Cite as 2022 Ark. App. 503

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-411

	Opinion Delivered December 14, 2022
HEIDI CHASSELS AND JEREMY COLLINS APPELLANTS	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72JV-20-56]
V.	
ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	HONORABLE DIANE WARREN, JUDGE AFFIRMED

BRANDON J. HARRISON, Chief Judge

The Washington County Circuit Court terminated the parental rights of Jeremy Collins and Heidi Chassels to their two children. On appeal, both parents challenge the circuit court's findings on best interest and the statutory grounds for termination. We affirm the circuit court's order.

In November 2019, the Arkansas Department of Human Services (DHS) exercised a hold on ten-year-old Minor Child 1 and two-and-a-half-year-old Minor Child 2 after the children and their parents, Collins and Chassels, were in a car accident. Chassels had been driving and was arrested for DWI and two counts of endangering the welfare of a minor; Collins was arrested for public intoxication and disorderly conduct. The circuit court granted DHS emergency custody of the children and later entered a probable-cause order finding it necessary that custody with DHS continue. The probable-cause order also

indicated that the Cherokee Nation of Oklahoma had been served with notice of the proceeding and found by clear and convincing evidence that continued custody with the parents was likely to result in serious emotional or physical damage to the juveniles.

In February 2020, the circuit court adjudicated the children dependent-neglected as a result of neglect and parental unfitness. The court set the goal of the case as reunification with a fit parent. The court ordered both parents to, inter alia, participate in individual counseling, undergo a drug-and-alcohol assessment and follow the recommendations, obtain and maintain stable housing, and demonstrate the ability to protect the children and keep them safe from harm.

The circuit court reviewed the case in June 2020 and found that both parents were in partial compliance with the case plan and court orders. The court recited that the parents had not made measurable and sustainable progress and had not demonstrated an ability to protect the juveniles and keep them safe from harm. Specifically, Chassels had not resolved her criminal charges and had been charged with new offenses. Collins had not completed an intensive outpatient program as recommended by his drug-and-alcohol assessment, had not remained sober, had not remedied his criminal charges, and had been charged with new offenses.

In January 2021, the circuit court entered a permanency-planning order changing the goal of the case to adoption. The court reasoned,

> [T]he juveniles were initially removed from the parents' care over 12 months ago, and have continued out of the parents' custody since that time. The removal in this case is not the first time that the children have been in foster care. The elder juvenile, [Minor Child 1], has been in foster care three times in three different states. Each time the juveniles were taken into foster care, one or both of the parents struggled with substance abuse or substance

> misuse. The parents have been provided with services by three different courts in three different states, but neither parent has remedied the reasons the children came into care in this case, despite being offered services for over 12 months. Therefore, the Court finds sufficient reason to change the goal to adoption.

DHS petitioned to terminate Collins's and Chassels's parental rights in March 2021 based on the twelve-month/failure-to-remedy ground; however, the circuit court denied the petition after finding no clear and convincing evidence to substantiate DHS's claims in the petition. The court did find, however, that there was clear and convincing evidence that Chassels had not yet demonstrated an ability to appropriately meet the emotional needs of Minor Child 1 and likewise found that "there is evidence that [Collins] has not yet earned back the trust of the juveniles."

The circuit court entered a second permanency-planning order in August 2021 changing the goal of the case back to reunification with the parents "as the parents have made substantial, measurable progress toward remedying the reasons the juveniles were removed." The court authorized a transition plan to allow the parents to receive increasing unsupervised visits with the juveniles and eventually a trial home placement. The court noted that the parents had resolved their criminal charges and "engaged in services suited to their needs."

The children began a trial home placement with their parents on August 13, but the trial placement ended on September 23 after Collins was arrested for public intoxication and disorderly conduct. The circuit court reviewed the case on October 5, and in its review order, the court found that "the parents are unfit and the juveniles' health and safety cannot be protected by the parents." The court noted that not only had Collins been arrested at a

bar on Dickson Street, Chassels had initially accompanied him to the bar with four-year-old Minor Child 2 in tow. The court found that "[t]he parents' presence at a location where alcohol was freely flowing shows an absolute unwillingness or inability to understand the situation they are in. . . . The Court finds that return of custody of the children to either parent today would result in serious physical, emotional, or other harm." Nevertheless, the goal of the case continued to be reunification.

