

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-13-101

STEPHANIE SELLERS and MICHAEL SELLERS APPELLANTS	Opinion Delivered June 19, 2013 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. JV-2011-486]
V. ARKANSAS DEPARTMENT OF HUMAN SERVICES and MINOR CHILD APPELLEES	HONORABLE STACEY ZIMMERMAN, JUDGE AFFIRMED

RHONDA K. WOOD, Judge

Michael and Stephanie Sellers appeal the termination of their parental rights to M.S., their two-year-old son. In July 2011, M.S. was placed in foster care after Michael and Stephanie refused to take a drug test and appeared to be under the influence of drugs. The circuit court never returned M.S. to his parents' custody and terminated their parental rights in November 2012. We find no error and affirm the circuit court's ruling.

I. *Facts and Procedural History*

The Department of Human Services placed M.S. in foster care after an investigator went to the Sellerses' house, and the parents refused to take a drug test; appeared under the influence of drugs; and Stephanie tried to abscond with M.S. and threatened to kill

herself. At the August 3, 2011 probable-cause hearing, the court ordered Michael and Stephanie to take specific actions to rehabilitate themselves and reunify with their child.

In September 2011, the court adjudicated M.S. dependent-neglected because of neglect and parental unfitness. It found that both parents had tested positive for methamphetamine, THC, and benzodiazepines; further, Stephanie had been breast-feeding M.S. while she was on drugs. In its adjudication and disposition order, the court placed additional requirements on the parents as part of the case plan.

In December 2011, the court issued an order to show cause to Stephanie and Michael. It alleged that they had missed nine out of eleven visitation days without notifying DHS, failed to participate in individual counseling, and did not get the court-ordered hair-follicle test. Additionally, Michael had tested positive for marijuana, methamphetamines, opiates, and benzodiazepines. The court found both parents in contempt of court and sentenced them each to forty-five days in jail.

A review hearing was held in April 2012, nine months after M.S. had entered foster care. The court found that Stephanie had failed to comply with the case plan and court orders. Michael also failed a drug test the same day of the review hearing; he denied using, but admitted to being around people who were.

In June 2012, the court held a permanency-planning hearing. This was nearly one year after M.S. was placed in foster care. Stephanie was still noncompliant with nearly every order. Michael was partially compliant, but still had not gotten a hair-follicle test. The court found that neither parent had made genuine, sustainable progress and changed the goal to adoption.

In August 2012, DHS filed a petition to terminate Stephanie's and Michael's parental rights, and the court terminated their rights based on the following three grounds:

- (1) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent,¹
- (2) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile,² and
- (3) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.³

Both parents have appealed the court's termination order.

II. *Standard of Review and Applicable Law*

This court reviews termination-of-parental-rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Grounds for termination of parental rights must be proved by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). When the burden of proving a disputed fact is by "clear and convincing evidence," the question on appeal is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence

¹ Ark. Code Ann. § 9-27-341(b)(3)(B)(i) (Supp. 2011).

² Ark. Code Ann. § 9-27-341(b)(3)(B)(ii).

³ Ark. Code Ann. § 9-27-341(b)(3)(B)(vii).

is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* 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. *Dinkins, supra.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well being of the child. *M.T., supra.*

The termination of parental rights is a two-step process that requires the circuit court to find that the parent is unfit and that termination is in the best interest of the child. *L.W. v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 44, 380 S.W.3d 489. The first step requires proof of one or more of the statutory grounds for termination. Ark. Code. Ann. § 9-27-341(b)(3)(B) (Supp. 2011). The second step requires consideration of whether the termination of parental rights is in the juvenile's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Supp. 2011). Whether termination is in the juvenile's best interest includes the following: (i) the likelihood that the juvenile will be adopted if the termination petition is granted and (ii) the potential harm, specifically addressing the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents. Ark. Code Ann. § 9-27-341(b)(3)(A)(i)–(ii) (Supp. 2011). The court, however, does not have to determine that every factor considered be established by clear and convincing evidence; instead, after considering all of the factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *L.W., supra.*

Michael only challenges the circuit court's best-interest finding. Stephanie also challenges the court's best-interest finding, but only attacks the court's reliance on the first statutory ground. When an appellant fails to attack the circuit court's independent, alternative basis for its ruling, we will not reverse. *Thomsen v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 687, 370 S.W.3d 842. Because the court terminated the Sellerses' parental rights based on three statutory grounds, and only one is needed, our review is limited to whether the circuit court erred when it found that termination was in M.S.'s best interest.

III. Discussion

The circuit court did not err when it found that termination of Michael and Stephanie's parental rights was in M.S.'s best interest. Neither parent challenges the caseworker's testimony at the termination hearing that M.S. was adoptable and currently in a permanent placement. As for potential harm, the circuit court is not required to affirmatively identify a potential harm or to find that actual harm would result if the child were returned to the parent; rather, the potential-harm evidence must be viewed in a forward-looking manner and considered in broad terms. *Gutierrez v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 575.

Here, there was clear evidence of potential harm. Stephanie failed to comply with most of the court's orders even fifteen months into the case. For example, she did not begin counseling until June 2012, she never completed a psychological evaluation until the end of July 2012, she did not obtain employment until a month before the termination hearing, and she did not complete the drug and alcohol assessment until approximately a week before the termination hearing. The court had ordered all of these

things to be done in its adjudication order in September 2011. Further, there was testimony at the termination hearing that Stephanie did not have any contact with DHS from December 2011 to April 2012.

Stephanie's prolonged absence, general indifference, and failure to comply with court orders prohibited her from reunifying with her child. Failure to comply with the court's orders shows potential harm to the minor child. *L.W., supra*.

Michael's progress was also deficient and exhibits potential harm. He tested positive for THC in April 2012—nine months into the case. He denied using drugs, but his excuse—that he associated with people that do use drugs—is no better. He stated that he didn't go to NA/AA classes because he didn't like the people present. Michael testified that he and Stephanie had been separated for five months since the case started, but that they had now reconciled. Further, Michael had been jailed overnight in May 2012 for failure to pay fines. In addition, he still had not provided documentation of employment. The circuit court concluded that because Michael continued in an unstable relationship and still, as late as April 2012, was using drugs and associating with drug users, returning M.S. to him was not in M.S.'s best interest. This finding was not clearly erroneous, and we affirm the circuit court's termination order.

Affirmed.

GLOVER and BROWN, JJ., agree.

Therese M. Free, for appellant Stephanie Sellers.

Thomas Wilson, for appellant Micael Sellers.

Tabitha Baertels McNulty, Office of Policy and Legal Services, for appellee Arkansas Department of Human Services.

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