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ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-591

AMBER PRESCOTT

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered May 11, 2022

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17JV-20-24]

HONORABLE MICHAEL
MEDLOCK, JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Amber Prescott appeals the Crawford County Circuit Court’s termination of her parental rights to her daughters, DP, born June 1, 2017; and AMP, born June 6, 2018.¹ On appeal, Prescott argues that it was not in her daughters’ best interest for her parental rights to be terminated. We affirm.

The Arkansas Department of Human Services (DHS) initially received a referral in November 2019 alleging that Prescott was using methamphetamine, was unable to care for her daughters’ needs, and was leaving the children with elderly caretakers who were not able to properly care for them. Prescott tested positive for methamphetamine, amphetamine, and THC, and a protective-services case was opened. Prescott told DHS

¹The parental rights of the children’s father, Tyler Prescott, were also terminated in this order, but he is not a party to this appeal.

that she was living in two different homes at the time, but she refused to tell DHS the addresses, she continued to test positive for illegal drugs, and she failed to attend scheduled intake appointments for drug treatment. On February 22, 2020, Prescott was arrested for third-degree assault on a family member as the result of a physical altercation that occurred between her and her sister in front of the children. On February 25, Prescott tested negative for all illegal substances, and the house in which she was residing was clean and appropriate, but she was arrested that day on charges of felony theft and commercial burglary. DHS exercised a seventy-two-hour hold on the children on February 26 due to Prescott's arrest and because there was no clear plan to post bond; Tyler Prescott, the children's father, informed DHS of his inability to pass a drug test; and there were no family members who were able to provide appropriate supervision, protection, or care for the children. When the family service worker visited Prescott in jail to inform her the children were being taken into care, Prescott told her that foster care was the best place for the children because she was unable to take care of them. DHS filed a petition for dependency-neglect and emergency ex parte custody on February 28; an order granting this request was filed the same day. In the probable-cause order entered on March 4, Prescott stipulated there was probable cause to remove the children and for DP and AMP to remain in DHS custody. DP and AMP were adjudicated dependent-neglected in an order entered on April 24, with Prescott stipulating to the adjudication on the basis of her parental unfitness. Prescott was ordered to obey all orders of the circuit court; submit to a drug-and-alcohol assessment and follow the recommendations; submit to random drug screens; obtain and maintain stable and appropriate housing with functional utilities; make her home available for assessment

and home visits; obtain and maintain gainful employment or provide proof of sufficient income to support the children; obtain and maintain reliable transportation; visit the children regularly and demonstrate appropriate parenting skills; resolve her criminal issues; and cooperate with DHS, including keeping DHS informed of her address and telephone number at all times.

A review order was entered on August 13 in which the circuit court ordered DP and AMP to remain in DHS custody because their parents were unfit, and their health and safety could not be protected if returned to them. The circuit court found Prescott had recently obtained employment; had completed her drug-and-alcohol assessment and psychological examination; was about to begin outpatient treatment and counseling; had been more communicative with DHS; had missed some visitation due to communication issues but was appropriate when visitation occurred; and did not yet have appropriate housing.

Another review order was entered on November 16. The circuit court continued the children's custody with DHS because Prescott remained unfit. The circuit court noted that Prescott had obtained new employment at Burger King; had completed her drug-and-alcohol assessment; had an upcoming assessment for outpatient services; had begun seeing a new therapist; continued to miss some visitation but was appropriate while visiting; did not have appropriate housing; had recently been incarcerated; and her participation in the case plan was sporadic.

The circuit court entered a permanency-planning order on March 1, 2021, changing the goal of the case to authorizing a plan for adoption with a concurrent goal of reunification. Custody of DP and AMP remained with DHS. Prescott was found to have

not complied with the case plan because her current employment status was unknown, although she had previously been employed by Burger King, Simmons Bank, and Pepper Source; she had not maintained consistent communication with DHS; she was not participating in counseling, parenting classes, or drug rehabilitation; and she had visited DP and AMP only three times during the review period.

DHS filed a petition to terminate Prescott's parental rights on May 21, alleging two grounds: (1) the children had been adjudicated dependent-neglected and had continued out of her custody for a period of twelve months, and despite a meaningful effort by DHS to correct the conditions causing removal, the conditions had not been remedied; and (2) aggravated circumstances—little likelihood of successful reunification. DHS also alleged that it was in the best interest of the children for Prescott's parental rights to be terminated.

After a hearing on July 29, 2021, the circuit court entered an order on September 16 terminating Prescott's parental rights on the basis of both grounds alleged by DHS in its petition to terminate parental rights. The circuit court further found it was in the children's best interest for Prescott's parental rights be terminated, finding they are adoptable, and they would be subjected to potential harm if returned to Prescott's custody due to her continued drug use and lack of stability. This appeal followed.