On 1 December 2021, DHS again petitioned to terminate parental rights and alleged statutory grounds of twelve month/failure to remedy (noncustodial), subsequent factors, and aggravated circumstances. *See* Ark Code Ann. § 9-27-341(b)(3)(B)(i)(*b*), (vii)(*a*), and (ix)(*a*) (Supp. 2021).

On 7 March 2022, the circuit court convened a combined permanency-planning and termination hearing. The following testimony was presented in the permanency-planning portion of the hearing. Chassels testified that she has lived at her current residence for two years and that she has steady employment. She has attended counseling throughout the pendency of this case and has completed two outpatient treatment programs. She filed for a divorce from Collins in December 2021 and had no plans to reconcile with him.[1] She had fulfilled all the requirements of the case plan and stated that she "would never ever put another substance in my body that would risk me being away from my children again." She opined that she was financially and emotionally ready to have the children returned to her. She did not currently have a driver's license, but a neighbor had agreed to help her with transportation.

[1]Chassels and Collins married on 13 May 2021.

On cross-examination, Chassels described the family's previous involvement with DHS in other states: a case in Colorado involving Minor Child 1 and a case in Oklahoma involving both Minor Child 1 and Minor Child 2. In Oklahoma, both children spent two months in foster care, and in Colorado, Minor Child 1 spent twenty-two months in foster care. Including the current case, Minor Child 2 had spent two and a half years in foster care; and Minor Child 1 had spent four and a half years in foster care. Chassels also has three older children; she signed her rights away to two of those children and lost her rights to the third. She also admitted that she currently drives herself to work even though she does not have driver's license. Chassels's work hours are 8:30 p.m. to 4:30 a.m.; she stated that her neighbor or a friend would watch the kids while she is at work.

Tad Teehee, a representative from the Cherokee Nation Indian Child Welfare Department, testified that he had spoken to Chassels several times and visited her home. Teehee had concerns about the children returning to Chassels based on the incident that happened on Dickson Street with Jeremy as well as indications that there was some alcohol in the home prior to the incident on Dickson Street. He could not recommend that the children be placed with Chassels that day "based on issues of mother coming to terms with what caused the children to come back into care." Due to alcohol issues and Chassels's past decisions, he was not positive the children would be safe if returned to her. He likewise could not recommend that the children be placed with Collins. Teehee had no objection to the goal of the case changing to termination and recommended changing the goal as opposed to continuing reunification efforts.

Collins testified that he lives with his mother and stepfather and works part time through a temp agency. He said he, and specifically his drinking, had been the primary problem in the case, and he planned to step out of the way so that Chassels could have the children. He did not plan to be in his children's lives until he is sober.

Hayley Miles, the DHS family-service worker, testified that the goal of the case should be changed to adoption and that the outcome of the trial home placement had greatly impacted the children. She opined that all possible services available to the family had been exhausted, and she had ongoing concerns about the family's honesty. She also did not feel confident that Collins would stay away from the home. Miles could not recommend returning the children to either parent, and she believed the children should not have to wait any longer for permanency.

Catherine Mayes, Minor Child 2's therapist, explained that she had been working with him on boundaries, safety, and processing trauma through play therapy. Minor Child 2 had made progress in therapy and thrived on consistency. She described him as "very attached" to his foster mom and anxious before visits with his mother. She said that his needs were met in his current placement and that he needs a family that will provide him with unconditional support and consistent boundaries. He still has work to do on safety and boundary issues before he could transition to his mother's home.

Katherine Hochman, Minor Child 1's therapist, testified that the child's biggest stressor was her mother's home and that while she had made progress in therapy, when she returned from the failed trial home placement, she was "completely shut down." Before the child returned to her parents' home, she was excited and hopeful; but afterward, she

was "flat" and "depressed." Hochman stated that the child needs as much consistency and stability as possible.

