

Cite as 2022 Ark. App. 326

ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-21-620

JUDRIKA HOUSTON AND
CHRYSTAL MARTIN

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered September 14, 2022

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. 66FJV-19-331]

HONORABLE LEIGH ZUERKER,
JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Judrika Houston and Chrystal Martin (collectively “Appellants”) separately appeal the Sebastian County Circuit Court Order terminating their parental rights to their children, C.H. and A.H. On appeal, Appellants argue the circuit court erred in finding termination of parental rights was in the children’s best interest when a less restrictive alternative to termination, relative placement, was available. We affirm.

I. Relevant Facts

On June 20, 2019, the Arkansas Department of Human Services (“DHS”) initiated an investigation of Appellants regarding threat of harm, failure to protect, and inadequate supervision. The investigation followed a domestic disturbance in which Ms. Martin was driving with C.H., A.H., and Mr. Houston in the car. Appellants got into a verbal

altercation, and Mr. Houston removed the keys from the ignition causing Ms. Martin to lose control of the vehicle. Mr. Houston ran from the scene but was located and arrested on outstanding warrants and charged with two counts of endangering the welfare of a minor. During the course of the investigation, DHS learned Appellants had been in at least two domestic altercations in the presence of the children, which resulted in the arrest of one or both of them.¹

On June 27, 2019, Ms. Martin refused to allow DHS access to the home, admitted she had used drugs, and stated she would not participate in services without a court order, which resulted in a protective-services case being opened on August 20, 2019. DHS continued to have issues with access to the home. When Mr. Houston was released from jail on July 1, 2019, his bond condition included no contact with Ms. Martin or the children unless approved by DHS. At that time, it was revealed Mr. Houston tested positive for THC while incarcerated. On August 26, 2019, the original investigator went to the home and found Mr. Houston present. Mr. Houston denied having a no-contact order, and Ms. Martin stated she would be moving with the children but would not state where. Following the home visit, a seventy-two-hour hold was placed on the children due to the presence of drugs and domestic violence in the home.

¹Mr. Houston was arrested on July 25, 2018, for a domestic dispute with Ms. Martin. Six months later, Mr. Houston was again arrested for another domestic dispute. Between December 2018 and June 2019, the police had been called three times, including the arrest that led to the opening of this case. Ms. Martin was arrested on March 29 and June 25, 2019, for battery. Additionally, on June 25, 2019, she was arrested for aggravated assault. Mr. Houston was arrested on March 2, 2019, for third-degree domestic battery.

On August 29, 2019, the court entered an emergency order placing custody of C.H. and A.H. with DHS. On September 5, a probable-cause hearing was held wherein the circuit court found probable cause that C.H. and A.H. were dependent-neglected, and the emergency situation that necessitated removal of the children continued such that it was necessary for the children to remain in the custody of DHS until the adjudication hearing.

On October 17, 2019, the circuit court held an adjudication hearing, and Appellants stipulated that the children were dependent-neglected based on neglect due to inadequate supervision. The circuit court set a goal of reunification and ordered Appellants to obtain and maintain stable and appropriate housing, income, and transportation; submit to random drug screens and hair-follicle testing, and if positive, submit to a drug-and-alcohol assessment; visit regularly; and continue in couple's counseling and follow the recommendations of the counselor. During the adjudication hearing, the circuit court found DHS had made reasonable efforts to prevent or eliminate the need for removing the children from their home.

On February 6, 2020, the circuit court held a review hearing, continued the goal of reunification, and found DHS had made reasonable efforts toward this goal. The circuit court also found Ms. Martin had stable and appropriate housing, was receiving SSI, and had transportation, but she did not have a valid driver's license. Further, Ms. Martin was attending counseling, had visited regularly, and had tested negative on drug screens. As for Mr. Houston, the circuit court found he was currently incarcerated in the Arkansas Department of Correction due to a parole violation. On May 22, 2020, Mr. Houston was arrested for domestic battery following allegations that he dragged Ms. Martin by the hair,

struck her, and left a knot on her forehead. Following Mr. Houston's arrest, the circuit court ordered that Appellants have no contact with each other due to the continued violence.

