

Cite as 2022 Ark. App. 520  
**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CV-22-289

NINA JOHNSON

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES AND MINOR CHILDREN

APPELLEES

Opinion Delivered December 14, 2022

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. 72]V-20-601]

HONORABLE STACEY ZIMMERMAN,  
JUDGE

AFFIRMED

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**MIKE MURPHY, Judge**

Nina Johnson appeals the decision of the Washington County Circuit Court terminating her parental rights to her two children. On appeal, she argues that grounds do not support termination of her parental rights and that termination is not in the children's best interest.<sup>1</sup> We affirm.

On September 22, 2020, the Arkansas Department of Human Services (DHS) filed a petition for ex parte emergency custody and dependency neglect in the Washington County Circuit Court after taking an emergency hold of Nina Johnson's children, MC1, who was almost seven years old, and MC2, who was almost three years old. In an affidavit attached to the emergency petition, a family service worker averred that DHS had received a report that

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<sup>1</sup>A companion case regarding MC3 is also being handed down today. *Johnson v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 513, \_\_\_ S.W.3d \_\_\_.

Johnson had tested positive for THC and amphetamines at the birth of the children's younger sibling, MC3. Johnson would not tell DHS where MC1 and MC2 were located. The court granted the petition. On December 4, 2020, MC1 and MC2 were adjudicated dependent-neglected on grounds of parental unfitness and neglect. The court specifically found Johnson had exposed MC3 to amphetamines and THC while pregnant with MC3, causing the child to suffer withdrawal. It further found that Johnson was homeless and unemployed. The goal was reunification.

Johnson was ordered, among other things, to cooperate with DHS; refrain from using illegal drugs; participate in substance-abuse counseling; submit to random drug screens; and obtain stable housing. At the April 2021 review hearing, Johnson was not in compliance with the case plan. The goal of the case was changed to adoption at the August 2021 permanency-planning hearing. The court found that Johnson had failed to successfully complete inpatient drug rehab or parenting classes, not submitted to drug screens, not maintained stable housing or contact with DHS, and failed to demonstrate the ability to protect the children. On November 12, 2021, DHS filed a petition to terminate Johnson's parental rights. A termination hearing via Zoom was held the following month.

At the termination hearing, the first witness was Kathleen Housley, Johnson's counselor. Housley testified that Johnson had made significant progress in therapy. They worked on parenting skills, building support systems, and addressing Johnson's sobriety. Housley said that Johnson is intelligent and capable of applying the skills she's developed in counseling, and Housley had no concerns about Johnson being around her children.

Johnson testified next. She testified that she only just secured housing the week before the termination hearing; prior to that she had lived with various coworkers. She stated that two of her children were in foster care in 2014 due to the presence of drugs in her system during pregnancy. She participated in services and regained custody of her children. She stated that she was arrested near the beginning of this current case and again in February 2021 for drug possession. Those charges were being handled through drug court; at the time of the termination hearing she still had ten months left in the drug-court program. Johnson explained why she decided to leave one of the rehabilitation programs she was in and further explained that she was enrolled in and had almost completed a different program through Harbor House. When asked who would watch her children while she worked if they were returned to her, she said that she had a friend from drug court who could babysit.

Nancy Raines, Johnson's drug-court supervisor, testified. Raines said that Johnson's random drug screens had been clean, she is diligent in following drug-court requirements, and she was participating in groups and counseling.

Hayley Miles, the social worker assigned to the case, testified that the children are adoptable. Miles said that Johnson's drug screens had been negative only since around May or June of 2021. She said that Johnson never completed the court-ordered residential treatment, had not completed parenting classes, and did not have stable housing or employment throughout the case and that it was DHS's recommendation that parental rights be terminated. Miles stated that DHS's overarching concern with Johnson was the continued pattern of substance abuse and choice in partners. This was the second time she has had

children placed in foster care. It was DHS's opinion that continued custody with Johnson would result in further harm or danger. DHS did not believe there were any additional or continued family services that would result in successful reunification.

At the conclusion of the hearing, the circuit court terminated Johnson's parental rights to MC1 and MC2 on the grounds of failure to remedy, Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2021); subsequent factors, Ark. Code Ann. § 9-27-341(b)(3)(B)(vii); and aggravated circumstances, Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A)–(B)(i). It further found that it was in the juveniles' best interest to terminate Johnson's parental rights because they are adoptable and due to the potential harm they would suffer if returned to Johnson's custody. Johnson now appeals the termination-of-parental-rights order.

