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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-459

MIKAYLA MITCHELL

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered January 24, 2024

APPEAL FROM THE LOGAN
COUNTY CIRCUIT COURT,
SOUTHERN DISTRICT
[NO. 42BJV-22-27]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BRANDON J. HARRISON, Chief Judge

Mikayla Mitchell appeals the Logan County Circuit Court’s order terminating her parental rights to Minor Child 1 (MC1), her youngest.¹ Her counsel has filed a motion to withdraw and an accompanying brief demonstrating that there could be no merit in the appeal. *See Linker-Flores v. Ark. Dep’t of Hum. Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004); Ark. Sup. Ct. R. 6-9(i). Mikayla was served with them and notified that she could raise any points on her own. She has not done so. We grant counsel’s motion to withdraw and affirm.

On 12 December 2022, the Arkansas Department of Human Services (DHS) filed a petition for ex parte emergency custody and dependency-neglect after exercising a hold on

¹The circuit court also terminated the parental rights of Leon Carlton, MC1’s biological father. He has not appealed.

MC1, who was then six months old. Since April 2021, Mikayla had an open dependency-neglect case involving three of MC1's older siblings (the siblings' case), who were all under five years old. Two of them, MC2 and MC3, had returned to Mikayla's home on a trial home placement. MC1 had remained with her since birth in June. DHS ended the trial home placement and exercised a hold on MC1 after home visits December 7 and 8—the second of which was to investigate hotline allegations that Mikayla had struck one of the older children. Mikayla told DHS family service worker Brandy Ezell that she had moved in with Leon Carlton, the children's biological father, a week earlier because there was mold growing in her home, and her floors were not safe to walk on. Mikayla tested positive for methamphetamine on December 7. When Ezell returned the following day, Mikayla told her that Leon, who had remained asleep during the visit, was coming down off methamphetamine. He refused a drug test.

The circuit court entered an ex parte order putting MC1 in DHS's legal custody, and appointed an attorney ad litem for MC1 and counsel for Mikayla. It found probable cause at a hearing December 16. Mikayla stipulated in January 2023 to a dependency-neglect finding based on parental unfitness due to use of illegal or controlled substances that seriously affected her ability to care for MC1. The circuit court set the goal of MC1's case as adoption. It ordered Mikayla to follow the orders in the siblings' case.

One day after that adjudication order—but about twenty-one months into the siblings' case—DHS filed a petition to terminate Mikayla's parental rights. It pleaded the subsequent-factors and aggravated-circumstances grounds, Ark. Code Ann. § 9-27-341(b)(3)(B)(v)(a) & (ix)(a) (Supp. 2023), specifically that there was little likelihood that

services would result in reunification. DHS noted that the conditions that had required MC1's removal from Mikayla's custody remained unremedied in the siblings' case despite services from DHS.

The termination hearing was held 15 March 2023 immediately after a hearing in the siblings' case that resulted in the termination of Mikayla's parental rights to MC2, M3, and MC4. Without objection, the circuit court took notice of the record from that hearing.²

Ezell, the family service worker, testified that she had been assigned to the siblings' case since it opened in April 2021, almost two years earlier. The case opened because MC4 was born with amphetamines in her system and the family was homeless. Early in that case, Mikayla had done what the case plan required, including completing outpatient drug treatment. Leon, who was also a party to the case, had not followed the case plan—and, indeed, never would. In January or February 2022, Mikayla moved out of his home in Booneville and was living on her own in Paris, Arkansas, and doing well. She began the trial home placement with MC2 and MC3 in July 2022.³ In August, Mikayla's sister Kensy passed away. Ezell began having difficulty contacting Mikayla and visiting the family at her home, though it was right by the DHS office. Ezell testified she “knew something was going on because [Mikayla] was avoiding [her].” The day of an October 2022 hearing, Mikayla tested positive for methamphetamine. In November, Ezell found out the family

²Some witnesses testified in both proceedings. Because there is no procedural issue that would require considering the testimony separately, we take it together.

³MC4 remained in the home of Mykka Bottoms, Mikayla's sister, and never began a trial home placement. The record does not reveal why. We don't need to know, ultimately, because Mikayla has appealed only the termination order for MC1.

had moved back in with Leon in Booneville. The trial home placement in the siblings' case ended (and this case opened) after the two home visits in December 2022. At the first visit December 7, Mikayla tested positive for methamphetamine. On a second visit the following day, Ezell's supervisor, Pamela Feemster, observed a saw blade and "vape juice" within reach of the children, who had been left unsupervised in the home. MC1 was in an unbuckled booster seat. Mikayla tested negative for substances at a supervised visit in January 2023, but Ezell had not been able to get a drug screen since. Leon tested clean the same day but used methamphetamine—and otherwise tested positive for it—throughout both DHS cases.

After the trial home placement ended, Ezell made three separate referrals for Mikayla to get another round of substance-abuse treatment. A drug-and-alcohol assessment in January 2023 recommended fourteen to sixteen weeks of concurrent outpatient treatment. Mikayla attended one session in late January, then was discharged for failing to attend any others.