After hearing arguments from counsel, the court found that the children had been out of the home for well over twelve months. The court recalled that in April 2021, almost a year previous, the parents had made progress such that the children returned home on a trial basis. But less than two months later, an incident involving poor decision-making caused the trial placement to end. The court characterized it as a "significant incident" and noted the negative impact it had on the children, especially Minor Child 1.

> [T]here's again, clear and convincing evidence from the therapist for [Minor Child 1], that she has suffered a great deal. You know, creating emotional stress and a violation of that trust and reliance, that's one of the most damaging things you can do for a child . . . [Minor Child 1] had developed some trust and reliance on the foster family. She had . . . gotten comfortable there and started to have some trust there and then the Court sent her home hoping that we could rebuild the trust and reliance. Trust and reliance at home. And then when that didn't happen, that destroyed her ability to trust anybody.

The court concluded,

> [W]e have been providing services to this family for two years and we just don't have a situation today, there is not evidence presented by the parents today to show that they have addressed the issues that caused the children to come into care so that the children can safely be returned today. And that means stability in their relationships, stability in their housing, stability in their ability to refrain from drugs and alcohol and to meet these children's needs. . . . And so the Court finds that the children cannot be returned today and there's not evidence before the Court to suggest that the children are going to be able to be returned to them in the next three months. And so the Court finds that it is appropriate to . . . proceed with the termination of parental rights here.

Upon motion by the parties, the court incorporated the testimony and exhibits from the permanency-planning hearing into the termination hearing. Chassels returned to the

stand and reiterated that "there's never going to be alcohol again in my house and there will be no reason for [the children] to go back to foster care." She said that if the children were returned to her, she would not let Collins back into her life. She also stated that the only mistake she had made in well over a year was accompanying Collins to Dickson Street. She asked the court to deny the petition to terminate her rights and allow time for the family to participate in counseling.

Tad Teehee was recalled to the stand and testified that returning the children to either parent at this time would likely result in serious emotional harm. He opined that DHS had made active efforts and that those efforts had been unsuccessful. He said that the Cherokee Nation had no objection to the children's current placement. After receiving additional arguments from counsel, the court took the matter under advisement.

The court entered an order terminating both parents' parental rights on 19 April 2022. The court found beyond a reasonable doubt that the children had been adjudicated dependent-neglected and had "continued out of the home for more than twelve months and despite active efforts by the Department to rehabilitate the parents and correct the conditions that prevented the children from safely being returned to or placed in the parents' home, the conditions have not been remedied by the parents."

The court also found beyond a reasonable doubt that, despite ample opportunities to take advantage of drug and alcohol treatment, Collins had not demonstrated that he can maintain his sobriety or make decisions that keep the children safe from harm. Regarding Chassels, the court found beyond a reasonable doubt that she was unable to maintain her

own stability and provide a stable and safe home for the children. The court then described the following specific examples:

> i. The children were placed on a trial home placement on August 23, 2021. But, on September 23, 2021 the Department removed the children from the home based upon Father having been arrested on alcohol related charges. Mother was complicit in the actions that surrounded Father's arrest and the subsequent removal of the children from the home.
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> ii. Mother willingly participated in the decision to take the children to a bar during a college football game knowing that alcohol would be plentiful and that she and her husband were both in recovery. She should have known that was a poor choice. She provided conflicting testimony about the timeline of events on that day. At first she said the line was too long so she left, but during cross examination, she indicated she had left because Father had ordered a beer.
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> iii. While the children were on trial home placement, Mother failed to maintain the individual or family counseling for the children. There was a lapse in counseling from August 12, 2021, the day before the trial home placement began until October 5, 2021, after the children had returned to foster care. The main issue that needed to be dealt with after the denial of the first Petition to Terminate Parental rights was the relationship between parents and children and Mother did not participate in the service most specifically designed to assist with that issue and failed to act in ways that demonstrated she recognized the impact her choices would have on the children.
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> iv. After the removal of the children from the trial home placement, she purchased a Chromebook for one of the children, which was set up so the child's location could be tracked. Mother claims she did not know of that capability, but the Court does not find her testimony to be credible in part because she previously admitted that she had delivered a notebook to one of the children that had a note in it written by Father. The Court finds this was a pattern of behavior engaged in by Mother and Father to circumvent the rules that had been set up to monitor communication between the parents and the children to ensure all communication was appropriate.
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> v. Mother has been in a relationship with Mr. Collins for over fifteen (15) years. At the beginning of this case she was not married to him. During the case she married him and now she has divorced him. The instability in the nature of the family home is an additional factor that arose during the pendency of this case.

