

**ARKANSAS COURT OF APPEALS**DIVISION I  
No. CA12-290

SUSAN COOPER

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** SEPTEMBER 19, 2012APPEAL FROM THE HOT SPRING  
COUNTY CIRCUIT COURT,  
[NO. 30]V-10-195]HONORABLE PHILLIP SHIRRON,  
JUDGE

AFFIRMED

**CLIFF HOOFFMAN, Judge**

Appellant Susan Cooper appeals from the order of the Hot Spring County Circuit Court awarding permanent custody of her three children, J.F., Z.F. and R.F., to their maternal aunt, Wendy Cady, and denying Cooper further visitation with the children. On appeal, Cooper argues only that the trial court erred in its denial of visitation. We affirm.

This case began on November 21, 2010, when the Arkansas Department of Human Services (DHS) exercised an emergency hold on fifteen-year-old J.F., fourteen-year-old Z.F., and nine-year-old R.F., after Cooper failed to comply with certain requirements implemented during a protective-services case. DHS was notified that the children had been truant from school, that they had been out on the streets late at night, and that they had been associating with an inappropriate adult male, Todd Brown, with whom a no-contact order had recently been issued. The children were placed with their aunt, Cady, and adjudicated dependent-neglected on the basis of educational neglect in February 2011. Cooper was ordered to have

supervised visitation with her children, complete a psychological evaluation, attend outpatient drug treatment, submit to random drug screens, complete parenting classes, and complete counseling. The goal of the case was set for reunification with Cooper.

The trial court found that Cooper was complying with the case plan and that unsupervised weekend visitation would be allowed following a review hearing in March 2011. However, at the next review hearing in May 2011, the trial court indicated that weekend visitation had been discontinued because Cooper had allowed the children to have contact with Brown in violation of the court order and because she had been discharged from outpatient drug treatment due to her noncompliance. At a review hearing in September 2011, the trial court found that Cooper had partially complied with the case plan but that she had still not completed outpatient drug treatment. Also, Cooper had recently been arrested, along with Brown, for possession of a handgun and intent to deliver narcotics.

The permanency-planning hearing was held on November 21, 2011. Lauren Harris, the family service worker assigned to the case, testified that Cooper had completed her psychological evaluation and her drug assessment. She had also been attending counseling. However, she had not completed her outpatient drug treatment, instead having been discharged from the program on two occasions. She had also tested positive for opiates two weeks prior to the hearing. Although Cooper claimed that she had a prescription for the medication, Harris testified that she had not seen proof of this. Harris further stated that DHS was concerned that Cooper would not comply with the no-contact order with Brown if the children were returned to her custody, as she had continued to have contact with Brown.

Harris testified that, despite prior allegations of possible abuse by Brown and an allegation that he had forged documents and misappropriated the children's identities, Cooper did not believe that contact with Brown was problematic. According to Harris, the two older boys had expressed concern about being forced to visit their mother since the last hearing. She stated that they did not want to visit Cooper and that they were doing well in their current placement with Cady. Harris also testified that the children were performing much better at school.

Tina Lature, Cooper's sister, testified that Cooper was constantly with Brown and that she had told Lature that Brown was her family. When asked whether Cooper had ever made threats to anyone involved in the case, Lature stated that Cooper had "always said if anybody took her kids she was going to burn them out." Lature further stated that she had concerns about the children being returned to Cooper's custody because they would be back at "square one," out on the streets with no supervision and having contact with Brown. According to Lature, the children were doing much better in Cady's custody, and it was in their best interests to stay with her.

Lisa Carpenter, J.F.'s and Z.F.'s school counselor, testified that there had been no problems with their attendance since they had been in Cady's custody and that they were thriving in school. She stated that the boys indicated that they were comfortable in their current placement and felt safe. She further testified that the boys had expressed their desire not to visit their mother and that she did not believe it was healthy to force them to do so. R.F.'s counselor, Michelle Kyeum, testified that R.F. also felt happy and safe in her current

placement and that she had made a lot of progress with her behavior at school.

Stephanie Matthews, Cooper's therapist, testified that Cooper suffered from bipolar disorder and that her "impulsivity and mania" negatively affected her parenting skills. According to Matthews, Cooper needed further therapy sessions in order to learn how to manage her behavior and also needed to be consistent about taking her medication. Matthews stated, however, that she felt Cooper was able to parent her children at the present time, given that they were not young children.

Patricia White, who was the family's initial case worker, testified that at a recent visitation, she asked Cooper about her recent contact with Brown and that Cooper admitted that she had been with him when he was recently arrested for forging a prescription for pain pills and for contributing to the delinquency of a minor. According to White, throughout the case, Cooper had consistently denied being around Brown despite maintaining a relationship with him. Although White stated that Cooper had complied with much of the case plan, she also stated that Cooper had done the minimum that she could do to get by and that she appeared to choose Brown over her children.

J.F. also testified and stated that, prior to entering DHS custody, he had been skipping school and hanging out with Brown, both doing drugs and assisting him in buying and selling drugs. According to J.F., his mother was aware of his contact with Brown, and he believed that she also knew about the drugs because he was under the impression that they were buying or selling drugs for her on a couple of occasions. J.F. stated that his mother had also allowed the children to have contact with Brown during weekend visitations, despite the no-contact

order. Since he had been in his aunt's custody, J.F. testified that he was doing better than he ever had before and that he now wanted to go to school and learn. Although he stated that he loved his mother, J.F. wished to remain with his aunt and testified that he did not want to visit his mother until she learned to stay away from Brown and be a better parent.