On August 20, 2020, the circuit court held a permanency-planning hearing, continued the goal of reunification as a result of Ms. Martin's compliance, and approved a continued trial home placement with Ms. Martin. Additionally, the circuit court found Mr. Houston was allowed supervised visitation at the discretion of DHS despite its finding that he was not in compliance with the case plan. The circuit court found Mr. Houston did not have housing or income and ordered him to participate in anger-management classes, domestic-violence classes, and counseling—as well as report for drug screens. At that time, the circuit court also continued the no-contact order between Appellants.

On October 8, 2020, the circuit court found Appellants in contempt for violating the no-contact order between them. The circuit court found Appellants had contact with each other on September 11, 2020. On November 19, 2020, the circuit court held a fifteen-month review hearing. Because Ms. Martin was in compliance, the circuit court continued the goal of reunification.

On January 21, 2021, the circuit court held a review hearing. At this hearing, DHS noted it intended to request two home studies for two of the children's aunts, one on the maternal side and one on the paternal side. Additionally, the circuit court changed the goal of the case to relative custody and ordered the parents be sentenced to twenty-four hours in jail for their contempt citation.

On January 28, 2021, the circuit court entered two orders for expedited placement decision. In these orders, the circuit court ordered there be an expedited placement

decision for the children concerning their potential placement with out-of-state relatives, Janai Polk and Ciarra Pickett, who resided in Chicago, Illinois.

On February 11, 2021, the circuit court held a review hearing and changed the goal to adoption with a concurrent goal of relative custody. The circuit court found the Appellants were unfit and the children's health and safety could not be protected by Appellants if returned to their care. Additionally, the circuit court found that while Ms. Martin had obtained stable housing and complied with the ordered services, the primary issue was that Appellants could not and would not stay apart. Because of this, the circuit court continued the previous no-contact order.

On May 27, 2021, the circuit court held another review hearing and continued the goal of adoption with a concurrent goal of relative custody. Additionally, it ordered DHS to ensure Appellants' attorneys had copies of the home studies it had received for the children's aunts, Janai Polk and Ciarra Pickett. Both aunts were deemed not suitable for consideration as a relative placement. On June 1, 2021, DHS received the contact information of Maria Johnson, Mr. Houston's stepmother, via email from Ms. Martin's attorney.

On June 11, 2021, DHS filed a petition to terminate Appellants' parental rights. On August 12, August 26, and September 10, 2021, the circuit court held a termination hearing and terminated Appellants' parental rights under the following statutory grounds: (1) the children had lived outside the home of the custodial and noncustodial parents for a period of twelve months, and the parents failed to provide significant material support in accordance with the parents' means or to maintain meaningful contact with the children; (2) that other

factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the children in the custody of the parents is contrary to the children's health, safety, or welfare and that, despite the offer of appropriate family services the parents had manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parents' circumstances that prevent the placement of the children in the custody of the parents; and (3) aggravated circumstances. Additionally, the circuit court found it was in the children's best interest to terminate Appellants' parental rights on the basis of the children's adoptability and the potential harm they would face if returned to the parents' custody.

II. *Standard of Review*

A circuit court's order terminating parental rights must be based upon findings proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2021). Clear and convincing evidence is defined as that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Posey v. Ark. Dep't of Health & Hum. Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007). On appeal, the appellate court reviews termination-of-parental-rights cases de novo but will not reverse the circuit court's ruling unless its findings are 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. *Id.*

In order to terminate parental rights, a circuit court must find by clear and convincing evidence that termination is in the best interest of the child, taking into consideration (1) the likelihood the child will be adopted if the termination petition is granted; and (2) 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)(i) & (ii). The order terminating parental rights must also be based on a showing by clear and convincing evidence as to one or more of the grounds for termination listed in section 9-27-341(b)(3)(B). However, only one ground must be proved to support termination. *Reid v. Ark. Dep't of Hum. Servs.*, 2011 Ark. 187, 380 S.W.3d.

