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ARKANSAS COURT OF APPEALS
D. P. MARHSALL JR., Judge

DIVISION II

CA06-964

23 May 2007

ERICA POLLARD AND
TINA WILLIAMS,
APPELLANTS

v.

ARKANSAS DEPT. OF HEALTH
& HUMAN SERVICES & MINOR
CHILDREN,
APPELLEES

AN APPEAL FROM THE POPE
COUNTY CIRCUIT COURT
[JV2002-344]

THE HONORABLE KENNETH
COKER JR., CIRCUIT JUDGE

AFFIRMED

This is an appeal of the circuit court's termination of parental rights across two generations. Tina Williams is Erica Pollard's and SW's mother. Erica Pollard also has two children, DP and AP. After finding that the Department of Health and Human Services had proven the relevant circumstances by clear and convincing evidence, the circuit court terminated Pollard's parental rights as to DP and AP and Williams's parental rights as to SW. We affirm because the circuit court's decisions were not clearly erroneous. *Maxwell v. Arkansas Dept. of Human Services*, 90 Ark. App. 223, 231–32, 205 S.W.3d 801, 806 (2005).

I. Erica Pollard

DHHS opened a case on this family in 2002, when Pollard—who was then sixteen years old—was living with DP and Williams. DHHS removed Pollard and DP from Williams's custody because she and Pollard were abusing cocaine with James Phaup (DP's father and an adult), and because Williams was allowing Pollard to have a sexual relationship with Phaup. The police arrested Phaup for his relationship with Pollard, and the court entered a no-contact order forbidding contact between them. When Pollard turned eighteen, she was dismissed as a juvenile from the case against Williams, but remained involved as a defendant parent. In July 2005, the circuit court adjudicated DP dependent-neglected and gave custody to DHHS because Pollard tested positive for drugs and was living with Phaup. In December 2005, Pollard had another baby with Phaup, AP. The court also adjudicated AP dependent-neglected and removed her from Pollard's custody. The circuit court eventually terminated both Phaup and Pollard's parental rights to DP, and Pollard's parental rights to AP. Pollard now appeals the court's termination decisions.

Since 2002, Pollard has attended various drug-treatment programs to no avail. She tested positive for marijuana in 2005 and admitted using cocaine. She surrounded herself with known drug users, including her mother and Phaup. At AP's adjudication hearing, a DHHS worker testified that Pollard was found in December 2005 staying at Phaup's apartment, which smelled strongly of marijuana. Phaup admitted to a DHHS worker that he had smoked marijuana during Pollard's visit while AP—who

has a serious breathing malady—was in the room with him. Further, DHHS found marijuana, a pipe, and a product used to cover up drug usage during a visit to Pollard's home when she was living with her mother in 2005.

Pollard also consistently failed to comply with the court order forbidding her contact with Phaup, the admitted drug abuser who was arrested for sexually abusing her. After the no-contact order was entered in 2002, she had a second child with him, lived with him in 2003, and continued thereafter to have regular contact with him. The court also found that Pollard was unable to maintain a stable home environment for her children. Though she was ordered to obtain appropriate housing, in late 2005 she was still living with her mother. Her mother admitted that drugs were being used in her apartment and that drug paraphernalia was lying in the open there. In early 2006, Pollard had her own apartment, but was behind on child support payments and had several men staying with her. At the time of the termination hearing, she was in danger of being evicted because she was behind on rent and had received shut-off notices from the utilities.

Arkansas law rightly disfavors the extraordinary step of termination of parental rights. *Maxwell*, 90 Ark. App. at 231, 205 S.W.3d at 806. Under Ark. Code Ann. § 9-27-341(b)(1)(A) (Supp. 2005), the circuit court may consider a petition to terminate parental rights if the court first finds that there is an appropriate permanency placement plan for the juvenile. After that initial requirement is met, an order terminating

parental rights must be based on clear and convincing evidence that termination is in the best interest of the child and that at least one statutory ground exists. Ark. Code Ann. § 9-27-341(b)(3)(A) & (B). When considering the best interest of the child, the circuit court must address the likelihood that the child will be adopted and the effect on the health and safety of the child caused by continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii).