The court found that the children faced potential harm if returned to Chassels's custody due to her poor decisions regarding her life partners and individual actions. If returned to Collins, the children would likely suffer as a result of inadequate supervision because of Collins's continued alcohol use. The court concluded, "Given that past behavior is the greatest predictor of future behavior, the Court believes that the parents are incapable of effecting permanent change that will serve the best interest of the children. Return to either Mother or Father would result in serious physical or emotional harm to the children." The court also noted the testimony of Tad Teehee, who stated that DHS had made active efforts to reunify the family and that it would be in the best interest of the children to terminate the parental rights of both parents. Chassels and Collins timely appealed from the court's order and have filed separate briefs with this court.[2]

We review termination-of-parental-rights cases de novo. *Hune v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 543. At least one statutory ground must exist in addition to a finding that it is in the child's best interest to terminate parental rights. Ark. Code Ann. § 9-27-341 (Supp. 2021); *Kohlman v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 164, 544 S.W.3d 595. A best-interest finding under the Arkansas Juvenile Code must include consideration of two factors: the likelihood of adoption and potential harm to the child if returned to the parents' custody. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii).[3] Potential harm must be

[2]The circuit court did not enter its permanency-planning order until 1 May 2022 (after the termination order was entered). Both parents amended their notices of appeal to include an appeal from the permanency-planning order.

[3]We note that the circuit court's order does not include a finding on the likelihood of adoption as required by the statute. Neither party raised this issue on appeal, but in the

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, 470 S.W.3d 286.

According to the Indian Child Welfare Act (ICWA), the party seeking to terminate parental rights shall satisfy the circuit court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d). Moreover, no termination of parental rights may be ordered in such a proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. *Id.* § 1912(f).

Despite this heightened standard in the circuit court, this court's review is still de novo, and we will not reverse the circuit court's ruling unless its findings are clearly erroneous. *Holmes v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 495, 505 S.W.3d 730. 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. *Sharks v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569. In determining whether a finding is clearly erroneous, we give due deference to the circuit court's opportunity to judge the witnesses' credibility. *Bryant v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 375, 554 S.W.3d 295.

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future, we encourage the bench and the parties to ensure that orders include all necessary findings.

I. *Best Interest*

Chassels first argues that there was insufficient evidence to support the circuit court's decision to change the goal of the case to termination of parental rights and to support a finding that termination of her parental rights was in the children's best interest. In cases subject to the ICWA, the burden of proof at a permanency-planning hearing is clear and convincing evidence, and the burden of proof at the termination hearing is beyond a reasonable doubt. Ark. Code Ann. § 9-27-325(h)(B)(i) & (ii) (Supp. 2021). Chassels contends that DHS failed to meet its burden of proof at both hearings.

Chassels explains that DHS sought to change the goal of the case and to terminate her parental rights based on a perception that she was not honest and made poor decisions, and the circuit court cited her "poor decisions regarding her life partners or individual actions" as potentially harmful to the children. Chassels does not deny that this case began because of her alcohol abuse and her decision to drive while intoxicated.[4] But she argues that there is no dispute that she complied with the case plan and court orders; that she had a stable home, employment, and a plan to have her children returned to her custody; and that she had not had any relapses during the pendency of the case. Chassels also asserts that she ended her relationship with Collins after he was arrested in September 2021 to prevent his behavior from affecting her reunification with the children.

