

Cite as 2023 Ark. App. 344  
**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CV-22-620

SARAH STEWART

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES AND MINOR CHILDREN

APPELLEES

Opinion Delivered May 31, 2023

APPEAL FROM THE CARROLL COUNTY  
CIRCUIT COURT, EASTERN DISTRICT  
[NO. 08EJV-20-67]

HONORABLE SCOTT JACKSON, JUDGE

AFFIRMED; MOTION TO WITHDRAW  
GRANTED

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**MIKE MURPHY, Judge**

Sarah Stewart appeals the Carroll County Circuit Court’s order terminating her parental rights to her three children. Stewart’s attorney seeks to be relieved as appellate counsel and has filed a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Arkansas Supreme Court Rule 6-9(j) (2022). We affirm and grant counsel’s motion to withdraw.

On November 1, 2020, the Arkansas Department of Human Services (DHS) placed an emergency hold on MC1 (age sixteen); MC2 and MC3 (both age eleven); and MC4 (age nine). In an affidavit attached to the emergency petition, a family service worker averred that DHS became involved with the minor children’s parent, Stewart, after the children made allegations of physical abuse and informed an officer with the Berryville Police Department that they were afraid to go home.

On November 5, the circuit court granted the petition for emergency custody and subsequently found probable cause to continue the children's custody with DHS. DHS was ordered to arrange appropriate visitation, develop a case plan, and provide services. On January 7, 2021, the court found the children to be dependent-neglected, specifically due to neglect based on "environmental neglect, observed injuries and open investigations." The children remained in the custody of DHS, and the goal of the case was reunification with a fit parent.

A review hearing was held on February 4, and Stewart was found to be noncompliant with the case plan and court orders. The children remained in the custody of DHS, and the goal of the case remained reunification. At a review hearing on May 20, Stewart was found to be minimally compliant. While she attended visitation, participated in parenting classes, and submitted to her psychological evaluation, she had not made any progress on the condition of her home and continued to "deny the abuse of the children that led to them being brought into care."

DHS and the attorney ad litem filed a joint termination-of-parental-rights petition on April 6, 2022. The petition sought termination only for MC2, MC3, and MC4. (MC1 had already turned eighteen.) The petition pleaded the following grounds: twelve months failure to remedy; twelve months failure to provide significant support or maintain meaningful contact; subsequent factors; and aggravated circumstances, specifically that there was little likelihood that continued services would result in reunification.

At the termination hearing on June 24, Carissa Stalnaker, the counselor for MC2 and MC4, testified she saw both children weekly but was currently transitioning them to a new counselor. MC2's diagnosis was posttraumatic stress disorder, and while she saw improvement

in some areas, there remained difficulties in other areas. MC4 was diagnosed with other specified trauma and stress disorder and specified anxiety disorder. MC4 also improved in some areas and regressed in other areas. Stalnaker recommended MC2 and MC4 continue in therapy and that it was in their best interest to obtain permanency because the instability was preventing them from working on their past trauma. Stalnaker testified that she had a one-hour session with Stewart ten days prior to gauge the appropriateness of family therapy but that she determined it would not be appropriate because Stewart had not acknowledged “all the traumas and harms that have been reported” by the children.

The next witness was Stewart’s therapist, Robert Park. He testified that he opened a chart on Stewart two months prior, and in that time, he saw her for two assessments and six individual sessions. Stewart was diagnosed with other specified stress disorder and early remission of methamphetamine-use disorder. Park testified that Stewart was beginning to process the issues that led to the case opening and that he found her to be “very forthcoming” and “truthful,” despite her denial of the abuse allegations. It was his opinion that there were factors that would “potentially mitigate” any future relapses by Stewart. Most of the sessions focused on processing current stressors, and Park recommended further therapy along with outside support in order for Stewart to maintain her sobriety.