Z.F. testified that, before he was placed in DHS custody, he did not have a stable home and his mother was involved in buying and selling drugs. He stated that they were living with Brown and that he would hear his mother talking about drugs with Brown. Z.F. testified that his mother also violated the court order by allowing Brown to be around the children when they were home for weekend visitations. Z.F. believed that he would continue to have contact with Brown if he were returned to his mother's custody, and he did not want to go home. Z.F. agreed with his brother that his mother put Brown ahead of her children. Since he had been in his aunt's custody, Z.F. testified that his school attendance and grades had improved and that he wanted to remain with his aunt where he would be protected.

Wendy Cady, the children's aunt and current placement, testified that she had seen many changes in the children since they came into her custody, such as learning to take responsibility for their actions and improving their grades. Cady stated that she "absolutely had concerns about the [children's] health and safety" if they were returned to Cooper and that she would like to have permanent custody. Cady further testified that she had concerns about allowing visitation with Cooper because Cooper had threatened her and because the children were coming home upset from visits. According to Cady, Cooper was telling the children inappropriate things and trying to undermine their placement with her, such as telling them

that Cady is to blame for their situation, that their mother, father, and siblings will not be their family anymore if they stay with Cady, and that Cady was planning on changing R.F.'s name, which Cady stated was not true. Cady testified that she believed it would be against the children's best interest to allow visitation until Cooper could demonstrate appropriate behavior.

In her testimony, Cooper stated that she had complied with everything that the court had asked her to do. Although she had not completed outpatient drug treatment, Cooper testified that she had set up an appointment on her own after the last hearing and that her first meeting was supposed to be that evening. Cooper claimed that she had a prescription for Klonopin and that that was why she had a recent positive drug test. She also denied any prior knowledge of J.F. doing drugs with Brown and claimed that the only contact that she had with Brown during the case was on the occasions when she had to talk to him about her other son, who was supposed to be paroled out to Brown, and when Brown stopped by to drop off a lawnmower. Cooper further stated that she thought the no-contact order had been lifted at the time when her children were home on a weekend visitation and Brown stopped by the house. With regard to recent supervised visitation, Cooper stated that the boys had refused to visit for a couple of months and that her daughter had also recently not shown up for her visitation. Although Cooper admitted that her children wanted to stay with their aunt, she claimed that this was because Cady spoke negatively of her.

Based upon the evidence presented at the hearing, the trial court awarded permanent custody of J.F., Z.F., and R.F. to Cady, finding that it was in the children's best interest and

necessary to the protection of their health and safety. The trial court found Cooper's explanations for her contact with Brown and her failure to complete drug treatment not to be reasonable and that she had not complied with the case plan and court orders. The court noted that the children had "found a sense of worth" since they had been in Cady's custody and that to continue this progress, it was necessary for them to remain with Cady. The trial court also declined to award visitation to Cooper, pending further orders of the court. Cooper now appeals from this decision.

On appeal, Cooper does not challenge the award of permanent custody to Cady, instead conceding that there was sufficient evidence to support the award. However, she does argue that the trial court erred in declining to award her continued visitation.

The fixing of visitation rights is a matter that lies within the sound discretion of the trial court, and the main consideration in a judicial determination concerning visitation is the best interest of the child. *Hudson v. Kyle*, 365 Ark. 341, 229 S.W.3d 890 (2006). We do not reverse the trial court's findings on appeal unless they are clearly erroneous. *Id.* We also give great weight to the trial judge's personal observations, as there are no cases in which the superior position, ability, and opportunity of the trial judge to observe the parties carry a greater weight than those involving the custody of minor children. *Id.*

Cooper contends that the trial court's decision to deny visitation was not supported by the evidence, had no correlation to the best interest of the children, and was done solely to punish her. We disagree. The evidence presented at the hearing showed that the children loved their mother but that they did not want to have visitation with her at the present time

because she was unwilling to put her children first and to comply with court orders. The wishes of the children are factors to be considered in determining visitation. *Brown v. Brown*, 2012 Ark. 89, \_\_\_ S.W.3d \_\_\_. All of the evidence showed, and the trial court found, that the children had significantly improved since being placed in Cady's custody, and Cady testified that the children had recently come home upset after supervised visitations because of Cooper's inappropriate behavior and attempts to undermine their current placement. Cady further stated that Cooper had made threats to her, and she believed that visitation was not in the children's best interest until such time as Cooper was able to act in an appropriate manner. J.F.'s and Z.F.'s counselor also testified that the children did not want to visit their mother at the current time, and she agreed that it was not healthy to force the children to attend visits.

Thus, there was ample evidence presented at the permanency-planning hearing to show that visitation was not in the children's best interest at this time, and Cooper's argument that the denial of visitation was done solely to punish her is without merit. Cooper is certainly allowed to request visitation again in the future, as the permanency-planning order noted that the present denial of visitation was "pending further order of this court." The trial court's decision not to award visitation is not clearly erroneous, and we therefore affirm.

Affirmed.

PITTMAN and GRUBER, JJ., agree.

*Leah Lanford*, Arkansas Public Defender Commission, for appellant.

*Tabitha B. McNulty*, Office of Chief Counsel, for appellee.

*Bristow & Richardson, PLLC*, by: *Melissa B. Richardson*, attorney ad litem for minor children.