Addressing the circuit court's specific concerns, Chassels explains that she left the situation on Dickson Street once she saw that Collins was going to consume alcohol, and

[4]Chassels did deny committing a DWI in her testimony at the termination hearing; she claimed that the accident occurred due to slick roads and bad wheel bearings and that she only "drank at the scene of the accident" after the accident occurred.

she was not present for anything that occurred afterward, including his arrest. Chassels asserts that the lack of counseling for the children during the trial home placement was due to DHS's failure to make the necessary referrals. With regard to the Chromebook situation, Chassels contends that whether she knowingly or unknowingly put parental controls on her child's Chromebook, which apparently permitted tracking of the Chromebook, DHS had failed to demonstrate the safety hazard of a parent providing her child with a computer with active parental controls in place.

In support, Chassels cites *Mason v. Arkansas Department of Human Services*, 2022 Ark. App. 124, 642 S.W.3d 260, in which this court held that termination of a father's parental rights was not in his child's best interest. In its termination order, the circuit court found that Venson Mason had complied with the case plan, but it nevertheless terminated his parental rights based on his "poor parenting decisions." *Id.* at 7, 642 S.W.3d at 264. Specifically, the circuit court identified four instances of poor decision making: (1) Venson took the child to see her mother, who had serious criminal issues and had stabbed her boyfriend, during the trial home placement; (2) Venson had a physical altercation with a man during the trial home placement; (3) the child was found alone in a ditch outside a babysitter's house, which effectively ended the trial home placement; and (4) Venson's relationship with his girlfriend, Miranda Foster, who is a convicted felon. The circuit court concluded that termination of parental rights was in the child's best interest and also found two statutory grounds had been proved.

In reversing the circuit court's best-interest finding, this court explained:

> With respect to Venson's decision to take [the child] to see her mother, he explained that [the child]'s mother was terminally ill, and this would be

> the last time [the child] would see her mother before she died. Regarding Venson's physical altercation that occurred on Halloween night, this appeared to be an isolated incident, not witnessed by [the child], from which no criminal charges arose. And with respect to the caseworker's finding [the child] in the ditch, this occurred while Venson was at work, and [the child] was in the care of a DHS-approved babysitter who had taken a few minutes to use the restroom. None of these incidents, either alone or collectively, can support a finding that termination of Venson's parental rights is in [the child]'s best interest.
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> The trial court's biggest concern appeared to be Venson's relationship with Miranda Foster, who has prior felony and misdemeanor drug convictions. The trial court noted that Miranda had not provided DHS with any drug screens. However, the caseworker admitted that she had never personally asked Miranda to participate in a drug screen until the day of the termination hearing when Miranda could not produce a urine sample, as explained above, but was willing to submit a blood sample. Miranda was also driving Venson to his visits with [the child]. While we share the trial court's concern about this relationship, the record shows that Miranda no longer lives with Venson and has her own residence. There was also no evidence that, during [the child]'s trial home placement with Venson, Miranda had ever spent the night there. The exact status of their relationship is unclear, and the record does not show that either the trial court or DHS informed Venson that preservation of his parental rights depended on his termination of this relationship. In light of the unrefuted evidence of Venson's compliance, progress, and close bond with [the child], we conclude that his association with Miranda cannot justify the trial court's order severing Venson's parental rights.

Id. at 16–17, 642 S.W.3d at 269–70.

Similarly, Chassels argues, she complied with all requirements of the case plan, but the circuit court found that it was in her children's best interest to change the goal of the case to termination and ultimately terminate her parental rights based on her "poor decisions." The circuit court also concluded that returning the children to her would "result in serious physical or emotional harm" as required by ICWA. However, she contends that considering her progress throughout the case and her decision to immediately separate from Collins following his use of alcohol and poor decision making, she deserves to reunify with

her children. She also notes that *Mason* was not an ICWA case with the accompanying higher standards of proof and argues that if Mason's imperfect behavior and decisions, which also resulted in a failed trial home placement, did not support the circuit court's best-interest finding under the lower burden in non-ICWA cases, then her similar actions cannot support the circuit court's best-interest finding in this case at either the clear-and-convincing burden of proof or the higher ICWA standard. Chassels urges this court to follow the precedent in *Mason* and reverse.

