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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-22-801

APRIL BRADLEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered May 31, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
EIGHTH DIVISION
[NO. 60JV-21-257]

HONORABLE TJUANA BYRD
MANNING, JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

April Bradley appeals the Pulaski County Circuit Court’s order terminating her parental rights to her daughter, Minor Child (“MC” or “child”). The circuit court also terminated the parental rights of Paul Bradley, Sr., the child’s father. Paul did not appeal. April argues there was insufficient evidence of grounds for termination. Separately, she argues the evidence did not support the circuit court’s finding that termination was in the child’s best interest. We affirm.

These proceedings began in circuit court 19 April 2021, when the Arkansas Department of Human Services (“DHS”) filed a petition for ex parte emergency custody and dependency-neglect concerning MC, who was then five months old. DHS named April as MC’s mother and Paul as the father. An affidavit attached to the petition explained that DHS became involved after a caller to the Arkansas Child Abuse Hotline reported that

emergency medical services were contacted after Paul began to have visual hallucinations and made unsettling statements about April and the child.

DHS personnel responded with a home visit. The camper where the family was living was dirty and unsafe, but MC was not injured. April explained that Paul had been taken to a mental-health facility. The DHS worker instructed her to clean the home. When DHS returned a few days later, the camper was still dirty to the point of being unsafe. DHS workers noticed April pushing MC in a stroller beside a man who turned out to be Paul.

Both Paul and April admitted a history of drug use. April had used methamphetamine a few months earlier and had completed drug treatment for methamphetamine in the past. Paul's drugs of choice were THC and methamphetamine. Both parents denied current drug use. April passed her drug screen. Paul failed his: he tested positive for amphetamine and methamphetamine.

Paul explained the incident that led to the hotline call. He had "heard gunshots outside of his camper and when he looked, he saw a human head inside of a trash bag." He had gone to UAMS for a mental evaluation but left without being discharged. The DHS worker and her supervisor agreed MC was not safe. They informed Paul and April that they would be exercising a 72-hour hold. April took off running while pushing the child in a stroller. Eventually law enforcement found her and convinced her to turn MC over to DHS. This was 12 April 2021. MC was adjudicated dependent neglected because of neglect and parental unfitness after a June 8 hearing. A hair-shaft test on MC came back positive for amphetamines and methamphetamine. April had tested positive for methamphetamine on April 28. She explained that she "might have touched money that had

methamphetamine on it” at work. The circuit court heard testimony that April has other children in Indiana—two of whom had been removed from her care and adopted because of her methamphetamine use.

The circuit court’s dependency-neglect finding was based on MC’s positive test, Paul’s mental-health issues, and parental drug use. The court ordered Paul and April, in relevant part, to “obtain sobriety and remain drug free; maintain safe, stable and appropriate housing; and stable income.” The goal was reunification.

In early contacts with DHS, both parents admitted domestic-violence issues. These incidents continued. After a review hearing in October 2021, the circuit court noted that April had described a domestic dispute June 14 as “a misunderstanding.” Paul was convicted of domestic battery. April was the victim of another domestic battery, reduced to a misdemeanor, August 24. The court memorialized April’s testimony that she “does let [Paul] come home but also not; she wants him to get treatment.” April conceded it was not safe for MC to go home in that environment.

A second review order was entered after another domestic-violence incident in January 2022. This time, Paul had cut April. The court noted that April had said a few days before the hearing that she “would absolutely not be in a relationship [with Paul] going forward,” but “her answer is different in court today.” A DHS caseworker testified that MC could not be returned to either parent because it was unclear whether Paul would be in the home, whether April would remain in a relationship with him, and whether she could keep herself and the child safe from him.

MC's guardian ad litem filed a petition in June 2022 to terminate both Paul's and April's parental rights. The circuit court held a termination hearing over two days, 4 August and 2 September 2022. Paul did not attend. The domestic violence was a focus of the ad litem's argument for termination but not, it must be said, the only issue.

April had been ordered in July 2021 to maintain a stable income. By 4 August 2022, the first day of the termination hearing, she had not been employed in at least a year. She testified she had been living on what she earned doing odd jobs and what Paul gave her. She produced no other proof of income or employment, steady or otherwise.

The threat of eviction loomed throughout the case. DHS paid some \$4,500 to bring April current on rent through the termination hearing but had no plans to pay more. April owed some \$1,200 in back utilities by then. DHS had no plans to pay those either.

Pending criminal charges presented another threat of instability. Marine Loveless, a probation officer for Howard County, Indiana, testified that April has an active warrant there for felony escape. April was alleged to have absconded from pretrial monitoring by removing her ankle bracelet. She also faced felony charges for theft and methamphetamine possession. As far as Loveless knew, Indiana was seeking extradition.

Although April made progress toward sobriety since the case began, there were bumps in the road—and April had not yet reached the road's end. Hair-follicle tests from January and April 2022 were positive for methamphetamine. She refused to enter inpatient drug treatment. Seventeen months on, April had not completed outpatient treatment either.

Finally, there's Paul. He was served with the termination petition but did not appear at the hearing. He was somewhere in Indiana. But there was evidence April might welcome

him back. The two were still married. Between 10 January and 7 February 2022, when Paul was in jail for allegedly stabbing April, they spoke by phone about one hundred times. April did not testify against Paul in any of the criminal cases. She wasn't subpoenaed, she said. She never divorced him because she was "not going to file for divorce until [she's] ready to file for divorce." She wants Paul to be a part of the child's life. As the termination hearing began, April was more than six months pregnant with another child that might also be Paul's.

