

Cite as 2009 Ark. App. 805

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA09-582

TAMI RENEE STEDMAN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered December 2, 2009APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. JV08-691]HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

The sole issue in this termination-of-parental-rights case is whether the circuit court erred by admitting hearsay evidence at the termination hearing. We conclude that no reversible error occurred and we affirm the termination order.

On October 23, 2008, the Arkansas Department of Human Services (“DHS”) filed a petition seeking emergency custody of appellant Tami Stedman’s minor child, M.S. (born October 25, 2005). As required by Ark. Code Ann. § 9-27-311(d)(2)(A) (Repl. 2008), DHS supported its petition with an affidavit. The affidavit was signed by DHS family service worker Freeman Peters and recited that, on October 22, 2008, the Hot Springs Police Department notified DHS of a possible methamphetamine lab in appellant’s home. Peters stated that, when he arrived at appellant’s home, M.S. was asleep in appellant’s bedroom and

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had what appeared to be a methamphetamine burn on her left hand and spots on her legs. Peters also stated that Officer Tollece Sutter of the Arkansas State Police Crimes Against Children Division informed him that a hotline call had been taken regarding inadequate supervision, lack of food, physical abuse of a child, and poisonous or noxious substances in the home. Sutter told Peters that she had not found a methamphetamine lab in the home but that she had detected a strong odor that was making her sick. Sutter also related to Peters that appellant admitted to smoking marijuana in the home and to having a known sex offender living in the home at some point. Peters stated that he inspected appellant's home and found cabinets and a refrigerator that were virtually empty along with what appeared to be drug paraphernalia. Peters stated further that appellant had a previous true finding of abandonment, and he noted that M.S.'s putative father was serving a prison sentence for a controlled-substance violation and exposure of a child to a chemical substance. At the scene, the authorities arrested appellant for a probation violation involving grand larceny charges in Mississippi.

On the basis of Peters's observations and the information given to him by Officer Sutter, DHS placed a seventy-two-hour hold on M.S. and petitioned the circuit court for emergency custody. The court granted emergency custody to DHS on October 24, 2008. Later, the court entered a probable-cause order and directed appellant to obtain or maintain stable housing and employment and submit to random drug screens.

On December 5, 2008, the court entered an adjudication and disposition order that

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contained the following findings:

4. The court finds that the juvenile is dependent/neglected as defined in the Arkansas Juvenile Code and that the allegations in the petition are true and correct. Specifically, the court finds by clear and convincing evidence that:

- (a) The juvenile suffered burns on her left hand and had some spots on her legs;
- (b) The juvenile was residing in a home with a strong odor coming from the home indicative of the making of illegal substances and drug paraphernalia was located in the home;
- (c) The juvenile's home had an inadequate amount of food and the living conditions of the home were unsanitary;
- (d) The mother admitted to illegal drug use and admitted exposing the juvenile to a known sex offender;
- (e) The mother was being arrested to be extradited to Mississippi on probation revocation and grand larceny charges and no appropriate caregiver was available[;] the mother has now, in fact, been extradited to the state of Mississippi; the mother has a previous true finding for abandonment; and one of the putative fathers . . . is currently serving a sentence in the Arkansas Department of Correction for manufacturing/delivery/possession of a controlled substance and exposure of a child to a chemical substance.

The court also found that appellant had abandoned M.S.; that appellant had subjected M.S. to aggravated circumstances; and that reunification could not occur within a reasonable time when viewed from the child's perspective. Nevertheless, the court established a goal of reunification and ordered appellant to follow court orders and the case plan; to cooperate with DHS; to remain clean and sober; to submit to random drug/alcohol testing; to complete parenting classes; to attend all hearings; to submit to a psychological evaluation and a drug-and-alcohol assessment and follow recommendations; to attend counseling; to attend inpatient

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drug treatment; to attend ninety AA/NA meetings in ninety days and obtain a sponsor; to refrain from inflicting abuse of any nature on the child; and to contact the DHS caseworker and the CASA volunteer weekly.

On December 8, 2008, DHS filed a petition to terminate appellant's parental rights and to terminate reunification services, citing appellant's incarceration, the court's determination that appellant had abandoned the child, and the court's finding that there was little likelihood that family services would result in successful reunification. On February 27, 2009, the court held a termination hearing. At that point, approximately four months had elapsed since DHS removed M.S. from appellant's custody. Appellant, who was still incarcerated in Mississippi, appeared by telephone and was represented by counsel.