III. *Best Interest*

Appellants do not challenge the circuit court's findings regarding statutory grounds or adoptability. Thus, we need not consider those issues. *Benedict v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 395, 242 S.W.3d 305 (2006); *Yarbrough v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 429, 501 S.W.3d 839. Instead, Appellants argue termination was not in the children's best interest where there was a less restrictive alternative through placement with Ms. Johnson. While DHS contends Appellants' argument is not preserved for our review, we hold that Appellants received a final ruling on the issue of relative placement and that the argument is preserved.

Arkansas Code Annotated § 9-27-329(d) (Repl. 2020) states the court shall give preference to the least restrictive disposition consistent with the best interest and welfare of the children. Therefore, Appellants contend that termination was premature when permanent placement of the children with Ms. Johnson would have permitted a less restrictive alternative for permanency without destroying familial bonds. In support of their argument, Appellants rely on our previous decisions in *Clark v. Arkansas Department of*

Human Services, 2019 Ark. App. 223, 575 S.W.3d 578, and *Borah v. Arkansas Department of Human Services*, 2020 Ark. App. 491, 612 S.W.3d 749.

This court has held that a circuit court is permitted to set termination as a goal even when a relative is available and requests custody. *Dominguez v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 2, 592 S.W.3d 723. The circuit court's decision here was based on the provisions in the Juvenile Code listing permanency goals in order of preference; and prioritizing a plan for termination and adoption unless the children are already being cared for by a relative, the relative has made a long-term commitment to the child, and termination of parental rights is not in the child's best interest. The decision in *Clark* did not change this. In *Clark*, this court reversed the termination order because DHS consistently ignored the grandparents' request for placement, the grandparents had an approved home study, DHS recommended placement with the grandparents, and there was a strong familial bond between the grandparents and the children. Additionally, each termination-of-parental-rights case is decided on a case-by-case basis, and the circuit court's decision to forgo relative placement as a permanency goal for the children in *Clark* was clearly erroneous given the facts. *Id.*

Unlike the circumstances in *Dominguez* and *Clark*, Ms. Johnson is not a blood relative to the children, was not caring for the children, did not have a familial bond with the children, nor did she make a long-term commitment to the children. In fact, she testified that she met C.H. when she was first born but had not seen her since, and she had only spoken on the phone with A.H. Although Ms. Johnson testified she and her husband were willing to provide a home for the children and even adopt them if the Appellants' parental

rights were terminated, we must consider the absence of a familial bond. In addition to the lack of a familial bond, Ms. Johnson is married to Mr. Houston's father, Judrika Houston, Sr., who was convicted of two felonies—residential burglary and theft with a firearm.

Appellants argue DHS declined to follow up on Ms. Johnson's request for placement and did not submit a home study to Ms. Johnson, which DHS disputed. Brianna Long testified she was the caseworker for the case but had been involved for only three months. When asked about whether a home study was done on Ms. Johnson, she testified she was told a home study was done on Ms. Johnson, and she was denied. Despite the fact that this home study was never introduced into evidence, counsel for Appellants failed to object to Ms. Long's hearsay statement. Without an objection or evidence to the contrary being introduced, the court must accept Ms. Long's statement as true and may not disturb determinations of credibility on appeal because those determinations are left to the province of the circuit court. *Posey*, 370 Ark. 500, 262 S.W.3d 159.

Finally, Ms. Martin separately argues the circuit court committed reversible error when it failed to include any of the factual information regarding Ms. Johnson in its termination order. In support of her argument, Ms. Martin points to our previous decision in *Borah*. In *Borah*, we held the circuit court clearly erred by failing to consider placement with a paternal grandmother as a less restrictive alternative to termination. *Borah*, 2020 Ark. App. 481, at 20, 612 S.W.3d at 760. In *Borah*, the circuit court made no mention of the grandmother's request. We find *Borah* distinguishable. The circuit court made its findings after learning Ms. Johnson's home study had been denied. Therefore, the circuit court was not required to mention Ms. Johnson in its best-interest findings. We cannot say the circuit

court clearly erred in terminating the Appellants' parental rights since the termination was in the children's best interest. Accordingly, we affirm.

Affirmed.

KLAPPENBACH and HIXSON, JJ., agree.

Jennifer Oyler Olson, Arkansas Commission for Parent Counsel, for separate appellant
Judrika Houston.

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