

Cite as 2023 Ark. App. 494
ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-23-173

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| NICOLE SPEARS AND SHANE SPEARS APPELLANTS | Opinion Delivered November 1, 2023 |
| V. | APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. 66FJV-21-251] |
| ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILD | HONORABLE SHANNON L. BLATT, JUDGE |
| APPELLEES | AFFIRMED |

N. MARK KLAPPENBACH, Judge

Nicole and Shane Spears appeal from the order of the Sebastian County Circuit Court terminating their parental rights to their five-year-old minor child (MC). Nicole and Shane have filed separate briefs on appeal challenging the grounds supporting termination and the circuit court’s finding that termination is in MC’s best interest. We affirm.

The Arkansas Department of Human Services (DHS) became involved with the family in July 2021 after it was reported to police that MC had gone to neighboring apartments asking for food, and Shane had allegedly “grabbed her up and dragged her back” to their apartment. The family’s home was found to be in disarray with food smashed into the floor and a marijuana pipe and Nicole’s insulin needles on the floor. Nicole had open sores on her face and legs, and MC was in dirty clothes. Both Nicole and Shane tested

positive for THC, amphetamines, and methamphetamine. MC had previously been in foster care from October 2017 until February 2018 after being removed due to domestic violence and alcohol abuse in the home.

MC was adjudicated dependent-neglected due to parental unfitness. The court set the goal of the case as reunification with the concurrent goal of adoption. When the case was reviewed in December 2021, the parents were found to be only minimally compliant with the case plan and court orders because they were not in counseling, had not completed domestic-violence classes, and had housing issues, including that the electricity had been turned off. When the case was reviewed again in March 2022, the parents were still only partially compliant due to their failure to regularly attend parenting classes and domestic-violence classes and the fact that they had unstable income and both had legal issues.

At the June 2022 permanency-planning hearing, the court kept the goal of reunification because some progress had been made. Nicole and Shane had housing, income, and transportation. They had completed some classes, and the court found that they needed to demonstrate the skills learned therein. The court also ordered Nicole to provide proof from her doctor that her diabetes is under control. Following a review hearing in September 2022, the court changed the primary goal to adoption upon finding that the parents were not compliant. Specifically, they did not have appropriate housing, they had legal issues, and they had not completed all services. The court ordered both parents to submit to a hair-follicle test and ordered that if they did not submit to the test, it would be

considered positive. The court also prohibited the parents from modifying their hair in advance of the test.

The termination hearing was held December 5, 2022. The evidence established that by this time, the parents had completed anger-management counseling, domestic-violence counseling, psychological evaluations, drug-and-alcohol assessments, and parenting classes. There was conflicting evidence regarding their compliance with individual counseling. While both parents had medical marijuana cards and tested positive for marijuana throughout the case, they did not test positive for other nonprescribed drugs. There had been instances of refused drug screens, however. Both acknowledged that they had failed to produce receipts for their medical marijuana as ordered. They also violated the court's orders regarding their hair-follicle tests: Nicole dyed her hair in advance of the test, and Shane did not appear for his test. Shane testified that he did not have hair long enough to test despite not trimming it. The circuit court questioned Nicole about a note from a November medical record stating that a urine test was positive for amphetamines, but Nicole denied knowing about this and denied using amphetamines.

Despite their completion of most of the case plan, caseworker Melissa Kaupp testified that the parents were not in a better position to take back custody of MC. Kaupp testified that for the majority of the case, there had been environmental concerns with the parents' housing. She said that the parents previously had supervised visits in their home, but those were stopped due to environmental safety concerns in the home. Kaupp had visited their home about two weeks before the termination hearing and had seen insulin needles lying

around, spoiled food, open beer cans, what appeared to be marijuana residue, and minimal food. She also said that there was not an appropriate bed for MC. Kaupp said that while the condition of the home was “not necessarily the worst,” she did not believe it would be safe for an active five-year-old. CASA volunteer John Mundy confirmed the condition of the home when he visited November 23 and took pictures, which were admitted into evidence. In addition to old food and drink cans left about, he saw cigarette butts on the floor, a marijuana pipe on the couch, an insulin-injection pen left out, no linens on the beds, and unvacuumed carpet. Mundy said that the condition of the home had “mainly stayed the same” throughout the case.

Shane testified that Nicole’s physical impairments limited her ability to keep the two-bedroom apartment clean, and it has “taken a toll” on him to clean the home after work. Nicole had her foot amputated a few months before MC’s removal, and she suffers from cerebral palsy. A month before the termination hearing, she called an ambulance for the sixth time due to issues with her blood-sugar level and was hospitalized for five days. She testified that she had since gotten an insulin pump that keeps track of her sugar levels and was helping her better manage her diabetes. Nicole had failed, however, to provide proof from her doctor that her diabetes is under control as ordered by the court. She did not work but received disability income. Shane testified that Nicole may not be able to do the dishes, but she could cook and get MC bathed, dressed, and fed. Nicole and Shane testified that the home was cleaner now than when Kaupp and Mundy last visited.

To help address the environmental concerns with the home, the family had been referred to the organization 100 Families to receive homemaker services. There was no evidence as to when this referral was first made, but no services had yet been provided. Shane testified that they had to wait on two assessments and Medicaid approval and that the provider had to cancel an appointment in October. Nicole testified that she had to make two phone calls to set up an appointment, that she “passed” her two meetings with the organization, and that she had an appointment two days after the termination hearing for them to help her clean. Mundy testified that after Nicole initially contacted the organization, the organization had been unable to contact her and was going to “drop” the family. Mundy then gave Nicole the number to call again in November. Nicole felt that with the help of 100 Families and more time, she could resolve the issues in the home.

