

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-291

ERICA SANDERSON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and A.M., MINOR
CHILD

APPELLEES

Opinion Delivered September 12, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
EIGHTH DIVISION
[NO. JJN-10-1717]HONORABLE WILEY A. BRANTON,
JR., JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Erica Sanderson appeals from an order terminating her parental rights in her daughter, A.M. Her sole argument on appeal is that the trial court abused its discretion in denying her motion for a continuance. We affirm.

In October 2010, the Arkansas Department of Human Services (DHS) received a report that A.M. had tested positive for methamphetamine at birth. An ex-parte order for emergency custody was entered on October 19, ordering the immediate removal of A.M. from Sanderson's custody. At a probable-cause hearing on October 21, 2010, the court returned the child to Sanderson's custody.

On January 13, 2011, an order was entered adjudicating A.M. dependent-neglected upon stipulation of the parties. The order noted that A.M. had tested positive for methamphetamine at birth and that the medical records revealed that Sanderson's pregnancy

complications consisted of hepatitis C, substance abuse, and a diagnosis of bipolar disorder. The order continued custody of A.M. with Sanderson, but ordered that DHS maintain a protective-services case on the matter with the stated goal of maintaining reunification. Sanderson was ordered to obtain and maintain stable housing and income, to abstain from illegal drug usage, and to attend individual counseling at DHS expense.

A review hearing was held on March 8, 2011. While the court indicated that it was inclined to remove the child, the court ordered that A.M. remain in the custody of Sanderson with the continued goal of maintaining reunification. The court further ordered Sanderson to submit to a psychological evaluation at DHS expense as soon as possible.

On April 18, 2011, the court removed A.M. from Sanderson's care after Sanderson tested positive for amphetamines, methamphetamine, and marijuana and after she failed to complete a drug-rehabilitation program. At the time of the evidentiary hearing in June 2011, Sanderson was incarcerated on charges unrelated to her drug use (namely, forgery and failure to appear).

A permanency-planning hearing was held on August 23, 2011, at which time Sanderson was still incarcerated. While the court continued the goal as reunification, it found that Sanderson had subjected A.M. to an aggravated circumstance—that it was unlikely that services to the family would result in a successful reunification. The court once again ordered Sanderson to obtain a psychological evaluation. While the court indicated that DHS was authorized to file a petition to terminate, it was not ordered to do so at that time. A permanency-planning and termination-of-parental-rights hearing was scheduled for December

13, 2011. DHS filed a petition for termination of parental rights on October 17, 2011, alleging aggravated circumstances as the ground for termination.

On November 22, 2011, Sanderson's attorney filed a motion for a continuance seeking a two-week continuance of the termination hearing. The motion recited that Sanderson needed additional time to obtain critical evidence to rebut DHS's allegations, including a psychological evaluation and approval of a parole plan to reunite with A.M. in a treatment facility designed for mothers with children.

The attorney ad litem and counsel for DHS responded to the motion, arguing that this information would be immaterial because, even under the best-case scenario, Sanderson would still be incarcerated until April 2012 and would still need additional time to demonstrate fitness. The court agreed, finding that a short continuance would not make a material difference in the outcome of the proceedings and denied the motion.

The court addressed the continuance motion again at the termination hearing and reiterated that it was denying the motion. After hearing the evidence, including testimony from Sanderson about her potential April 2012 release date, the court entered an order terminating Sanderson's parental rights. The court found that A.M. was likely to be adopted; that there was potential harm in returning her to Sanderson; and that the following ground for termination existed: that A.M. had been subjected to aggravated circumstances in that there was little likelihood that services to Sanderson would result in successful reunification. Sanderson does not challenge these findings on appeal. Rather, her arguments are limited to the circuit court's denial of her motion for continuance.

A motion for continuance shall be granted only upon a showing of good cause. *Butler v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 570, at 4. We will not reverse the denial of a motion for continuance absent an abuse of discretion amounting to a denial of justice. *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 401, 219 S.W.3d 705, 708 (2005). A circuit court abuses its discretion when it acts improvidently and without due consideration. *Henderson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 481, at 5. Additionally, the appellant must show prejudice from the denial of a motion for continuance. *Smith, supra*.

There was no abuse of discretion here. The court considered Sanderson's arguments and determined that the information sought would not impact the court's decision on termination. Thus, the court did not act "improvidently and without due consideration." Moreover, Sanderson failed to demonstrate prejudice in being required to go forward with the termination hearing. Sanderson indicated that she needed the continuance so that she could solidify her release date and determine whether she could enter a drug-rehabilitation program that would allow her to live with A.M. The court allowed Sanderson to testify that she believed that she would be released in April 2012 and that she was attempting to enter a drug-rehabilitation program that allowed mother-child cohabitation. The court considered this evidence in making its determination on termination. Thus, the information Sanderson sought to obtain during the continuance would have merely corroborated, rather than added to, this testimony.

She also indicated that she needed a continuance in order to complete her psychological evaluation. However, the court had ordered the psychological evaluation in

March 2011, and Sanderson failed to follow through with that recommendation, despite the court's continued urging. Thus, Sanderson was not diligent in securing the evaluation she now asserts is crucial. Nor did she show that the psychological evaluation would change the amount of time she would need to be able to properly parent A.M. Given that Sanderson testified that, in her own opinion, she would not be ready to parent A.M. until the end of 2012, and given that the court determined that even under these circumstances an aggravating circumstance existed, Sanderson cannot show prejudice. In sum, the record reflects that the court duly considered the merits of Sanderson's motion for a continuance and denied it primarily because she could not demonstrate that the information sought during the two-week postponement would have changed the outcome.

Sanderson also appears to allege that the trial court could not primarily rely on her incarceration as a ground for termination as that ground was not pled in the termination petition. However, she did not raise this issue with the trial court, and, even in termination cases, we will not address arguments raised for the first time on appeal. *Andrews v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 22, ___ S.W.3d ___. Therefore, this argument is not preserved for our review. Even so, while the court indicated in its order that Sanderson's incarceration clearly hampered her ability to engage in services to allow reunification within a reasonable time frame, the court's order also highlighted Sanderson's drug history and failure to maintain sobriety, her lack of stable housing and employment, and her failure to follow through with services provided outside of her periods of incarceration to support its determination.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.

Leah Lanford, Arkansas Public Defender Commission, for appellant.

Tabitha McNulty, Office of Chief Counsel, for appellee Arkansas Department of Human Services.

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