

Cite as 2023 Ark. App. 470  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CV-22-543

STACI ELLIS

APPELLANT

V.

JAMES SMITH AND NANCY SMITH  
APPELLEES

Opinion Delivered October 25, 2023

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. 26PR-20-232]

HONORABLE LYNN WILLIAMS,  
JUDGE

AFFIRMED

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**BART F. VIRDEN, Judge**

Staci Ellis appeals the Garland County Circuit Court order granting the petition of Nancy Carolyn (Carolyn) and James (Jim) Smith to adopt Minor Child (MC). We affirm.

*I. Relevant Facts*

On April 29, 2020, Carolyn and Jim Smith filed a petition for adoption of their great-granddaughter, MC (born 10/22/14). At the time of filing, both Jim and Nancy were seventy-seven years old. The petitioners asserted that they were granted legal custody on December 2, 2016, shortly after MC's mother, Sabrina Smith, died, and on February 27, 2017, the Smiths were granted a permanent guardianship. The Smiths had been MC's daily

caregivers the majority of MC's life, and they believed that adoption would serve MC's best interest.<sup>1</sup>

On June 3, 2020, Staci Ellis, MC's grandmother, contested the Smiths' petition for adoption. Staci was formerly married to the Smiths' son, Danny, and Sabrina was their daughter.

On March 29, 2022, the home study on the Smiths was filed. The licensed clinical social worker (LCSW) who conducted the study, Libby Slatton, recommended MC remain in the Smiths' custody and opined that changing custody could be traumatizing to her. Slatton stated that "[b]ased upon information received, observation and interview, they would be great candidates to move forward with the adoption process and give [MC] permanency."

The court held the adoption hearing from April 21 to 23. The Smiths testified that they had been married since 1962, and both were retired. Jim testified that MC attends Lakeside Elementary School and was doing very well academically and socially. Jim recounted that he and Carolyn began taking care of MC when she was two or three months old while Sabrina worked. Since Sabrina died, MC has been with them all the time, and they have a loving, close relationship. Jim stated that they want to adopt MC because "she needs some affirmation officially that we love her and that we care for her, and we want to have her as

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<sup>1</sup>The person named as the father on MC's birth certificate, Joseph Golden, consented to the adoption. DNA testing confirmed that Golden was not MC's biological father. The Putative Father Registry showed no claims of paternity regarding MC, and parental consent to adoption is not an issue in this case.

our child.” Both Jim and Carolyn testified extensively about the many family activities with MC, and the Smiths presented a large stack of photographs of the holidays and outings the family had enjoyed since MC was born. Jim and Carolyn stated that their age of seventy-seven does not affect their ability to parent MC, and they are very physically active. Jim has diabetes, hypertension, anxiety, a history of skin cancer, and high cholesterol but takes medication, and his conditions are well controlled. Jim does not smoke but uses smokeless tobacco. The Smiths earn about \$10,000 a month from Social Security and retirement. Additionally, MC receives a survivor’s benefit check for \$710 a month that the Smiths use to provide for MC. The Smiths stated that they understand that if their adoption petition is granted, it will legally terminate the relationship between Staci and MC; however, they testified that they want MC’s relationship with Staci to continue. MC travels to Washington to see the Ellises every other spring break and four weeks in the summer; and on alternating years, she goes to Washington for Thanksgiving or Christmas. Staci is entitled to Arkansas visitation if she gives the Smiths two weeks’ notice, which she exercises. The Smiths explained that MC cries every time she is told she is going to Washington and worries about it from the time she is told until the time she leaves. Jim explained that MC seems depressed and quiet before leaving but returns from visitation in a good mood, though she “shakes for a couple of days” afterward. The Smiths stated that MC told them that Staci bad mouths members of the Smith family and told her that Sabrina’s ex-boyfriend got angry and shot Sabrina. MC also told the Smiths that Staci and her husband, Russ, “fight with words” and curse. The Smiths testified that if their petition was granted, they intended to transition to

a three-day visitation in Arkansas, and then, if things went well, MC could resume traveling to Washington for visits. The Smiths explained that during the pandemic, they restricted access to MC and would not let anyone (including Staci) get within six feet of MC until he or she had received the COVID-19 vaccine. Carolyn testified that if something were to happen to her and Jim, they have a plan for their sons and their wives to take over MC's care. Jim explained that he did not want to adopt MC so that she could draw his Social Security if he died, but that would be a benefit of adoption.

