

Cite as 2022 Ark. App. 377
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-22-169

FELICIA LOVE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered October 5, 2022

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, EIGHTH
DIVISION
[NO. 60JV-20-337]

HONORABLE TJUANA C. BYRD,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Felicia Love appeals the Pulaski County Circuit Court order terminating her parental rights to her children, Y.L. (born in December 2019) and A.L. (born in September 2018). On appeal, Love argues that the circuit court erred by finding (1) a statutory ground supported termination and (2) it was in the best interest of the children to terminate her parental rights. We affirm.

On March 20, 2020, the Arkansas Department of Human Services (DHS) filed a petition for dependency-neglect concerning Y.L. and A.L. In the affidavit attached to the petition, DHS alleged that on December 22, 2019, a Garrett’s Law report had been filed indicating that Y.L. and Love had tested positive for THC at Y.L.’s birth. DHS further explained that due to the report, a protective-services case had been opened and it attempted

to offer services to Love; however, Love declined services, refused DHS access to the children, and continued to use THC around them. Thus, DHS filed the dependency-neglect petition requesting that Love comply with services.

On April 13, DHS filed an amended petition for ex parte emergency custody and dependency-neglect. In the affidavit attached to the petition, DHS alleged that Love admitted further THC use and continued to refuse DHS access to the children. On the same day the petition was filed, the court entered an ex parte order for emergency custody. On April 16, the court found probable cause for the emergency custody.

On May 7, the court adjudicated the children dependent-neglected due to parental unfitness and drug exposure. The court found that Y.L. had tested positive for THC at birth, and A.L. had tested positive for THC on a hair test. The court further found that Love had refused to cooperate with DHS and that she suffers from bipolar disorder and schizophrenia.

On September 1, the court held a permanency-planning hearing. The court found that Love had tested positive for THC on a hair test, but she had completed a psychological evaluation and had been attending outpatient substance-abuse treatment. The court noted that she had been living in a hotel and with friends. The court further noted that Love identified Cedric Johnson as Y.L.'s father, but she did not know the identity of A.L.'s father.

On January 12, 2021, the court held a permanency-planning hearing. The court found that Love had tested positive for THC on two occasions in November. The court further found that there had been concerns with DHS's "delivery of services," but the court

concluded that DHS had made reasonable efforts towards the goal of reunification. The court found Johnson to be Y.L.'s father.

On April 6, the court held a permanency-planning hearing, and the court found that Love had tested positive THC on two occasions in March. The court noted that she had failed to complete substance-abuse treatment and had stopped taking her mental-health medication. The court again noted the "concerns about delivery of services," but it found that DHS had made reasonable efforts to provide services.

On August 24, the court held a final permanency-planning hearing, and it changed the goal of the case to adoption. The court noted that since the last hearing, Love had found employment and had consistently visited the children. The court, however, found that Love had not been attending therapy and that she continued to self-medicate with THC. The court thus concluded that Love had not made significant, measurable progress. The court noted that relatives are interested in placement of the children, but it found that Johnson is not fit to have custody because his home study had been denied.

On October 7, DHS petitioned to terminate Love's parental rights alleging aggravated-circumstances, subsequent-factors, and failure-to-remedy grounds. The court held a termination hearing on November 18.

At the hearing, Gary Campbell, the outpatient program director at Recovery Centers of Arkansas, testified that Love completed her drug-and-alcohol assessment in May 2020, and as a result of the assessment, he recommended counseling sessions and a psychiatric evaluation. He explained that Love appeared for the initial intake, but she did not complete

the individual sessions. He stated that her counselor tried to call her, but her “number was not reachable.” Campbell stated that after eight months had passed, Love returned for a new intake. However, she again became unreachable.

Dr. George DeRoeck testified that he is a psychologist and that he completed a psychological evaluation of Love in July 2020. He stated that Love had used marijuana on a consistent basis and that she is at risk for continued substance abuse. He testified that she has a family history of schizophrenia and that he evaluated her for reasoning and judgment deficits, but he did not reach a conclusive diagnosis “along those lines.” He stated that she exhibits borderline personality traits and that she has irritability and anger issues that could be potentially harmful to the children if left untreated. He noted that Love had been hospitalized around age seventeen for anger-management problems. DeRoeck stated that Love needs a medication evaluation.

Monique Miller, the DHS supervisor for the Pulaski County office, testified that Love had employment and had been visiting the children. She stated, however, that Love had not completed the recommendation from her drug-and-alcohol assessment and that she had not completed counseling. Miller explained that she did not recommend returning the children to Love’s custody because Love had not remedied her recurring substance-abuse issue. Miller testified that DHS is not assured that Love is sober. She stated that Love admitted using illegal drugs in October 2021, which was eighteen months into the case, and that DHS had offered her outpatient treatment on two different occasions. She noted that Love had not provided DHS with a marijuana prescription.

