (2000); *see also Jefferson v. Arkansas Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004). Black did not appeal from either the adjudication order or from the permanency-planning order where the circuit court specifically found that DHS had made reasonable efforts to provide services. Moreover, Black cannot now complain because of her failure to remain in contact with DHS so that it could provide services. *Cobbs v. Arkansas Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004). Jamie Thompson, the current DHS caseworker, and Karen Qualls, the DHS caseworker on a previous case involving L.B., both testified that Black would not communicate with the department for several months at a time.

Affirmed.

PITTMAN, C.J., and VAUGHT, J., agree.