An order forever terminating parental rights shall be based on a finding by clear and convincing evidence that it is in the best interest of the child, including consideration of the likelihood that the child will be adopted if the termination petition is granted and 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). The order must also find by clear and convincing evidence one or more grounds. Ark. Code Ann. § 9-27-341(b)(3)(B).

We review termination-of-parental-rights cases de novo. *Parnell v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 108, at 11–12, 538 S.W.3d 264, 272–73. The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is 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 resolving the clearly-erroneous question, we give due regard to the opportunity of the circuit court to judge the credibility of witnesses. *Camarillo-Cox v. Ark. Dep't of Hum. Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). On appellate review, this court gives a high degree of deference to the circuit court, which is in a far superior position to observe the parties before it. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Friend v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 606, 344 S.W.3d 670.

The purpose of the termination-of-parental-rights statute, Ark. Code Ann. § 9-27-341(a)(3), is to provide permanency in a child's life in all instances in which the return of the child to the family home is contrary to the child's health, safety, or welfare, and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. 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. *Shaffer v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 208, 489 S.W.3d 182.

On appeal, Johnson challenges both the grounds on which the court relied to terminate and the best-interest finding. One of the grounds on which Johnson's parental rights were terminated was the aggravated-circumstances ground, meaning there is little likelihood that services to Johnson will result in successful reunification. Ark. Code Ann. §

9-27-341(b)(3)(B)(ix)(a)(3)(B). The court found that that Johnson did not participate in the case to the point that she made sustainable, measurable progress. It based its conclusion on the fact that this was the second time her children had been in foster care due to Johnson's drug use, and this was the second time Johnson had participated in drug court (she was in the first drug-court program for over twenty-two months). Johnson only began testing negative on her drug screens halfway through the case and not until after she had picked up additional drug charges. She was facing housing insecurity until a week before the termination hearing. This is supported by the record and supports a finding of aggravated circumstances. See *Perry v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 193, 625 S.W.3d 374 (affirming termination under aggravated-circumstances ground due to appellant's failure to demonstrate housing stability and testing positive for drugs five months before the termination hearing). Accordingly, the court's aggravated-circumstances finding is supported by sufficient evidence.

Sufficient evidence also supports the circuit court's best-interest finding. The court may determine whether it is in a juvenile's best interest to terminate parental rights by considering the juvenile's adoptability and the potential harm caused by returning the juvenile to the parent. E.g., *Norton*, 2016 Ark. App. 43, at 5, 481 S.W.3d at 783. Neither of these two factors is an essential element of proof in a termination case; thus, neither factor need be established by clear and convincing evidence. E.g., *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, at 13-14, 554 S.W.3d 285, 294. Johnson does not argue that her

children are not adoptable; instead, she argues that there was no evidence of potential harm should the children be returned to her.

For potential harm, a circuit court is not required to identify actual harm, and potential harm must be viewed in a forward-looking manner and includes the harm a child may suffer from lack of stability in a permanent home. *E.g.*, *Perry*, 2021 Ark. App. 193, at 10, 625 S.W.3d at 381. Additionally, “[a] parent’s past behavior is often a good indicator of future behavior.” *Id.* at 10, 625 S.W.3d at 381. Here, there was sufficient evidence of potential harm because Johnson failed to maintain stable housing throughout the case and had a pattern of drug abuse and relapse. Johnson even acknowledges in her brief that her past actions may be viewed as an indication of future conduct. This was the second time her children had been in foster care, and Johnson continued to test positive on her drug screens until five months before the termination hearing.

The burden is on the parent to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court to retain reunification as the permanency goal. *McKinney v. Ark. Dep’t of Hum. Servs.*, 2017 Ark. App. 475, at 20, 527 S.W.3d 778, 790–91. The overriding intent of the legislature is to provide the state’s children with safe, permanent homes. *Id.* On this record, we cannot say that the circuit court was clearly erroneous in finding that the children would be at risk of potential harm if returned to Johnson. Accordingly, we affirm the circuit court’s best-interest finding.

Affirmed.

GRUBER and BARRETT, JJ., agree.

*Jennifer Oyler Olson*, 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.