Collins also contends that the circuit court erred in finding that termination of his parental rights is in the children's best interest. He asserts that the circuit court erred in terminating Chassels's parental rights, and should she prevail on appeal, it would be contrary to the children's best interest—and therefore clearly erroneous—to terminate his parental rights because "permanency would not be achieved by and through the termination of Jeremy's parental rights if the children could be in the permanent care of Heidi."

DHS and the ad litem (referred to collectively as DHS) filed a joint response to Chassels and Collins. Addressing the court's decision to change the goal of the case, DHS explains that in order to continue a goal of reunification at the permanency-planning stage, the juvenile code states that the parent must demonstrate that he or she is working to remedy the conditions that caused removal or prevent placement in the home of the parent *and* that placement shall occur within a time frame consistent with the juvenile's developmental needs but no later than three months from the permanency-planning hearing. Ark. Code Ann. § 9-27-338(c)(3) (Repl. 2020) (emphasis added). At the hearing, Tad Teehee testified that there were concerns with whether the children could be safely returned to the home

in light of Chassels's decision-making and credibility. He specifically noted the effect of the parents' actions on the children's mental health as a concern, and he ultimately recommended that the goal be changed to termination. Hayley Miles testified that available services had been exhausted and there were no other services available to address the issues in the home. She also cited credibility and honesty as a concern in returning the children to the home. In addition, the children's therapists testified that the children need consistency and unconditional support, and the therapists could not specify when the children could be ready to return to their mother's home.

DHS asserts that the circuit court tied together all the testimony about the impact on the children and their needs for boundaries, consistency, and trust in their parents in making its decision to change the goal. DHS concludes that, considering the needs of the children and the timeline of the case, there was sufficient evidence to change the goal to adoption following termination of parental rights, even with the heightened burden imposed by ICWA. DHS also notes that the parents had already been given additional time and that the case had been open for almost twenty-four months. And finally, DHS points out that Chassels has three other children with whom she had not reunited with prior to this case, and as the court indicated, past behavior is an indicator of future behavior.

Turning to the parties' best-interest arguments, DHS first incorporates the arguments it made in response to the "goal of the case" point above. It then explains that Collins's argument is dependent on this court finding error in the termination of Chassels's parental rights, but DHS contends that his argument is misplaced and that Collins has no standing to make such an argument. His argument relies on Chassels prevailing on appeal and the

permanency achieved by the children being returned to her, but the circuit court terminated the parental rights of both parents to clear the children for the permanency plan of adoption, and there was no indication that custody would be returned to Chassels.

DHS next addresses Chassels's reliance on *Mason* and argues that *Mason* is distinguishable. In that case, the circuit court cited instances of the father's poor parenting decisions as the only thing keeping him from his child, and this court considered each of those instances and held that they were isolated events that did not directly affect the child and therefore did not warrant termination of his parental rights. In the present case, DHS asserts, both children's therapists testified to the changes and therapeutic needs of the children following the failed trial home placement. Both children's therapists testified that there were mental and emotional consequences to the actions of the parents as demonstrated by the behaviors and regression of both children since the trial home placement ended.

In addition, this case shows a pattern of behavior in the parents, and this was not the first time the children had been in foster care due to drugs or alcohol, nor was this the first time Chassels faced permanent loss of parental rights to her children. The relationship between Chassels and Collins also reflected their instability: they had been together for fourteen years; had previously reconciled after problems with alcohol issues; had decided to get married after the first termination hearing in 2021 to show they were a unified family; and Chassels later filed for divorce—not immediately after the incident with Collins getting arrested once more for public intoxication and disorderly conduct, but after the trial home placement ended, two months passed, and DHS filed its second termination petition.