At the outset of the hearing, DHS's attorney introduced a certified copy of the record in the case, including all prior pleadings, motions, and orders. The packet included DHS's petition for emergency custody with Freeman Peters's affidavit attached. Appellant's counsel objected to "anything that's hearsay," particularly Peters's affidavit. The court overruled the objection and, following the hearing, entered an order terminating appellant's parental rights to M.S. The court found that termination was in the child's best interest and that several grounds for termination existed, including that appellant subjected the child to aggravated circumstances in that there was little likelihood that family services would result in successful reunification; that appellant was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life; and that, despite the offer of

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appropriate family services, appellant manifested an incapacity or indifference to remedying other factors or issues that arose after the original dependency-neglect petition was filed. Appellant filed a timely notice of appeal from the termination order.

The issue before us is whether the Peters affidavit contained hearsay and, if so, whether its admission constituted reversible error. Our standard of review is well established. We will not reverse a circuit court's ruling on the admission of evidence absent a manifest abuse of discretion. *Hopkins v. Ark. Dep't of Human Servs.*, 79 Ark. App. 1, 83 S.W.3d 418 (2002).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ark. R. Evid. 801(c). Hearsay is generally inadmissible. Ark. R. Evid. 802. The Rules of Evidence apply at termination hearings. See Ark. Code Ann. § 9-27-325(e)(1) (Supp. 2009); *Vasquez v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 575, ___ S.W.3d ___.

The affidavit was placed into evidence as part of a packet of relevant pleadings and prior orders, which is done in order to complete a record for the benefit of the trial court and the appellate court in the event of an appeal. See Ark. Sup. Ct. R. 6-9(c); *Busbee v. Ark. Dep't of Human Servs.*, 369 Ark. 416, 255 S.W.3d 463 (2007). The court's prior adjudication order, which was also placed in evidence and from which appellant did not appeal, stated that the court had already made specific factual findings that the allegations in the affidavit were true.

Even though the affidavit did not contain hearsay, appellant cannot show that she was prejudiced by the admission of the document. Any statements in the affidavit by Freeman

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Peters and Tollece Sutter, who did not testify at the termination hearing, were cumulative to other evidence admitted at the hearing without objection. *See Meins v. Meins*, 93 Ark. App. 292, 218 S.W.3d 366 (2005) (holding that the appellate court will not reverse if hearsay evidence is cumulative of other evidence admitted without objection). The court expressly relied on live testimony that Peters and Sutter gave under oath at a prior hearing regarding the information in the affidavit. Appellant acknowledges that the court was permitted to rely on evidence adduced at prior hearings. *See Smith v. Ark. Dep't of Human Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007). The court also heard testimony from DHS caseworker Jessica McDowell and from appellant regarding some of the matters contained in the affidavit. That being the case, appellant cannot show that the admission of the affidavit affected her substantial rights. *See Ark. R. Evid. 103(a)*.

Additionally, the evidence at the termination hearing, separate and apart from the affidavit, demonstrated that termination was in the child's best interest and that at least one statutory ground for termination existed. M.S.'s foster parent, Patty Briselden, testified that when M.S. came into her care at approximately age three, the child could not use words, knew no colors, could not use the toilet, had screaming nightmares, and was afraid of being hugged. Briselden also testified that M.S. had burns on her legs and her hand and sores that had been infected for a while. Caseworker Jessica McDowell testified that appellant was arrested the night that M.S. was removed from the home and that appellant remained in jail in Mississippi during all but the first few weeks of the case. McDowell expected appellant to

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remain in prison for as long as four years and said that a lengthy period would pass before DHS could provide appellant with services. McDowell also testified that DHS had a true finding that appellant had abandoned another child in 2005 and that, in the present case, appellant had not maintained weekly contact with DHS.

Appellant denied allegations of drug use, abandonment of another child, and that M.S. suffered from a “meth burn.” She also expressed disbelief that M.S.’s putative father exposed the child to methamphetamine, despite his being incarcerated on that precise charge. Appellant testified further that she expected to be paroled in November 2009, but she produced no documentation. Appellant remarked during Jessica McDowell’s testimony that McDowell was a “lying b****.”

DHS thus produced evidence, outside the affidavit, of appellant’s long period of incarceration, her lack of communication with DHS, her refusal to accept that M.S.’s putative father harmed the child by exposing her to methamphetamine, her failure to see that the child developed appropriately and had proper medical care, her abandonment of another child, and her improper conduct in court. The impact of the affidavit pales in light of this proof, and we cannot say that appellant was prejudiced by the affidavit’s admission into evidence.

Affirmed.

MARSHALL and HENRY, JJ., agree.