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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-21-447

CHRISTY COLLIER

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered March 2, 2022

APPEAL FROM THE LOGAN
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. 42PJV-19-31]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

The Logan County Circuit Court terminated appellant Christy Collier’s parental rights to her three children, V.E. (born in 2006); A.E. (born in 2008); and K.B. (born in 2015). On appeal to this court, Collier argues that the trial court erred (1) in finding grounds for termination; (2) in finding that termination was in her children’s best interest; and (3) in denying her motion for a continuance of the termination hearing. We affirm.

I. Background

On December 6, 2019, the Arkansas Department of Human Services (DHS) was notified that Collier’s children were at the Logan County Sheriff’s Department because they had called the police after Collier’s cousin, with whom she had left her children, tried to run over them with his vehicle. DHS filed a petition for emergency custody. Attached to the petition was an affidavit in which a family service worker (“FSW”) attested that Collier

and her children had been living with Collier's aunt and that Collier's cousin and his girlfriend also lived there. Collier had left her children around Thanksgiving to meet with a man whom she had met through an online-dating service. She had been gone for two weeks during which time she had no contact with her children. In the affidavit, the FSW set forth an extensive history that Collier had with DHS, including numerous unsubstantiated allegations from 2006 through 2019; a differential response (DR) case in March and April 2019 for environmental neglect involving Collier and all three minors; DR cases in February 2015 and in June 2016, both for inadequate supervision; true findings for inadequate supervision in July 2006, August 2016, and March 2017; and protective-services cases from July 2008 to August 2009 (environmental neglect); from August 2009 to October 2012 (concerns regarding mother's drug use); and from October 2016 to March 2018 (inadequate supervision due to mother's drug use). The father of V.E. and A.E. was identified as Shawn Ellingburg, who was incarcerated at the time of the children's removal from Collier's custody. K.B.'s father was said to be James Moore because he was married to Collier at the time of K.B.'s birth. Moore is deceased.

DHS exercised an emergency hold on the children, and the trial court later found probable cause for granting emergency custody to DHS. The children were adjudicated dependent-neglected based on Collier's neglect, specifically, her inadequate supervision, her drug use, and her failure to care for and protect her children. The trial court set the goal as reunification and ordered Collier to obtain and maintain stable housing, income, and transportation; submit to random drug screens; attend parenting classes and counseling; submit to a drug-and-alcohol assessment and comply with recommended treatment; submit

to a psychological evaluation and follow the recommendations; obtain and maintain sobriety; resolve any pending criminal issues; participate with homemaker services; keep DHS informed of her contact information and any significant life events; and visit the children as recommended.

The trial court held a review hearing in June 2020 at which it found that Collier had not complied with the case plan and court orders. At another review hearing in September, she was found to be in partial compliance. The trial court noted that Collier had been discharged from drug treatment due to a physical altercation and that she had not yet obtained stable housing, income, and transportation. The trial court added to the previous orders that Collier complete “SWS” inpatient drug treatment.

In December 2020, a permanency-planning hearing was held at which the trial court found that Collier had just begun to comply with services. The trial court found that, while Collier still did not have stable housing, income, and transportation, she had submitted to drug treatment. The trial court continued the goal of reunification and noted that Collier had made significant, measurable progress in that she was doing well at Gateway Recovery Center and that she planned to transition into an aftercare program that would assist her with obtaining housing and employment.

In April 2021, a fifteen-month review hearing was held at which the trial court changed the goal from reunification to adoption following termination of parental rights. The trial court found that Collier’s compliance had significantly changed since the permanency-planning hearing. While Collier had completed the SWS drug-treatment program, she had not complied with outpatient treatment and had left the Crisis

Intervention Center (CIC) early. Collier admitted that she had used methamphetamine in February 2021. She did not have her own transportation and was not employed. She had, however, rented an apartment and was waiting for HUD (Housing and Urban Development) approval. The trial court noted that the siblings were not placed together; that V.E. was in a treatment program because she required a higher level of care; that A.E. was in a therapeutic foster home; and that K.B. was in a foster home where he was doing well.