DHS also notes that while Chassels emphasizes that parents do not have to be perfect to retain their parental rights, she does not acknowledge the case law stating that 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. *Cobb v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 85, 512 S.W.3d 694. DHS infers that because Chassels has separated from Collins and remained sober during the pendency of the case, she believes she has remedied the problem that caused the children to be taken into DHS custody. But, DHS asserts, even if that were true, failure to remedy was not the only ground pled by DHS, and the circuit court also found evidence supporting the subsequent-factors ground. In paragraph 7 of the termination order, the court discusses events that occurred after the first termination hearing and lists its examples of the parties' instability. The court concludes that "[t]he instability in the nature of the family home is an additional factor that arose during the pendency of this case."

DHS contends that the parents have essentially requested more time to allow for additional family counseling with Chassels. But family counseling had already been implemented during the case and the parents did not use it as it was intended. There was no reason to believe additional time for this service that had already been provided would change the outcome of the case, and a child's need for permanency and stability may override a parent's request for additional time to improve her circumstances. *Williams v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 162. The circuit court heard the necessary testimony from an ICWA expert and made the requisite findings under the statute, and the parties do not argue otherwise. The court also took into account the history of the case and

the time spent by the children in DHS custody, and the court correctly noted that past behavior is the greatest predictor of future behavior. DHS contends that the parents are really requesting that this court reweigh the evidence and interpret it in their favor, but it is well settled that this court will not reweigh evidence on appeal. *Cole v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 481.

We hold that the circuit court did not clearly err in changing the goal of the case or in finding that the children's best interest would be served by terminating the parental rights of both parents. Of particular importance is the length of time—approximately two years—that the case had been open. The parties argue that the case should be reversed and the family given time to participate in further counseling. But the intent behind the termination-of-parental-rights statute is to provide permanency in a child's life when it is not possible to return the child to the family home because it is contrary to the child's health, safety, or welfare, and a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3). 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. *Cobb*, *supra*. Moreover, a child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. *Id.* In its order, the circuit court concluded,

> Over the lifespan of this case and the lifespan of these children, the parents' numerous relapses and instability have caused the children to be in foster care on numerous occasions. Given that past behavior is the greatest predictor of future behavior, the Court believes that the parents are incapable of effecting permanent change that will serve the best interest of the children.

We hold that the circuit court did not clearly err in this finding.

II. *Statutory Grounds*

Chassels first discusses the sole ground found by the circuit court, which is the failure to remedy/noncustodial ground.[5] Again, that ground requires a finding that

> the juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the home of the noncustodial parent for twelve months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that prevented the child from safely being placed in the parent's home, the conditions have not been remedied by the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B)(i)*(b)*. As a preliminary matter, she asserts that this statutory ground cannot apply to her because she was a custodial parent at the time DHS exercised custody of the children. She also contends that the children had not been "adjudicated" because the circuit court used the preponderance-of-the-evidence standard in its adjudication order instead of the clear-and-convincing-evidence standard required for ICWA cases. Finally, she argues that termination was not warranted under this ground because she remedied her issues and was ready to reunite with her children.

Chassels also addresses the other two grounds alleged in DHS's termination petition: subsequent factors and aggravated circumstances. The subsequent-factors ground requires a finding that

> other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the juvenile in the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent the placement of the juvenile in the custody of the parent.

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[5]The circuit court's order did not specify whether it was applying the custodial or noncustodial subsection of the failure-to-remedy ground, but because DHS pled the noncustodial subsection, we attribute that subsection to the court's ruling.

Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)*(a)*. The aggravated-circumstances ground, as pled in this case, requires a finding 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)(B)(i)*.

Chassels argues that all three grounds pled by DHS requires it to prove that some issue remains that prevents the placement of the children in the care of the parent. As explained above, the allegations in the termination petition and evidence at the hearing demonstrated that DHS believed termination of her parental rights was warranted due to concerns regarding her decision making. Chassels contends that for all the reasons discussed in the best-interest section above, it is clear that she had remedied the issues that prevented the placement of the children in her care as evidenced by her stable home, sufficient income, continued sobriety, participation in counseling, and decision to separate permanently from her husband. She also argues that the law requires that "there must be more than a mere prediction or expectation on the part of the trial court that reunification services will not result in successful reunification." *Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 254, 240 S.W.3d 626, 631 (2006). She claims that it was "purely speculative" that she could not safely parent her children on her own.