Ryan Killackey, MC's therapist, testified that he began treating MC when she was three or four years old to help her and the Smiths work through the trauma of Sabrina's death and find some stability. Killackey explained that he did not go into detail about Sabrina's death with MC because a child of three or four would not understand, and the details would cause anxiety and fear. Killackey stated that he noticed a lot of anxiety, fear, worry, and panic before and after MC's visitation in Washington, and she still experiences those emotions, though it was worse when she was younger. Killackey stated that he works with MC on breathing techniques and keeping a positive mindset to regulate her anxiety, and he had worked with the Smiths to help them address MC's anxiety and give her a safe, loving environment. Killackey said that the Smiths have exceeded that goal.

Savannah, Sabrina's sister, testified that growing up, life with their mother was chaotic, violent, and toxic, and Staci had kept her from having a relationship with the Smiths when she was a child. Currently, Savannah has no contact with Staci because Savannah considers her mother to be toxic and very manipulative. Savannah testified that Staci had

joked about MC's weight, and she is impatient and short tempered. Savannah stated that Sabrina, Staci, and Russ fought in front of MC when Sabrina was still alive, and MC "shrinks" around Staci. In contrast, Savannah testified that the Smiths are

loving, healthy. I've never even seen my grandparents fight. I've never seen them raise their voices. They have rules and very loving home. There's nothing bad I can say at all but it's just a house full of love is all I can say and [MC] is very, very happy there.

Savannah and other witnesses testified that the Smiths are very active and in great health.

Staci testified about her relationship with MC and Sabrina before Sabrina's death. She stated that they often met up during holidays and for visits, both in Hot Springs and Washington. Staci testified that sometimes when she comes to pick up MC for a visit, MC might cry initially, but by the time they reach the end of the driveway, she is excited for her "GeeMaw adventure." Through Staci, MC has a large extended family of cousins, aunts, and uncles, and together they do a lot of activities around the Washington and California area—the zoo, playgrounds, the aquarium, Puget Sound, hiking, sports tournaments, and the children's museum to name a few. Staci testified that when COVID-19 hit in 2020, the Smiths refused visitation from March to September, and beginning in September, they allowed visitation but enforced strict social-distancing rules, including outdoor visits only, staying six feet apart, and not allowing hugging. In December 2020, "things kind of changed." The Smiths hosted Staci and Russ in their lake house, but for social-distancing purposes, the Smiths placed blue tape on the floor, and MC was not allowed to cross it. By June 2021, the Washington visits had resumed, and Staci testified that she and MC have a loving, bonded relationship, and MC likes to come to Washington; however, Staci believes

that if the Smiths' adoption petition was granted, they would never let her or her family see MC again, and MC would suffer because of that. Staci and Russ denied cursing and fighting in front of MC. Witnesses testified that they had never seen the Ellises fight or curse and that they are loving and have a wonderful relationship with MC.

In her posttrial brief, Staci asserted that there was no need to grant the Smiths' petition because the Smiths have a permanent guardianship over MC, and adoption would serve no purpose except to terminate Staci's relationship with her granddaughter. Moreover, Staci asserted that in foster-care cases, parents are not allowed to adopt if they are forty-five years older than the child, and that rule should be applied here because of the Smiths' advanced age and potential health problems.

The circuit court entered the decree of adoption on May 17, 2022, finding that it was in MC's best interest to grant the Smiths' petition. The court found that the Smiths are healthy and vibrant, and there is a plan for MC's care if they should pass away before she is eighteen years old. The court determined that MC is healthy and flourishing with the Smiths, and the Smiths wish for visitation with Staci to continue. Staci timely filed her notice of appeal, and this appeal followed.

## II. *Discussion*

On appeal, Staci argues that the circuit court erred in determining that MC's best interest was served by granting the petition for adoption, effectively severing the legal relationship between her and MC. We affirm.

To grant an adoption petition, the circuit court must find that (1) the biological parent consents or consent is excused, and (2) the adoption is the best interest of the child. Ark. Code Ann. § 9-9-214(c) (Repl. 2020). In determining best interest, courts consider all the evidence, including the child's relationship with family members whose rights the adoption would terminate. *See Ballard v. Howard*, 2018 Ark. App. 479, at 6, 560 S.W.3d 800, 803.