The circuit court terminated both parents’ parental rights on the basis of each ground alleged in DHS’s petition: failure to remedy, subsequent factors, and aggravated circumstances. The court also found that termination was in MC’s best interest.

A circuit court’s order terminating parental rights must be based on findings proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2023). Clear and convincing evidence is defined as that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Long v. Ark. Dep’t of Hum. Servs.*, 2023 Ark. App. 372, ___ S.W.3d ___. On appeal, the appellate court reviews termination-of-parental-rights cases de novo but will not reverse the circuit court’s ruling unless its findings are 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 determining whether a finding is clearly erroneous, an appellate court gives due deference to the opportunity of the circuit court to judge the credibility of witnesses. *Id.*

In order to terminate parental rights, a circuit court must find by clear and convincing evidence that termination is in the best interest of the juvenile, taking into consideration (1) the likelihood that the juvenile 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). The order terminating parental rights must also be based on a showing by clear and convincing evidence as to one or more of the grounds for termination listed in section 9-27-341(b)(3)(B).

To prevail on the failure-to-remedy ground, DHS must demonstrate that (1) the child was adjudicated dependent-neglected; (2) the child remained out of the custody of the parent for twelve months; (3) the parent failed to remedy the cause of the removal; and (4) this failure occurred despite a “meaningful effort” by DHS to rehabilitate the parent and correct the conditions that caused the removal. Ark. Code Ann. § 9-27-341(b)(3)(B)(i).

Both Shane and Nicole argue that there is insufficient evidence to support this ground because they complied with the case plan, there was no evidence of illegal drug use or domestic violence, and Nicole had addressed her medical issues. They acknowledge that DHS’s primary concern was the condition of their home, but they claim that DHS failed to

provide the necessary services to address this issue. They argue that although DHS made a referral to 100 Families at some point in the case, DHS did nothing to ensure they received the service, and they were delayed in receiving it through no fault of their own.

Although the parents did not appeal from the circuit court's prior findings that DHS had made reasonable efforts to provide family services, they did seek homemaking services during the case and raised this issue at the termination hearing. See *Threadgill v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 426, at 6, 526 S.W.3d 891, 895 (holding that a reasonable-efforts argument was not waived where none of the prior reasonable-efforts findings were in orders containing a Rule 54(b) certificate and the appellant raised the argument at the termination hearing); see also *Long, supra*. We do not agree, however, that DHS failed to prove that it had made a meaningful effort to correct the conditions that caused removal. Kaupp testified that previous caseworkers on the case had worked with the family to try to remedy issues in the home, including specifically pointing out what needed to be fixed and helping where they could. Kaupp said that the parents did not tell DHS they needed other types of assistance. It is unknown when the referral to 100 Families was made, but at least part of the delay in receiving the services was attributable to the parents' failure to keep in contact with the organization.

Although 100 Families had not helped them clean, it is clear from the testimony that the parents knew what needed to be done. Both parents testified that they knew the condition of the home was an issue in the case. Nicole testified that she had been commended by a caseworker for having a locked container to safeguard her insulin and

needles. When asked about the current state of the home, Shane testified that Nicole may have left her lunch out, but he would clean it up when he got home. Despite knowing what to do, it is clear that the parents were unwilling to maintain the home. The court described one of the pictures admitted into evidence as “crusted food and cigarette butts and limes and applesauce or apple juice and crusted Froot Loops” on a nightstand. In addition to spoiled food, Mundy and Kaupp saw insulin needles and marijuana paraphernalia lying around. Mundy and Kaupp also testified that the condition of the home had been an issue for the entirety of the case and had led to the end of visits at the home. Less than two weeks after Mundy’s and Kaupp’s final visit, Shane testified that the home was now clean. Keeping the home in a sanitary and safe condition for a five-year-old without needles, marijuana paraphernalia, or spoiled food accessible to MC was always in the parents’ control even without the assistance of homemaking services. Accordingly, we decline to hold that the fact that 100 Families had not yet been in the home to help clean constitutes a lack of meaningful efforts by DHS.

Less than two weeks before the termination hearing, the home remained in an environmentally unsafe condition according to the evidence offered by DHS and the attorney ad litem. Other evidence established that the parents’ failure to comply with certain court orders left questions about drug use and Nicole’s lack of control of her diabetes. Giving due deference to the opportunity of the circuit court to judge the credibility of witnesses, we cannot say that the circuit court clearly erred in finding that the parents had

failed to remedy the conditions that caused removal. Because we affirm on the failure-to-remedy ground, it is unnecessary to address the parties' arguments as to the other grounds.

Shane and Nicole also both argue that there was insufficient evidence that termination was in MC's best interest. They again point to their compliance with the case plan and their bond with MC. However, even full compliance with the case plan is not determinative; the issue is whether the parents have become stable, safe parents able to care for their child. *Long, supra*. Returning MC to a home that her parents would not maintain in an environmentally safe condition posed a threat of potential harm. A parent's past behavior is often a good indicator of future behavior. *Id.* Furthermore, this is the second time MC had been in foster care, and this case had gone on for nearly eighteen months. A child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. *Id.* Termination of parental rights will not be reversed on the basis of a parent's bond with the child. *Swanson v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 355. Neither parent challenges the court's finding that MC is adoptable. We hold that sufficient evidence supports the best-interest finding and affirm the order terminating both parents' parental rights.

Affirmed.

ABRAMSON and THYER, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for separate appellant Nicole Spears.

DeeAnna Weimar, for separate appellant Shane Spears.

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.