Not Designated for Publication

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 08-424

MICHAEL WHITE APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** September 17, 2008 APPEAL FROM THE FULTON COUNTY CIRCUIT COURT, [NO. JV-07-30] HONORABLE STEPHEN CHOATE, JUDGE AFFIRMED

SARAH J. HEFFLEY, Judge

Appellant Michael White appeals from an order terminating his parental rights to his daughter, CW, who was born on July 2, 2001. He contends that the evidence is not sufficient to support the termination decision because there was no proof offered at the termination hearing that he sexually abused the child and because there was no evidence presented showing the likelihood for the child to be adopted. We affirm.

The Department of Human Services (DHS) petitioned for and obtained emergency custody of CW on June 6, 2007. This action was prompted after an investigation produced evidence that appellant was sexually abusing the five-year-old child. At the time of the petition, appellant was residing in a homeless shelter, while the child was staying in the home of a maternal great aunt. While staying with her aunt, the child had unsupervised visitation with appellant, despite the aunt's fears that he was sexually abusing her. Probable cause for the removal was subsequently found, and the adjudication hearing was held on October 15

and 23, 2007. In the adjudication order dated December 3, 2007, the trial court found the child to be dependent-neglected. Specifically, the court found that appellant "has sexually abused the juvenile. The court finds that said abuse constitutes aggravated circumstances." The trial court directed appellant to comply with the case plan and ordered that he have no visitation with the child unless her therapist, DHS, and the attorney ad litem recommended it.

DHS filed a petition for termination of appellant's parental rights on January 7, 2008. At the hearing held on February 6, 2008, Lisa Hancock, the child's counselor, testified that she had met with CW once a week since August 2007 and had diagnosed her as having mild depression and anxiety. She said that CW was very guarded but was beginning to talk about being touched inappropriately by her father, whom she missed but also feared when he was angry. She stated that CW's boundaries were poor and that she was "really . . . affectionate early on to strangers. She likes to sit in your lap. You have to ensure personal space. The foster mom . . . reported that she masturbates during the night." Ms. Hancock stated that CW was able to bond with others and wanted a mommy and daddy. She said that CW was adoptable and needed a permanent place to live soon.

Appellant testified that his eleven-year-old twins (by a different mother) were not in his custody because he abused them. He said that, although his parental rights had not been terminated, he had been convicted of aggravated assault for the physical abuse of the twins in 1997 and had received five years' probation for that crime. He denied sexually abusing CW and stated that he believed she had been coached by her great aunt. He stated that he was employed as a landscaper and that he had a place to live. He said that he stopped attending

the sex-offender program, as required by the case plan, after one appointment because he did not want it to seem as if he were "admitting something." He also admitted that he had not attended anger-management counseling, which was also required by the case plan.

Lacy Shepherd, a family service worker, testified that appellant had completed parenting classes but that he had not participated in anger-management counseling or sexual-offender treatment. She said that there was nothing to stop appellant from sexually abusing the child again because he was not taking any measures to rehabilitate himself. She testified that it was in CW's best interest for appellant's parental rights to be terminated; that it was likely that CW would be adopted and that, in fact, some people were interested; and that returning CW to appellant's custody would be contrary to her health, safety, and welfare.

On February 6, 2008, the trial court entered an order terminating appellant's parental rights, based on findings that:

> 4. After considering the likelihood that the juvenile will be adopted, and the potential harm of continuing contact with the parents, the Court finds it to be contrary to the juvenile's best interests, health, safety, and welfare to return said juvenile to the care and custody of the parents and further finds that the Department has proven by clear and convincing evidence that:
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> C. The father has been found by the Court to have subjected the child to aggravated circumstances by sexually abusing her, and there is little likelihood that continued services to the family would result in successful reunification.
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> 5. The court finds that the Department, throughout this matter, has made reasonable efforts to reunite this family.

Arkansas Code Annotated section 9-27-341(b)(3) (Repl. 2008) states that an order terminating parental rights shall be based upon a finding by clear and convincing evidence that it is in the best interest of the juvenile, including consideration of the likelihood of adoption

and the potential harm, specifically addressing the effect on the health and safety of the child caused by continuing contact with the parent. The order terminating parental rights must also be based on a showing of clear and convincing evidence as to one or more of the grounds for termination listed in Ark. Code Ann. § 9-27-341(b)(3)(B). The ground relied upon in this case by the trial court was that of aggravated circumstances, which includes sexual abuse or a determination that there is little likelihood that services to the family will result in successful reunification. Ark. Code Ann. § 9-27-341(3)(B)(ix)(a)(3)(B)(i).

The standard of review in cases involving the termination of parental rights is well established. When the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the trial court's finding is clearly erroneous. *Lewis v. Arkansas Dep't of Human Services*, 364 Ark. 243, 217 S.W.3d 788 (2005). 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 made. *Gregg v. Arkansas Dep't of Human Services,* 58 Ark. App. 337, 952 S.W.2d 183 (1997). We give a high degree of deference to the trial court, as it is in a far superior position to observe parties before it and judge the credibility of the witnesses. *Dinkins v. Arkansas Dep't of Human Services,* 344 Ark. 207, 40 S.W.3d 286 (2001).

First, appellant argues that the trial court erred in terminating his parental rights based on allegations of sexual abuse, when no proof of abuse was offered at the termination hearing. The trial court's decision in this regard was based on a finding made in the previous adjudication order that appellant had sexually abused his daughter. This order was introduced into evidence at the termination hearing. Rule 6-9(a)(1)(A) of the Rules of Appellate

Procedure—Civil provides that an adjudication order is an appealable order. Appellant did not take an appeal from that order; thus, he is precluded from challenging the trial court's finding of sexual abuse in this appeal. *Moore v. Arkansas Department of Human Services,* 69 Ark. App. 1, 9 S.W.3d 531 (2000).

Appellant also takes issue with the trial court's finding that he was not in compliance with the case plan, complaining that he was not given a one-year period in which to meet its requirements. The term "fast track" means that reunification services will not be provided or will be terminated before twelve months of services. Ark. Code Ann. § 9-27-303(26) (Repl. 2008). Once again, in the adjudication order that appellant did not appeal, the trial court made a finding of dependency neglect as a result of sexual abuse. Pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(vi)(b) (Repl. 2008), this finding constitutes grounds for the immediate termination of parental rights. In addition, a finding of aggravated circumstances was also made in the adjudication order, which can relieve DHS of the obligation to provide reunification services. Ark. Code Ann. § 9-27-303(46)(C)(i). We perceive no error.

Appellant's last argument is that there was insufficient proof concerning the likelihood of adoption. He contends that the testimony of the case worker that the child was adoptable was inadequate because the worker was not an adoption specialist. Appellant, however, raised no objection to the witness's qualifications at the hearing, and we do not address issues raised for the first time on appeal. *Arkansas Dep't of Health & Human Services v. Jones,* 97 Ark. App. 267, 248 S.W.3d 507 (2007).

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.