We review the evidence de novo. *Kohler v. Cronney*, 2020 Ark. App. 289, 602 S.W.3d 123. We will not reverse a circuit court's decision regarding the best interest of a child to be adopted unless it is clearly against the preponderance of the evidence, giving due regard to the opportunity and superior position of the circuit court to judge the credibility of the witnesses. *Id.* We give great weight to a circuit court's personal observations when the welfare of young children is involved. *Id.*

On appeal, Staci asserts that the Ellises are an extensive and loving family and an integral part of MC's life. She contends that severing the legal relationship between her and MC is unnecessary to achieve permanency because the Smiths already have a guardianship over MC. Moreover, she argues that, in light of the Smiths' advanced age and potential health problems, the circuit court erred by allowing them to adopt MC.<sup>2</sup> Staci's argument is not well taken.

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<sup>2</sup>Staci also contends that "it is against public policy to allow an adoption with the intent to fleece the already struggling taxpayer social welfare programs in anticipation of death." Staci's argument is undeveloped, and unsupported by any authority; thus, it is not preserved for appeal. *See Alexander v. McEwen*, 367 Ark. 241, 239 S.W.3d 519 (2006).

Our case law supports the circuit court’s decision. In *Newkirk v. Hankins*, 2016 Ark. App. 186, 486 S.W3d 827, the father propounded the same argument that Staci presents now: adoption is not necessary for permanency because the petitioners are the legal guardians, and the guardianship should continue so that his legal relationship with the child could continue. This court rejected the father’s argument, holding that “[a]ppellant is essentially asking this court to do what the circuit court rightfully would not do—to place his and his relatives’ Want of a relationship with [MC] over [MC’s] need for a stable and permanent home.” *Id.* at 17, 486 S.W3d at 837. In *Arnold v. Przytarski*, 2021 Ark. App. 440, 638 S.W.3d 293, a stepparent adoption case, we rejected a similar challenge by a biological father who argued that adoption would not be in the child’s best interest because it would terminate the long-term relationship between the child and his paternal grandparents. This court held that “it is for the circuit court to weigh the benefits flowing to children from the granting of an adoption, as opposed to disadvantages which may result from the severing of ties between grandparents and grandchildren.” The same is true here, and the circuit court correctly considered the benefit of permanency and stability over the potential disadvantages of severing the legal relationship between Staci and MC. Staci attempts to factually distinguish the above cases; however, the tenet that the circuit court prioritizes the benefit flowing to the child from adoption holds true despite the factual differences.

We find no error in the circuit court’s best-interest finding. The court heard testimony that the Smiths are loving great-grandparents who have been a stable and consistent part of MC’s daily life for over four years. The Smiths took on a parental role

when Sabrina died, and they have filled that role in every way. They have encouraged contact with the Ellis family and have denied contact only during the COVID pandemic before MC was vaccinated. Additionally, the Smiths have stated that they believe some members of the Ellis family have displayed inappropriate behavior in front of MC, which upset her; however, the Smiths only want to limit, not end, contact with the Ellises until the issues are resolved. There was ample testimony that the Smiths provide a calm, loving environment and put MC's needs above their own feelings and the desires of others when safety is an issue. The circuit court acknowledged that the Smiths are not young, but they are active and attentive, and they have a plan in place if they should pass away before MC turns eighteen. The members of both the Smith family and Staci's family who are geographically near the Smiths are supportive, loving, and have a strong relationship with MC. MC's therapist supported the Smiths' adoption petition, and the LCSW who conducted the home study found that the Smiths had made an appropriate and loving home for MC. There was evidence that the relationship between MC and the Ellises was both loving and joyful and, at times, fraught with inappropriate behavior; however, that is not the focus of the petition for adoption. As stated above, this court gives great weight to the circuit court's ability to judge the credibility of the witnesses and will not reweigh the evidence. *Hollis v. Hollis*, 2015 Ark. App. 441, 468 S.W.3d 316. We affirm the circuit court's order in which it gives MC's stability and permanency priority over a legal relationship with her maternal grandmother.

Affirmed.

ABRAMSON and HIXSON, JJ., agree.

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