DHS filed a petition to terminate Collier's parental rights to all three children and Ellingburg's parental rights to V.E. and A.E. As to Collier, DHS alleged three grounds: one-year failure to remedy; subsequent factors; and aggravated circumstances. A termination hearing was held on June 2, 2021. The trial court continued the hearing until July 7 as to Ellingburg because of a service issue and denied Collier's motion for a continuance.

II. *Termination Hearing*

Collier testified that she was working two part-time jobs making around \$200 a week. She said that she was working at Cleaning and Organizing by Design "again" and for her "mentor," Drew Holmes, at his barbershop. She had started the cleaning job one week before the termination hearing and had started working at the barbershop two or three weeks prior. Collier stated that she has a driver's license but that it has been suspended because she owes fines. Collier claimed that she had secured an apartment and had been living there for four months. She conceded that DHS had paid the deposit for the apartment and utilities and had been paying the rent; however, she insisted that she could pay the rent going forward because she was working and waiting for her disability benefits. Collier, age

forty-two, testified that she began using methamphetamine and marijuana at the age of eighteen. She claimed to have been sober for ten years starting in 2010. She said, however, that she had relapsed when she lost her husband and her home in October 2019. Collier testified that DHS had failed to provide transportation for her to counseling appointments on three occasions. She admitted that, in the week before the termination hearing, she had refused a drug screen by DHS but explained that she had gotten aggravated when DHS was late picking her up for a counseling appointment.

Holmes confirmed that Collier did some housekeeping and filing for him at his barbershop. Holmes also described his experience with addiction issues and said that Collier was “taking leaps and bounds and towards the right direction” and that she was “committed to living a clean and serene life.” Holmes admitted that he had known Collier for a little over a month.

FSW Sandra Anderson testified that Collier had tested positive for methamphetamine, amphetamines, and THC when the case started and that she had not begun complying with services until well into the case. Anderson confirmed that DHS had been paying rent for Collier’s apartment. Anderson said that, after Collier had completed drug treatment at Gateway, she transitioned to CIC, which could have helped her with housing, employment, and therapy, but that Collier had left early because she thought that the program was “a joke.” Anderson said that Collier tested positive for methamphetamine and THC after leaving CIC but that Collier had gone back to drug rehabilitation. Anderson said that Collier had referred to herself as “a chronic relapser.” She said that Collier had just finished a twenty-eight-day drug-treatment program three weeks prior to the termination

hearing but that she had refused a drug screen right before the termination hearing; however, Collier's drug test on the day of the termination hearing was negative.

Anderson testified that V.E., A.E., and K.B. are adoptable. She described them as really good kids, who have nice personalities and are in fine physical health. She said that, although V.E. had been in two mental-health facilities because she had been suicidal, she is better now. Anderson said that V.E. is currently in a qualified residential treatment placement ("QRTP"), that she is doing well there, and that being in a QRTP will not prevent her from being adopted. She said that A.E. has some anger issues over being in foster care but that anger is normal for kids in the foster-care system.

After hearing testimony, the trial court terminated Collier's parental rights on three grounds under Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2021): (i)(a) (one-year failure to remedy); (vii)(a) (subsequent factors); and (ix)(a)(3)(B)(i) (aggravated circumstances—little likelihood that services will result in reunification). In considering adoptability, the trial court noted that the children are physically healthy and have good personalities. The trial court noted that V.E. had some mental-health issues but found that she had benefited from counseling. The trial court also considered the potential harm of returning the children to Collier. The trial court found that Collier had a very long history of substance abuse and addiction; that she could not demonstrate sustained sobriety; and that she had not shown stability with regard to housing, income, and transportation. Collier filed a timely notice of appeal.

III. *Standard of Review*

Pursuant to Ark. Code Ann. § 9-27-341(b)(3), an order forever terminating parental rights shall be based on clear and convincing evidence of one or more grounds. Ark. Code Ann. § 9-27-341(b)(3)(B). Proof of only one statutory ground is sufficient to terminate parental rights. *Burks v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 309, 634 S.W.3d 527. The trial court must also find by clear and convincing evidence that termination is in the best interest of the child, including consideration of the likelihood that the child will be adopted if the termination petition is granted and the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A).

