

Cite as 2022 Ark. App. 253

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-609

JORDAN LEMON

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES AND MINOR  
CHILD

APPELLEES

Opinion Delivered May 25, 2022

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. 72]V-20-556]

HONORABLE DIANE WARREN,  
JUDGE

AFFIRMED

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## N. MARK KLAPPENBACH, Judge

Appellant Jordan Lemon appeals the September 2021 order that terminated her parental rights to her five-year-old daughter, KL. Her sole argument on appeal is that the circuit court clearly erred in finding that it was in KL's best interest to terminate her parental rights.<sup>1</sup> We affirm.

The Arkansas Department of Human Services (DHS) took emergency custody of four-year-old KL in August 2020 due to the child's exposure to illegal drugs and drug paraphernalia in the home. Lemon admitted to the caseworker that she would test positive for acid and marijuana. KL's hair-follicle test was positive for methamphetamine, amphetamine, and THC. In October 2020, KL was adjudicated dependent-neglected due to neglect and parental unfitness attributed to Lemon's drug use. Lemon was ordered to (1)

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<sup>1</sup>The circuit court also terminated the parental rights of KL's father, Corey Lewis, but he did not appeal.

maintain weekly contact with DHS and keep DHS informed of any change in address or phone number, (2) submit to a drug-and-alcohol assessment and follow the recommendations that resulted from that assessment, (3) refrain from drug and alcohol use and submit to random drug screens twice monthly, (4) obtain and maintain stable, suitable employment and housing, (5) follow the case plan and court orders, (6) demonstrate the ability to protect and care for KL, (7) attend individual counseling and follow her counselor's recommendations, and (8) attend supervised visitation with KL.

Lemon did not appear at the next few hearings. In an April 2021 review hearing, Lemon was deemed in partial compliance with the case plan but had not started counseling, completed a drug-and-alcohol assessment, submitted to drug screens, consistently visited with her daughter, or resolved her criminal charges. At a July 2021 permanency-planning hearing, Lemon was deemed in noncompliance. Lemon had been arrested for running a stop sign, driving on a suspended license, and possessing drug paraphernalia. Lemon had failed to maintain contact with DHS, consistently visit with KL, have evidence of stable employment, or consistently participate in random drug screening. The court stopped visitation because of her inconsistency. The goal was changed to adoption because Lemon had not made significant, measurable, sustainable progress toward the goal of reunification.

In August 2021, DHS filed its petition to terminate parental rights. The termination hearing was conducted in September 2021. A DHS employee, Heather Fendley, testified that she had reached out to multiple family members to see if they were interested in being a placement for KL, but all the potential relative placements believed it was best for KL to stay with her current foster parent. DHS's visitation supervisor, Kimberly Slaton, explained

that Lemon was engaged with KL when she came for visitation, but Lemon was inconsistent in showing up, which devastated KL.

The DHS caseworker supervisor, Brett Dillard, testified that KL did not have any barriers to adoption, and she had remained in the same foster home for more than a year; the foster family was interested in adopting her. Dillard said KL could not return to her mother's custody because Lemon had pending drug charges, and Lemon still had not remedied many of the other issues (acquiring and demonstrating stable housing, employment, and sobriety). Dillard testified that Lemon had just entered an inpatient rehabilitation facility a week before the termination hearing and that KL had previously been in foster care in 2016 due to parental drug use. He knew of no other services that could be provided to reunify the family. He recommended termination of parental rights.

Lemon was present for the termination hearing. She said she had completed a one-week hospital detoxification program, so she had been sober for a week. Lemon stated that she was starting a thirty-day drug-treatment program although DHS had not recommended it. She said she is very bonded to KL and that it would not be in KL's best interest to lose both of her parents. Lemon was not employed and still had criminal charges pending, but she believed she would only need a month in treatment, and then she could get her own home and vehicle with help from her family and the treatment facility.

The circuit court found that DHS had proved its case by clear and convincing evidence that there were two statutory grounds for terminating Lemon's parental rights (the one-year failure-to-remedy ground and the subsequent-other-factors ground) and that it was in KL's best interest to terminate parental rights. Among its factual findings, the circuit

court recited Lemon’s pending criminal charges, her partial compliance in the previous year, and her failure to remedy her substance-use issues that caused her daughter to be taken into DHS’s care. The court found KL to be “very adoptable.” The circuit court specifically considered the potential harm in returning the child to her mother by finding that KL “clearly cannot be returned to her mother today as Mother now needs to complete rehab” and that this was “the second time that [KL] has come into care for her parents’ substance abuse issues and Mother did not take steps to rehabilitate herself until last week, despite knowing full well that she could not regain custody of her child until she did so.” The circuit court found that Lemon had not demonstrated the ability to be a safe, appropriate parent to KL, and it was in KL’s best interest that parental rights be terminated. On these findings, the circuit court terminated Lemon’s parental rights, and this appeal followed.

Lemon argues on appeal that the circuit court clearly erred in finding clear and convincing evidence that termination of parental rights was in KL’s best interest. Lemon does not contest the existence of statutory grounds, nor does she contest the finding that KL is adoptable or that there was potential harm in immediately returning KL to her mother’s custody. Lemon concedes that she struggled with drug addiction. She asserts that, despite those admissions, her bond with KL is strong, that KL has a stable foster home, and that DHS had provided her adequate services for only ten months of the year-long case.<sup>2</sup> Lemon contends that, given these circumstances, the circuit court clearly erred by not

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<sup>2</sup>There was a “no reasonable efforts” finding against DHS in the July 2021 permanency-planning order, but that finding related to DHS’s failure to provide KL’s father a copy of the case plan in a timely manner and failure to update the case plan. Those failures were unrelated to DHS’s provision of services to Lemon.

allowing her one more month to become the stable parent that KL needed. To give her a little extra time, Lemon argues, was in KL's best interest. We hold that Lemon has failed to demonstrate clear error in the circuit court's best-interest finding.

We review termination-of-parental-rights cases de novo. *Core v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 79, 640 S.W.3d 716. A court may order termination of parental rights if it finds clear and convincing evidence to support one or more statutory grounds listed in the Juvenile Code, Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2021), and that termination is in the best interest of the child, taking into consideration the likelihood of adoption and the potential harm to the health and safety of the child that would be caused by returning the child to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A). The circuit court is not required to find that actual harm would result or to identify specific potential harm. *Gonzalez v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 425, 555 S.W.3d 915. A child's lack of stability in a permanent home or a parent's continued drug use can constitute potential harm. The circuit court may consider a parent's past behavior as a predictor of future behavior. *Id.* The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Williams v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 162.

The existence of a bond between the biological parent and child may not be sufficient to prevent termination of parental rights when weighed against other facts in the case. *See, e.g., Holdcraft v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 151, 573 S.W.3d 555. A child's need for permanency and stability may override a parent's request for additional time to improve her circumstances. *Williams, supra.* This "wait-and-see" situation is the type of

instability that the termination-of-parental-rights statute is designed to prevent. *Id.* Living in a state of prolonged uncertainty is not in the child's best interest. *Id.*

Lemon essentially is asking this court to reweigh the evidence on appeal in her favor. It is well settled that this court will not reweigh evidence on appeal and defers instead to the circuit court's credibility determinations. *Cole v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 481, 611 S.W.3d 218. After our de novo review of this appeal, we find no clear error in the circuit court's findings regarding KL's best interest. We affirm the termination of Lemon's parental rights.

Affirmed.

ABRAMSON and BROWN, 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 child.