Here the circuit court found that it was contrary to DP's and AP's best interests, health and safety, and welfare to return them to Pollard's parental care and custody because of her drug problems, her continued violation of the no-contact order, and her inability to provide a stable home. The court also found statutory grounds for termination. DP had been out of Pollard's home for twelve months and had been adjudicated dependent-neglected. And Pollard had failed to remedy the conditions that caused him to be removed from her custody and that had arisen since the original petition for dependency-neglect. With regard to AP, the circuit court found that Pollard had subjected her to aggravated circumstances because there was little likelihood that services to the family would result in successful reunification.

Pollard does not dispute most of DHHS's proof about her unfitness to be a mother or the conditions that caused her children's removal from her custody. Rather, she argues that she did not receive appropriate reunification services as an adult; she says DHHS provided services to her only when she was a juvenile and could not utilize

them appropriately. The circuit court, however, found that DHHS provided adequate reunification services throughout the case, and the record supports that finding. DHHS gave her individual and family counseling, drug and alcohol assessments, inpatient and outpatient drug treatments, a psychological evaluation, and parenting classes. DHHS provided supervised visits with her son and trained her in specialized parenting techniques during those visits. It made referrals for employment and housing and offered to pay the down payment for the first month's rent on a new apartment and utility deposits. DHHS taught Pollard budgeting and money management skills. The fact that some of the services were provided only when Pollard was a juvenile does not change our analysis. The record establishes that the circuit court's termination of Pollard's parental rights to DP and AP was not clearly erroneous. *Maxwell*, 90 Ark. App. at 231–32, 205 S.W.3d at 806 (2005).

II. Tina Williams

Williams appeals the termination of her parental rights to her daughter, SW, arguing insufficient evidence existed for termination. (SW's father, Lynnie Williams, consented to the termination of his rights.) Williams first came to the attention of DHHS in 2002 when caseworkers found her using cocaine and methamphetamines with Pollard and Phaup. The circuit court granted Lynnie Williams custody of SW and ordered Williams not to have contact with SW. In 2003, however, the court removed SW from Lynnie's custody because he and Williams were living together and there

were allegations that Lynnie had sexually abused SW and her sister. When Williams separated from Lynnie, SW briefly returned to her custody, and the court ordered Lynnie to have no contact with SW. Williams, however, continued to let Lynnie have access to SW in December 2004 and January 2005. She also let SW accompany Pollard to a motel with Phaup, whom Williams knew had been sexually abusing Pollard. While at the motel, SW had sex with two men in their twenties.

On appeal, Williams does not dispute that she failed to protect SW from sexual abuse by adult men and other juveniles. Williams also concedes that her continued drug use was a factor in the court's decision. She tested positive for drugs as late as September 2005 despite her drug treatment programs, and family service workers found drug paraphernalia in her home during the course of this case. Further, the circuit court found that Williams failed to maintain a meaningful relationship with SW. Williams had no contact with SW for several months before the termination hearing. She did not notify DHHS when she moved in 2005 because she assumed her rights would be terminated and that there was no point in telling DHHS her new address.

The circuit court found that, despite DHHS's reasonable efforts to reunite this family, Williams failed to remedy the conditions that caused SW to be removed from her custody and she subjected SW to aggravated circumstances. The court also found that, despite DHHS's offer of appropriate family services, Williams manifested indifference to remedying the issues that arose after DHHS filed its original petition

for dependency-neglect. The record supports these findings. Williams did nothing to stop the sexual abuse of SW and never reported it to the police or DHHS. She continued to use drugs throughout the case and moved without telling DHHS where she could be found. Therefore, the circuit court's decision to terminate Williams's rights to SW was not clearly erroneous. *Maxwell*, 90 Ark. App. at 231–32, 205 S.W.3d at 806 (2005).

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.