On appeal, termination-of-parental-rights cases are reviewed de novo. *Burks, supra*. Grounds for termination must be proved by clear and convincing evidence, which is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established. *Id.* The appellate inquiry is whether the trial court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *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. *Bridges v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 50, 571 S.W.3d 506. In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Id.* We must also defer to the superior position of the trial court to weigh the credibility of the witnesses. *Id.* The trial court is in a far superior position to observe the parties before it. *Id.*

In deciding whether to terminate parental rights, the trial court has a duty to look at the entire picture to determine how that parent has discharged his or her duties as a parent. *Scott v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 347, 552 S.W.3d 463. Even full compliance with the case plan is not determinative; the issue is whether the parent has become a stable, safe parent able to care for his or her child. *Shaffer v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 208, 489 S.W.3d 182. Termination of parental rights is an extreme remedy and in derogation of a parent's natural rights; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

IV. Discussion

A. Grounds for Termination

According to Collier, the trial court based its termination decision as to all three grounds on her inability to demonstrate sufficient stability due to her drug issues and lack of a home. She argues that she simply needs more time to demonstrate stability. Collier argues that her relapses occurred after the deaths of her husband and her father. She claims that DHS failed to transport her for counseling—a service critical to overcome her addiction, which had been brought on by past traumas and posttraumatic-stress disorder. Collier states that it took time to obtain housing because she was in drug treatment and could not work during treatment. Collier asserts that she completed all of the services that were offered to her; she will be able to pay for her apartment going forward; and she has not tested positive for drugs since her relapse in February 2021. Collier contends that, while she had issues at the beginning of the case, that was before she had the benefit of services. She relies on, among other cases, *Rhine v. Arkansas Department of Human Services*, 2011 Ark. App. 649, 386

S.W.3d 577, in which this court reversed a termination decision because there had been only “isolated and minor incidents of noncompliance” and because “being less gung ho” did not necessitate termination.

We address the aggravated–circumstances ground because only one ground is necessary to support termination. *Burks, supra*. Aggravated circumstances means, among other things, that a determination has been made by a court that there is little likelihood that services to the family will result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A) & (B)(i). This type of aggravated circumstance occurs when a parent is not following through with offers of assistance; the parent is not completing basic goals of the case plan; and there is a lack of significant progress on the parent’s part. *Wright v. Ark. Dep’t of Human Servs.*, 2019 Ark. App. 263, 576 S.W.3d 537.

Rhine was reversed on a best-interest determination, not on grounds. Besides, Collier did not have isolated and minor incidents of noncompliance. Collier has an extensive history with DHS, and the DHS involvement in the past has been, at times, related to her drug use for which she has been offered drug treatment multiple times. Despite undergoing treatment and knowing the possible consequences of continuing to abuse drugs, Collier has not overcome her addiction. The trial court found that Collier had not benefited from the services, although she had made improvements in the weeks leading up to the termination hearing. *Perry v. Ark. Dep’t of Human Servs.*, 2021 Ark. App. 193, 625 S.W.3d 374 (holding that eleventh-hour efforts do not override a child’s need for permanency). Anderson testified that she could not think of any other services that DHS could offer Collier to assist with getting her children back. *Trogstad v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 443, 609

S.W.3d 661 (affirming termination because aggravated-circumstances ground was supported by evidence that the mother had an extensive history with DHS and that there were no further services that could assist with reunification). Moreover, Collier still did not have stable housing because she was in an apartment for which DHS had paid the deposit and had been paying the rent. Although Collier argues that she just needs more time to show her stability, her children were in DHS custody from early December 2019 through June 2, 2021. In other words, Collier had eighteen months within which to demonstrate stability. A child's need for permanency and stability may override a parent's request for additional time. *Scott, supra*. We cannot say that the trial court clearly erred in finding that the aggravated-circumstances ground supports termination of Collier's parental rights.

B. Best Interest

A best-interest finding must be based on the trial court's consideration of at least two factors: (1) the likelihood of adoption if parental rights are terminated and (2) the potential harm caused by continuing contact with the parent. *Hickman v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 457, 636 S.W.3d 815. It is the overall evidence—not proof of each factor—that must demonstrate termination is in the children's best interest. *Id.*

Collier argues that the children have had multiple placements, that they are not currently placed together, and that both of the older children need a higher level of care than a regular foster home can provide. Collier contends that there was no mention of whether the children could achieve permanency together or what impact separation would have on the sibling relationship. Keeping siblings together is an important consideration but

is not outcome determinative as the best interest of each child is the polestar consideration. *Martin v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 192, 596 S.W.3d 98.

