

Cite as 2023 Ark. App. 83  
**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CV-22-502

ALEXANDRA FRANKLIN

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES AND MINOR CHILD

APPELLEES

Opinion Delivered February 15, 2023

APPEAL FROM THE SCOTT  
COUNTY CIRCUIT COURT  
[NO. 64]V-20-8]

HONORABLE TERRY SULLIVAN,  
JUDGE

AFFIRMED

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**MIKE MURPHY, Judge**

Appellant Alexandra Franklin appeals the May 17, 2022, order of the Scott County Circuit Court terminating her parental rights to her then almost thirteen-year-old son, MC. On appeal, she argues that none of the grounds pleaded support the termination of her parental rights and, second, that terminating her parental rights was not in MC's best interest. We affirm.

On April 13, 2020, the Arkansas Department of Human Services (DHS) exercised emergency custody of MC due to allegations of environmental neglect and inadequate supervision. MC was almost eleven at the time. Franklin and MC lived in a camper without running water. The camper was unsanitary, about ten by ten feet total. MC was wearing an adult diaper with nowhere to use the restroom. He smelled like feces and urine. The home was covered with cigarette ashes and "reeked of cigarette smoke." Franklin left MC alone in

this camper at night so she could go work the third shift at Tyson. MC was so covered with feces he required two showers at the police station and new clothes. MC was eventually adjudicated dependent-neglected by stipulation due to parental unfitness and environmental neglect. The goal of the case was reunification.

Over the next three review hearings, the court found that both DHS and Franklin were in compliance with the case plan. Franklin had obtained appropriate housing and employment. Trial home placement was provided as an option. Franklin was ordered to acquire transportation and childcare. By the third hearing, the only real continued barrier to placement appeared to be Franklin's job working the night shift; an intensive staffing was ordered, and Franklin's psychological evaluation was ordered to be presented at the next hearing. By the June 8, 2021, fifteen-month review hearing, however, Franklin was only in partial compliance.

Another review hearing was held on January 25, 2022. Franklin was found minimally compliant. She had not consistently attended therapy, no longer had employment, tested positive for methamphetamine, and lost track of where her son was during an unsupervised visit. Supervised visits were reinstated, but Franklin would arrive late and failed to be appropriate during the visits. DHS filed a petition to terminate Franklin's parental rights on January 26, and a hearing was held on that petition on April 28.

At that hearing the court heard the following testimony. Deborah Hall, the family service worker, testified first. She stated that the MC had been taken into custody because of the environmental concerns of the camper and the mother's work schedule. She testified

that Franklin quit attending therapy consistently due to being incarcerated. Franklin tested positive for methamphetamine in August and was arrested in February. Franklin was charged with possession of a controlled substance and possession of drug paraphernalia. Franklin currently is incarcerated with no home, car, or job. Hall said that any progress Franklin had made was lost, and there were no services available through DHS that would be of any benefit. She said that the harm in returning MC to Franklin would be that Franklin is doing drugs and has no home for MC to go to. Hall opined that MC is adoptable.

Franklin testified next. She stated she was currently incarcerated with drug-related charges. She said that she and MC had lived in a camper, and she worked night shift. She started using drugs once the case began. She told the court she has “learned her lesson.” She had lost her job due to being injured in a car accident and was working on getting a new job or unemployment benefits. She said that if she got MC back, they could go live at her friend’s house, and she could get her job back at Tyson.

At the conclusion of the hearing, the court terminated Franklin’s parental rights on the following grounds: Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (twelve months failure to remedy); § 9-27-341(b)(3)(B)(vii)(a) (subsequent factors); and § 9-27-341(b)(3)(B)(ix)(a) (aggravated circumstances). The court found that it was in MC’s best interest to terminate Franklin’s parental rights. It further found that MC is adoptable, and he would be subject to potential harm if Franklin’s parental rights were not terminated. Franklin appealed.

We review termination-of-parental-rights cases de novo. *Gonzalez v. Ark. Dep’t of Hum. Servs.*, 2018 Ark. App. 425, 555 S.W.3d 915. At least one statutory ground must exist in

addition to finding that it is in the child's best interest to terminate parental rights. *Rivera v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 405, 558 S.W.3d 876. These must be proved by clear and convincing evidence. *Id.* In making a best-interest determination, the circuit court is required to consider two factors: (1) the likelihood the child will be adopted and (2) the potential harm to the child if custody is returned to a parent. *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. *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.* Credibility determinations are left to the fact-finder. *Id.*

One of the grounds relied on by the circuit court in terminating Franklin's parental rights was the failure-to-remedy ground. That ground allows for termination when a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

Here, MC was adjudicated dependent-neglected for parental unfitness and environmental neglect. DHS offered services to Franklin, such as transportation, home visits, and random drug screens; and made several referrals for services, including parenting classes, a psychological evaluation, supervised visitation, foster care services, counseling, and case management. At one point, the court denied DHS's petition to terminate because Franklin

was making such measurable progress as to warrant extra time to reunify with her son. Despite these services and the extra time, at the time of the termination hearing, Franklin was still an unfit parent. The record indicates that she failed to maintain stable and appropriate housing, failed to maintain employment, used illegal drugs, failed to consistently attend therapy, refused to be available for random drug screens, and failed to develop a plan to obtain childcare. In the termination order, the circuit court found that any progress Franklin made had been lost, and she had regressed.

Franklin contends that the services offered by DHS were not meaningful. She contends that had DHS just offered her housing and childcare that the impediments to reunification would have been remedied. Franklin, however, has not challenged any of the circuit court's prior reasonable-efforts findings, and she failed to request any of the specific services that she now claims were necessary to remedy the cause of removal; she has waived any services argument on appeal. *Peterson v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 75, at 11, 595 S.W.3d 38, 44-45.

Franklin next argues that the court's decision regarding best interest is also unsupported. The termination of parental rights is a two-step process that requires the circuit court to find that the parent is unfit and that termination is in the best interest of the child. The best-interest determination must consider the likelihood that the child will be adopted and the potential harm caused by returning custody of the child to the parent. *Selsor v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 182, at 5-6, 516 S.W.3d 314, 317-18. The court does not have to determine that every factor considered be established by clear and convincing

evidence. *Id.* Instead, after considering all the factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *Id.*

Regarding adoptability, Franklin contends that there was no clear home identified that would be willing to adopt MC in light of his needs; however, the caseworker testified that MC is adoptable, and a caseworker's testimony that a child is adoptable is sufficient to support an adoptability finding. *Cole v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App, 121, 543 S.W.3d 540.

Concerning potential harm, Franklin openly acknowledged in her brief that MC could not return to her home the day of the termination hearing. At the hearing, she testified that she had hit "rock bottom" but was willing to do anything to reunite with MC. 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. *Rivera, supra*. Here, the court considered the potential harm to MC should he be returned to Franklin's custody, including the harm MC would suffer due Franklin's drug use and failure to provide stability through housing and income. *See generally Doucet v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 323, at 15-17, 603 S.W.3d 643, 651-52. Accordingly, the court's best-interest finding is supported by substantial evidence.

Affirmed.

KLAPPENBACH and BARRETT, JJ., agree.

*Jennifer Oyler Olson*, Arkansas Commission for Parent Counsel, for appellant.

*Demarcus D. Tave*, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

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