Termination of parental rights is a two-step process requiring a determination that the parent is unfit and that termination is in the best interest of the children. *Williams v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 162. The first step requires proof of one or more statutory grounds for termination; the second step, the best-interest analysis, includes consideration of the likelihood that the children will be adopted and of the potential harm

caused by returning custody to the parent. *Id.* Each of these requires proof by clear and convincing evidence, which is the degree of proof that will produce in the finder of fact a firm conviction regarding the allegation sought to be established. *Id.*

Termination of parental rights is an extreme remedy and 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 children. *Collier v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 100, 641 S.W.3d 67. We review termination-of-parental-rights cases de novo, but we will not reverse the circuit court's ruling unless its findings are clearly erroneous. *Isom v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 159. 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. *Id.* In determining whether a finding is clearly erroneous, due deference is given to the circuit court's opportunity to judge the credibility of witnesses. *Gascot v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 57.

Prescott does not challenge the grounds relied on by the circuit court for termination; therefore, we need not review whether the circuit court erred in finding that statutory grounds for termination existed. *See Robinson v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 251, 520 S.W.3d 702. Prescott's argument on appeal is that termination of her parental rights was not in her children's best interest. A best-interest finding must be based on the circuit 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. *Baxter v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 508. It is the overall evidence—

not proof of each factor—that must demonstrate termination is in the children’s best interest.
Id.

Prescott specifically states in her brief that she does not challenge the finding that her children are adoptable. Instead, she focuses her argument on the potential-harm prong of the best-interest finding. A potential-harm analysis must be conducted in broad terms, with the circuit court considering the harm to the children’s health and safety that might occur from continued contact with the parent. *Barnes v. Ark. Dep’t of Hum. Servs.*, 2017 Ark. App. 525. There is no requirement to find actual harm would result or to identify the potential harm. *Id.*

Prescott contends that the circuit court’s finding that her children would be subjected to potential harm if returned to her custody is clearly erroneous. At the time of the termination hearing, she was in drug treatment, and, by all indications, she was doing well in the recovery program. She argues, citing *Prows v. Arkansas Department of Human Services*, 102 Ark. App. 205, 283 S.W.3d 637 (2008), that she did not have to be in a position to take her children home on the day of the termination hearing; that she had achieved sobriety, was actively pursuing drug treatment, was visiting with DP and AMP, and anticipated having a home and employment within a month; and that the circuit court clearly erred in terminating her parental rights on a finding of “continued drug use” when she was actively engaged in treatment and had achieved sobriety.

Prows is distinguishable from the present case. In *Prows*, the circuit court found that parental rights must be terminated if it were not possible for the child to return home on the day of the termination hearing; the circuit court further found it could not consider

Prows's recent stability in making its decision regarding termination. This court reversed, holding that the termination statute did not impose the standard that a child must be able to return home the day of the termination hearing, nor did it prohibit a consideration of Prows's recent improvements, and the circuit court erred in finding that it did.

There were no such findings in the present case. Here, while there was testimony Prescott was currently doing well in drug treatment, by her own admission she had been sober for only thirty days at the time of the termination hearing out of 519 days this case was active. Greg Steinsiek, Prescott's caseworker, testified that Prescott had been unable to maintain sobriety during the case; she had yet to complete drug treatment; and she had previously been discharged from her second attempt at drug treatment in May 2021 due to a positive drug screen. Steinsiek testified that Prescott had been incarcerated numerous times during the case; she had been late to some of the visitations because she said 9:00 a.m. was too early for her; and she had missed more than half of her visitations over the last several months before the termination hearing. When asked about Prescott's request for more time to get sober, Steinsiek opined that more time would not be beneficial because he did not think it would result in reunification due to the fact that even if Prescott maintained her new-found sobriety, she did not have housing, a vehicle, a job, or any way to support her children.

Evidence that supports the statutory grounds may also support a potential-harm finding, and potential harm includes lack of stability in a permanent home for the children. *Isom, supra*. In determining potential harm, the circuit court may consider past behavior as a predictor of likely potential harm should the child be returned to the parent's care and

custody. *Scott v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 347, 552 S.W.3d 463. At the time of the termination hearing, DP and AMP had been in DHS custody for approximately 519 days. While Prescott was currently in treatment and had been sober for thirty days, this was her third attempt at sobriety, and she had not yet completed a treatment program. We have consistently held that eleventh-hour compliance does not have to be credited by the circuit court and does not outweigh prior noncompliance. *Jennings v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 429, 636 S.W.3d 119. Prescott had suffered substance-abuse issues throughout the pendency of the case; she had not been consistent in her visitation; she had no housing for her daughters; she had no job; and she had no source of income with which to support her children. The circuit court's determination that it was in DP's and AMP's best interest for Prescott's parental rights to be terminated was not clearly erroneous.

Affirmed.

VAUGHT and BROWN, JJ., agree.

Dusti Standridge, 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.