Collier complains that no adoption specialist testified and that there was no data matching to show that there are parents interested in adopting these children with their characteristics. According to Collier, the only evidence of adoptability was a caseworker's testimony, and her testimony did not present "the full picture" regarding the children. Moreover, Collier argues that this case is "absolutely in line with" *Grant v. Arkansas Department of Human Services*, 2010 Ark. App. 636, 378 S.W.3d 227, in which this court reversed a termination decision because the only evidence of adoptability was a caseworker's opinion that the child was adoptable because "all children are adoptable." *Id.* at 13, 378 S.W.3d at 233. In *Grant*, the child at issue had autism, and the condition had not been considered in determining whether he was adoptable.

Here, Anderson did say that "just being a child makes [a child] adoptable." Despite making this statement, Anderson had much more to say about the children, and it is clear that their mental and emotional issues were considered by the trial court given its specific findings in that regard. *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004) (affirming trial court's best-interest determination where caseworker testified that children were adoptable even though they were older and had issues to work through). A caseworker's testimony that a child is adoptable is sufficient to support an adoptability finding. *Holloway v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 268, 520 S.W.3d 724.

A potential-harm analysis must be conducted in broad terms, with the trial court considering the harm to the children's health and safety that might occur from continued

contact with the parent. *Scott, supra*. There is no requirement to find actual harm would result or to identify the potential harm. *Id.* In determining potential harm, the trial court may consider past behavior as a predictor of likely potential harm should the child be returned to the parent's care and custody. *Id.*

Collier argues that there was no proof that she posed a risk of harm to her children because she had achieved sobriety, had secured a home, and was able to appropriately parent. The evidence showed, however, that Collier lacked stability with both her alleged sobriety and her housing. Collier's past behavior indicated that she had not benefited long-term from drug treatment and could not remain sober. We have held that continued drug use by a parent demonstrates potential harm. *Perry, supra*. Further, Collier had housing because DHS had been paying her rent, and Collier became employed only in the weeks leading up to the termination hearing, so there was no indication whether she could pay the rent in the future. Further, Collier had not shown that she could appropriately parent her children because the case had not reached a point at which the children could be placed with her for even a trial period. We cannot say that the trial court clearly erred in finding that termination of Collier's parental rights was in her children's best interest.

C. Motion for Continuance

When DHS announced that it had failed to obtain service on Ellingburg, the trial court continued his part of the case until July 7, 2021. Collier's counsel immediately moved for a continuance, stating that Collier "had not had the opportunity to fully avail herself of the Court ordered services" and that the case should be continued "to allow [Collier] adequate time to participate in services and correct the issues that she is facing." The trial

court denied the motion, noting that the case had been set for trial since March 2021 and that the case had dragged on for eighteen months.

A motion for continuance shall be granted only upon a showing of good cause. *Williams v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 194, 575 S.W.3d 415. We will not reverse the denial of a motion for continuance absent an abuse of discretion amounting to a denial of justice. *Id.* A trial court abuses its discretion when it acts improvidently and without due consideration. *Id.* The appellant bears the burden of proof and must show that he or she was prejudiced by the denial. *Id.*

Collier argues that termination would not provide V.E. and A.E. with permanency because the trial court had granted a continuance of their father's termination hearing. Because Ellingburg's rights had not been terminated, V.E. and A.E. would not be available for adoption, which would put K.B. on a different permanency track than his sisters. According to Collier, the trial court's denial of her motion was arbitrary, especially considering that DHS had "impeded her participation" in services, and the trial court had failed to perform any balancing test. Collier argues that she was prejudiced by the denial because a continuance would have given her more time to show her stability with sobriety and housing.

Granting a continuance would have given Collier only one more month to demonstrate stability in her life. Regarding a balancing test, it was clear that the trial court was looking out for the children's best interest and their need for permanency after they had lingered in DHS custody for so long. DHS admittedly failed to transport Collier to a counseling appointment on one occasion; however, we cannot say that this failure to

provide transportation was an impediment to Collier's ability to benefit from services. We conclude that the trial court did not abuse its discretion in denying Collier's motion for a continuance.

Affirmed.

GRUBER and BARRETT, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor children.