Love testified that she currently lives with her best friend in a one-bedroom home, and she noted that she also has extended family that has offered temporary housing. She stated that she stopped using marijuana in September, and she noted that she used it that month to celebrate her birthday. She testified that she attended four parenting classes, and she has employment at a liquor store. She noted that DHS had assigned six different caseworkers to her case and that she had had difficulties contacting them. She stated that she stopped attending counseling sessions because she did not have transportation and she had problems contacting the caseworkers.

On December 22, the court entered an order terminating Love's parental rights on the basis of all three grounds pled in the petition. The court further found that it was in the best interest of the children to terminate Love's parental rights. The court considered the likelihood that the children would be adopted as well as the potential harm to the health and safety of the children caused by returning them to Love's custody. The court found that the potential risk of harm included further drug exposure, neglect, and untreated mental-health issues. This appeal followed.

We review termination-of-parental-rights cases de novo. *Hall v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 4. An order forever terminating parental rights must be based on a finding by clear and convincing evidence that termination is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3)(A) (Supp. 2021). The circuit court must consider the likelihood that the child will be adopted if the parent's rights are terminated and the potential harm that could be caused if the child is returned to a parent. *Id.* The circuit court must also find

by clear and convincing evidence one or more grounds for termination. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the circuit court's finding is clearly erroneous. *McGaugh v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 485, 505 S.W.3d 227. 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 resolving the clearly erroneous question, we defer to the circuit court because of its superior opportunity to observe the parties and judge the credibility of witnesses. *Id.*

On appeal, Love first argues that the circuit court erred by finding that a statutory ground supported termination of her parental rights. She challenges the circuit court's finding on the aggravated-circumstances ground, and she asserts that the evidence is insufficient to show that there was little likelihood that services would result in successful reunification. She argues that the evidence is insufficient because DHS failed to offer her appropriate services, such as counseling and a dual-diagnosis program. She thus claims that "without proper services, it was completely unknown if reunification was likely." Love claims that this case is like *Duncan v. Arkansas Department of Human Services*, 2014 Ark. App. 489. In *Duncan*, we reversed a little-likelihood finding where DHS delayed providing services and the appellant was compliant and making progress. *Duncan*, 2014 Ark. App. 489.

To prevail on the aggravated-circumstances ground that there was little likelihood that services would result in successful reunification, DHS was required to demonstrate that if appropriate reunification services were provided, there was little likelihood that the services

could achieve reunification. See *Peterson v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 75, 595 S.W.3d 38; *Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 254, 240 S.W.3d 626, 631 (2006). We have stated, “[T]here must be more than a mere prediction or expectation on the part of the circuit court that reunification services will not result in successful reunification.” *Yarborough*, 96 Ark. App. at 254, 240 S.W.3d at 631. However, a finding of aggravated circumstances does not require evidence of meaningful services. *Peterson*, 2020 Ark. App. 75, 595 S.W.3d 38.

We find the circumstances in this case are unlike those in *Duncan*, and we hold that DHS presented sufficient evidence of the aggravated-circumstance ground. Here, the children were removed from Love’s custody due to her substance abuse. Y.L. tested positive for THC at birth, and A.L. tested positive for THC on her hair test. At the termination hearing, Campbell testified that Love was offered substance-abuse counseling. Yet Love admitted using illegal drugs two months prior to the hearing and eighteen months following the children’s removal. Given these circumstances, we cannot say that the circuit court erred by finding that there was little likelihood that services would result in successful reunification.

Love next argues that the circuit court erred by finding that it was in the best interest of the children to terminate her parental rights. She does not challenge the adoptability prong. Instead, she asserts that DHS presented insufficient evidence of potential harm. She acknowledges her drug and mental-health issues, but she claims that the issues are not serious enough to warrant removal of her children.

The harm referred to in the termination statute is “potential” harm; the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Robinson v. Ark. Dep’t of Hum. Servs.*, 2017 Ark. App. 262, 520 S.W.3d 322. Potential harm must be viewed in a forward-looking manner and in broad terms, including the harm the child suffers from the lack of stability of a permanent home. *Wallace v. Ark. Dep’t of Hum. Servs.*, 2015 Ark. App. 481. We have held that continued drug use demonstrates potential harm sufficient to support a best-interest finding in a termination-of-parental-rights case. *Tillman v. Ark. Dep’t of Hum. Servs.*, 2015 Ark. App. 119.

In this case, both children tested positive for THC, and Love continued to use drugs throughout the case. Further, DeRoeck testified about her untreated mental-health issues. Given these circumstances, we hold that the circuit court did not err by finding it was in the best interest of the children to terminate Love’s parental rights. We therefore affirm the termination order.

Affirmed.

HARRISON, C.J., and HIXSON, J., 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.