Collins argues that the circuit court clearly erred in terminating his parental rights on the failure-to-remedy ground because the children were not adjudicated dependent-neglected in accordance with Ark. Code Ann. § 9-27-325(h)(2)(B)(i), echoing Chassels's argument that the circuit court erroneously used the preponderance-of-the-evidence standard instead of the ICWA-required clear-and-convincing-evidence standard in its

adjudication order. He asserts that the circuit court could not later rely on the insufficient dependency-neglect finding to support the failure-to-remedy ground.

DHS first responds to the argument that the adjudication order is insufficient. DHS argues that neither parent appealed the adjudication order, so any argument that its findings are in error have been waived. Next, DHS discusses both parties' arguments that there was insufficient evidence of the statutory grounds for termination. As a preliminary matter, DHS does not agree that the failure-to-remedy/noncustodial ground is the only ground that the circuit court found had been proved by DHS. It states that the court did not specifically cite any grounds in its order, so we must turn to the words used as well as the facts presented to interpret which grounds were employed.

Collins only challenges the failure-to-remedy/noncustodial ground, and that challenge is based solely on the "defective" adjudication order. Chassels, on the other hand, argues that none of the grounds pled in the termination petition, as applied to her, had been proved. DHS asserts that the termination petition alleged two other grounds that apply to Chassels: subsequent factors and aggravated circumstances. In the termination order, the circuit court used words like "issue outstanding," "additional factor," and "demonstrated an inability." DHS argues that all of these phrases sound like a court referring to the subsequent-factors ground. The circuit court also concentrated on how long the children had been out of care, including the previous times in care, and found that the parents were incapable of effecting permanent change. DHS avers that this could be read as referring to little likelihood that continued services or additional time would result in a successful reunification.

DHS concludes that even if the circuit court did not explicitly make any of the necessary findings, this court has the ability to review the entire record and affirm on the grounds pled, because it is well established that this court may affirm a circuit court's order when it has reached the right result, although it may have announced a different reason. *See Brumley v. Ark. Dep't of Hum. Servs.*, 2015 Ark. 356 (affirming termination of parental rights based on a ground pled in the termination petition but not reached by the circuit court).

First, we agree that any argument based on an alleged deficiency in the adjudication order is waived because the order was not appealed by either party. *See Howell v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 154, 517 S.W.3d 431 (holding mother's argument that the adjudication order failed to apply the higher burden of proof required by ICWA and thus could not support the statutory ground for termination was waived because mother failed to appeal the adjudication order). And because Collins's challenge to the failure-to-remedy ground is based solely on the allegedly faulty adjudication order, we find no merit in his argument.

As to Chassels, she is correct that she was a custodial parent (in fact, both parents were custodial), so the twelve-month/failure-to-remedy (noncustodial) ground cannot be applied to her. However, in our de novo review, we may affirm the circuit court's termination if the ground was alleged in the termination petition and the ground was proved at the termination hearing. *Fenstermacher v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 88, 426 S.W.3d 483. In this case, we hold that the evidence presented at the hearing proved beyond a reasonable doubt the aggravated-circumstances ground. At the time of the termination hearing, four-year-old Minor Child 2 had spent two and a half years of his life

in foster care, and twelve-year-old Minor Child 1 had spent four and a half years of her life in foster care. In addition, the children could not be returned to either parent that day, and there was no indication if or when reunification would be possible. Noting the parents' "numerous relapses and instability," the circuit court found that "the parents are incapable of effecting permanent change that will serve the best interest of the children." We hold there is no clear error in the circuit court's decision.

Affirmed.

HIXSON and BROWN, JJ., agree.

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James & Streit, by: *Jonathan R. Streit*, for separate appellant Jeremy Collins.

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