Stewart was the next witness. She acknowledged MC3’s allegation that she was sexually abused by Stewart’s boyfriend, Rick Anderson, at the time of the removal. Stewart believed MC3 made up the allegations, and if Anderson had abused MC3, MC3 would have told her. As to the allegations of physical abuse, Stewart believed she and Anderson did not abuse the children but only disciplined them. Stewart testified that she remained in a relationship with Anderson

until his death in May 2021. Stewart admitted there was a prior DHS case due to issues with the cleanliness of the home she shared with Anderson. She testified that she lost the home where she and the children were living at the time of removal in a foreclosure action. She moved in with a friend, who was recently incarcerated on drug-related charges, because she could not find affordable housing. Stewart admitted using methamphetamine since the case opened but stated she had last used in March. She obtained the drugs through contacts of her ex-boyfriend, Gary Requa, who was currently incarcerated. She met Requa through Anderson, and they began to live together in June 2021.

Elizabeth Hayes, the family social worker, was the final witness and testified to the following. DHS requested that Stewart complete therapy, counseling, homemaker services, a psychological evaluation, and parenting classes. After Stewart began to test positive for methamphetamine, DHS requested she complete a drug-and-alcohol assessment. After the children disclosed sexual abuse, they were placed in counseling. Stewart's psychological evaluation recommended therapy, and the initial referral was made in January 2021, but despite attempts by DHS to have Stewart attend counseling, there was no compliance until April 2022. The drug-and-alcohol assessment was completed in April 2022, and Stewart had received no treatment other than when her past drug use was discussed during her therapy sessions with Park. Stewart's last positive drug screen was on March 15. Homemaker services were provided at the beginning of the case to assist Stewart in developing the skills and a plan to maintain her home and keep it clean, but Hayes had not seen any improvement. Hayes had concerns that the interactions during supervised visits lacked parental direction, and the children felt it was their responsibility to care for and parent Stewart. Overall, Hayes did not believe the issues that caused

the case to open had been remedied. She also believed that there was little likelihood that ongoing services would result in successful reunification because the issues that caused this case to open were similar to Stewart's prior DHS case from 2014–2015. Hayes felt that the children are adoptable and did not believe that there were any barriers to adoption.

At the conclusion of the hearing, the court issued its decision granting DHS's petition on the grounds of failure to remedy, twelve months failure to provide significant support or maintain meaningful contact, subsequent factors, and aggravated circumstances.

As previously stated, Stewart's attorney has filed a motion to withdraw, arguing that the appeal has no merit. Counsel's motion is accompanied by a brief that lists all rulings adverse to her client and explains why each ruling does not present a meritorious ground for reversal. The clerk of this court mailed copies of the brief and motion to Stewart at her last known address, informing her of her right to file pro se points for reversal. She has not done so.

The first adverse ruling discussed by Stewart's attorney is the circuit court's termination decision. This court reviews termination-of-parental-rights cases de novo. *Lloyd v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 461, at 7, 655 S.W.3d 534, 540. Termination requires a finding of at least one statutory ground and a finding that termination is in the child's best interest. *Id.* at 8, 655 S.W.3d at 540. Arkansas Code Annotated section 9-27-341(b)(3) (Supp. 2021) requires that a circuit court's order terminating parental rights be based on clear and convincing evidence. *Lloyd*, 2022 Ark. App. 461, at 8, 655 S.W.3d at 540. Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Baker v. Ark. Dep't of Hum. Servs.*, 340 Ark. 42, 48, 8 S.W.3d 499, 503 (2000). When the burden of proving a disputed fact is by clear and convincing evidence, the

question that must be answered on appeal is whether the circuit court's finding was clearly erroneous. *Payne v. Ark. Dep't of Hum. Servs.*, 2013 Ark. 284, at 3. 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.* This court gives a high level of deference to the circuit court because it is in a far superior position to observe the parties before it and to judge the credibility of the witnesses and the weight of the evidence. *Id.*

Stewart's counsel argues that there is no merit to an appeal of the circuit court's aggravated-circumstances finding. This finding was premised on the fact that there was little likelihood that services would result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A), (B)(i). Stewart's counsel argues that the evidence shows Stewart had not made material progress after eighteen months of services from DHS. She argues that at the time of the termination hearing, Stewart did not have a home, and there was no clear time frame for when she would obtain one that was appropriate and that even before she lost her home, the environmental issues continued despite homemaker services provided by DHS. Further, she explains that approximately eight months after the case opened, Stewart began to use methamphetamine. At the time of the termination hearing, Stewart had only three months of negative screens, including two that were "no shows." As to the abuse, counsel noted that Stewart continued to deny that either she or Anderson abused the children. Stewart completed parenting classes but could not demonstrate any skills she learned, and issues continued during visitations.