Termination of parental rights is "an extreme remedy and in derogation of the natural rights of the parents; but parental rights will not be enforced to the detriment or destruction of a child's health and well-being." *Weathers v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 142, at 9–10, 433 S.W.3d 271, 276–77. We review termination-of-parental-rights cases de novo. *Womack v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 168, at 5, 662 S.W.3d 737, 740. However, we review factual findings for clear error. *Id.* A finding is clearly erroneous, though there is evidence to support it, if on the entire evidence we are left with a definite and firm conviction that a mistake has been made. *Williams v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 622, at 3.

The circuit court must find by clear and convincing evidence that one or more statutory grounds for termination exists. Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2021). If there are grounds for termination, the 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 that 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). Even one ground is enough to affirm the termination. *E.g., Debiasse v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 331, at 6, 651 S.W.3d 736, 741.

Here, the circuit court found clear and convincing evidence of four grounds: (1) failure to remedy the cause of removal, (2) failure to remedy subsequent factors, (3) subjecting the child to aggravated circumstances, and (4) prior involuntary termination of parental rights. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a), (vi)(a), (ix)(a)(3) & (ix)(a)(4). The ad litem had pleaded all four grounds in the petition. The court found that April had not benefited from services in the five months since the last permanency-planning hearing, and there was “little likelihood that reunification can occur in a timeframe consistent with [MC’s] needs and perspective.” Further, the court found MC would be subjected to potential harm if returned to April because of a “potential risk of further instability, substance exposure or exposure to domestic violence The same issues persist today that brought the child into care.” The court referenced the length of time MC had been out of her parents’ custody, April’s slow progress in substance-abuse treatment, her unstable housing situation, and pending felony charges from Indiana. As a result, the court found April “at risk of arrest at any given time.” It highlighted concern about the domestic-violence situation and continuing contact with Paul.

The first termination ground was a finding that MC was out of April’s custody for twelve months and despite meaningful services by DHS, the conditions that caused the removal had not been remedied. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). April argues this ground does not apply because Paul’s drug use and mental-health struggles, not hers,

caused the child’s removal. See *Williams*, 2013 Ark. App. 662, at 4 (citing *Jackson v. Ark. Dep’t of Hum. Servs.*, 2013 Ark. App. 411, at 8, 429 S.W.3d 276, 280–81). Similarly, she argues that the housing-related concerns DHS cited initially were environmental issues she has corrected, not the instability that developed later.

We don’t think this strained reading of the “conditions that caused removal” is consistent with the law or the record in this case. The juvenile code refers to “dependent-neglected juveniles,” not “dependent-neglected parents.” *Albright v. Ark. Dep’t of Hum. Servs.*, 97 Ark. App. 277, 282, 248 S.W.3d 498, 502 (2007). Even full compliance with a case plan does not alone determine whether parental rights will be terminated; the core issue is whether the parent has become a stable, safe parent able to care for his or her child. *Fowler v. Ark. Dep’t of Hum. Servs.*, 2021 Ark. App. 307, at 10, 634 S.W.3d 535, 542.

Paul’s mental-health episode precipitated the call to DHS. But the circuit court cited drug use by both parents in the order adjudicating MC dependent-neglected. It did not specify which facts supported which grounds in the later termination order. And there was considerable overlap between the grounds on these facts. For example, in October 2019, an Indiana court terminated April’s parental rights in proceedings that began when she tested positive for methamphetamine before delivering twins. Her use of the same drug was an issue throughout this case. It makes little sense to dwell on whether it should be analyzed under section 341(b)(3) as a “condition” that caused MC’s removal, a “factor” that arose after DHS filed the petition, or something else; either way, it was a reason MC could not be returned to April’s custody in an acceptable time. The same might be said for her income instability, the pending Indiana charges, and her continued connection to Paul.

Paul remedied none of the conditions that led the court to terminate his parental rights. April's home could be a suitable place for MC to return only if Paul was not there. *See, e.g., Lee v. Ark. Dep't of Hum. Servs.*, 102 Ark. App. 337, 345, 285 S.W.3d 277, 282 (2008) (affirming termination of mother's parental rights where she indicated she would consider reconnecting with abusive father when he was released from incarceration in "no more than two years"). The circuit court did not believe April would keep him away. It found that her testimony "was not credible regarding her continued contact with [Paul], even after there was a no contact order issued," and that continuing contact with someone she acknowledged was dangerous "is a continuing safety concern." The record—which included phone calls between Paul and April recorded at the jail—more than supports those findings.

Finally, April challenges the circuit court's finding that terminating her parental rights was in MC's best interest.¹ She argues, incorporating her briefing on grounds for termination, that the ad litem did not prove that returning MC to her custody would risk potential harm. We acknowledge that April made progress in some areas. But the same evidence that supports grounds for termination can also demonstrate potential harm. *Black v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 518, at 8, 565 S.W.3d 518, 524. A parent's failure to sever a relationship with an abusive partner, in particular, is evidence of potential harm. *Ring v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 146, at 8, 620 S.W.3d. 551, 556. We are not persuaded the circuit court erred.

Affirmed.

¹She does not challenge the adoptability finding.

ABRAMSON and VIRDEN, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Janet Lawrence, attorney ad litem for minor child.