On this record, the circuit court did not clearly err in finding that Stewart subjected the children to aggravated circumstances because there was little likelihood that services would result in successful reunification. See *Reyes-Ramos v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 46, 571

S.W.3d 32 (affirming little-likelihood finding where the parent's lack of acknowledgement of physical abuse of the child demonstrated that she had not benefited from the services set out in the case plan); *Smith v. Ark. Dep't of Hum. Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007) (affirming little-likelihood finding for lack of significant progress where father's drug use persisted throughout the case, he did not follow treatment recommendations, and he remained unemployed). Accordingly, we hold that there is no merit to an appeal of this finding.

Stewart's attorney also argues that there is no merit to an appeal of the circuit court's best-interest finding. When making the best-interest finding, a circuit court must consider (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. *Migues v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 439, at 10, 586 S.W.3d 221, 227-28.

Stewart's counsel points out that Hayes testified that the children are adoptable, which this court has held supports an adoptability finding by the circuit court. *Cole v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 121, at 6-7, 543 S.W.3d 540, 544. Stewart's counsel also contends that the evidence demonstrates that the children would be subjected to potential harm if returned to Stewart because she failed to make any improvement in her ability to protect the children as she continued to deny both the physical abuse that led to the case being opened and the subsequent sexual-abuse allegations. She also failed to correct the initial environmental issues with her home, and at the time of the termination hearing, she did not have a stable home at all. After the case opened, Stewart began to use methamphetamine, and she had, at most, three months of sobriety at the time of the termination hearing. This evidence, taken as a whole,

supports the circuit court's conclusion that the children would be at a risk of harm if returned to Stewart's custody. See *Johnson v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 313, at 11, 603 S.W.3d 630, 636 (holding evidence of a parent's continued drug use or failure to comply with court orders constitutes sufficient evidence of potential harm); *Selsor v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 182, at 6, 516 S.W.3d 314, 318 (holding that the lack of an appropriate home is potential harm because "a stable home is one of a child's most basic needs"). The circuit court's finding that termination of Stewart's parental rights was in the children's best interest was not clearly erroneous and presents no nonfrivolous basis for an appeal.

Counsel identifies three other rulings that were potentially adverse to Stewart. The first objection by Stewart came after a question by the attorney ad litem as to what the children disclosed in therapy. Although the court did not issue a specific ruling on the objection, it agreed that the question did "call for what they said," and the question was not answered, and the testimony continued. This does not constitute an adverse ruling.

The second objection was to the relevancy of a question concerning a prior case involving Stewart in 2014 that opened due to allegations of physical abuse and environmental neglect. The court overruled Stewart's objection, finding the evidence to be relevant. A circuit court is free to consider a parent's actions in previous dependency proceedings in determining the appropriateness of termination. *Wheeler v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 453, at 11, 607 S.W.3d 536, 543. Further, as discussed above, DHS proved the aggravated-circumstances ground. Even if this ruling was sustained, it would not have changed the outcome of the hearing because the prior case was only a small part of the court's decision to terminate parental rights.

Finally, the only other ruling that could be construed as adverse was when Stewart requested a chance to complete the case plan and have her children placed in her custody. By terminating Stewart's parental rights, the circuit court denied her request for more time. It was not reversible error for the circuit court to deny this request because DHS proved that termination was in the children's best interest and supported by at least one ground for termination as detailed in the above sections. A child's need for permanency and stability may override a parent's request for more time to improve the parent's circumstances. *Shaffer v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 208, at 6, 489 S.W.3d 182, 185.

From our review of the entire record and the brief presented by Stewart's counsel, we conclude that any appeal would be wholly frivolous in this case. Therefore, we affirm the order terminating Stewart's parental rights and grant her counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HIXSON and BROWN, JJ., agree.

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

One brief only.