Ezell, her supervisor, and Mikayla herself testified that Mikayla and Leon continued to use methamphetamine throughout this case. Mikayla admitted she had been using methamphetamine off and on for fifteen years, and it had been a problem for ten years. The day MC1 was removed from her custody, "[r]ight after they came and took the kids, [she and Leon] went and got high." She had used within a week of the termination hearing. She would sometimes use methamphetamine in the shed next to her home while the children remained inside the house. Other times she would use at a friend's house before picking the children up from school. Challenged about whether that was a good idea,

Mikayla responded that it was “not a good idea to be using meth anyway, but it’s what [she] did.”

Mikayla testified that she had stopped attending outpatient drug treatment because of health issues and depression from her sister’s death. She had not worked, according to Ezell, since November. Mikayla testified that was because she was having surgery on her arm in April after injuring it in an automobile accident and did not know when she would be able to start a new job. Mikayla testified that a week before the termination hearing, she had moved in with her father. If the children were returned to her that day, she said, they would go stay with her sister if she’d let them.

Ezell testified that MC1 is “a very happy baby” and there was nothing that would prevent her from being adopted. Feemster, her supervisor, testified that two family members were possible relative placements. Until a week before the termination hearing, when MC1 was moved temporarily to a respite placement, the four children had been living with Mikayla’s sister Mykka, who had expressed interest in adopting MC4. Feemster said that if Mykka indicated that she wished to adopt all four children, DHS would complete an adoptive home study. Another relative recently came forward and inquired about placement. Feemster testified that adoption, not guardianship, was in the children’s best interest.

The court granted DHS’s petition to terminate Mikayla’s parental rights under the subsequent-factors and little-likelihood grounds. It found clear and convincing evidence that MC1 is adoptable and that terminating Mikayla’s parental rights was in MC1’s best

interest. An order reflecting the ruling was entered 11 April 2023. Mikayla filed a timely notice of appeal.

To terminate parental rights, a 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). The circuit court must also find clear and convincing evidence for one or more statutory grounds for termination. Ark. Code Ann. § 9-27-341(b)(3)(B). But one ground for termination is enough. *Fowler v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 307, 634 S.W.3d 535.

We review these cases de novo. *Id.* Our inquiry is whether the circuit court clearly erred in its findings on material facts. *Bradley v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 315, 669 S.W.3d 859. 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. *Id.* We give the circuit court's findings some deference because we cannot observe the witnesses' testimony and assess their credibility, as it could. *Wagner v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 400, 675 S.W.3d 469. Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Friend v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 606, 344 S.W.3d 670. Even full compliance with the case plan is not determinative; the issue is whether the parent has

become a stable, safe parent able to care for her child. *Shaffer v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 208, 489 S.W.3d 182.

The circuit court found clear and convincing proof for two grounds for termination, but we agree with Mikayla's counsel that appealing grounds for termination would be frivolous given the proof Mikayla subjected MC1 to aggravated circumstances in that there was little likelihood continued services would result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a). We have affirmed under this ground where the evidence demonstrated continued parental instability despite working with DHS, *Chapman v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 525, 443 S.W.3d 564, and the parent fails to meet, or make significant progress toward, basic goals of the case plan. *Aday v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 677.

Mikayla experienced periods of independence and apparent progress during the siblings' case before her sister died, and completed drug treatment once. But after receiving services for nearly two years, she unfortunately ended where she had started: with unstable housing, regularly using methamphetamine, and (until at least one week before the termination hearing) living with Leon, who had demonstrated no effort to achieve fitness as a parent. On that record, we cannot second-guess the circuit court's finding that clear and convincing evidence showed there was little likelihood that continued services would result in reunification with MC1.

We also agree with counsel that there would be no merit in an appeal from the circuit court's findings on adoptability and potential harm, factors it was required to consider in making the best-interest finding. Ark. Code Ann. § 9-27-341(b)(3)(A). The overall

evidence must demonstrate clearly and convincingly that termination is in the child's best interest; but the factors themselves do not have to be proved by clear and convincing evidence. *McFarland v. Ark. Dep't of Hum. Servs.*, 91 Ark. App. 323, 201 S.W.3d 143 (2005). In fact, termination can be proper even if the evidence shows adoption is unlikely, if termination is nonetheless in the child's best interest. *Connors v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 579, 537 S.W.3d 736.

Ezell testified that MC1 is a happy eight-month-old baby who could be adopted soon, and there were no barriers to adoption. That testimony is enough to support an adoptability finding. *See, e.g., Cole v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 121, 543 S.W.3d 540. The court's finding that MC1 would be subjected to potential harm if parental rights were not terminated cannot seriously be disputed. Potential harm must be viewed in a forward-looking manner and considered in broad terms. *Dowdy v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722; *Lee v. Ark. Dep't of Hum. Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008). Mikayla did not demonstrate sobriety or stability. She admitted using methamphetamine consistently, while her children were nearby and, at times, before she picked them up from school. Mikayla did not have stable housing either, as she was temporarily living with her father the day of the hearing.

In an abundance of caution, withdrawing counsel acknowledges that MC1 has older siblings, and her relationship with them is a relevant best-interest consideration. *See Clark v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 286, 493 S.W.3d 782. But the possibility that siblings will be separated is not grounds to reverse a best-interest finding without evidence

of a genuine sibling bond. *Brown v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 370, 584 S.W.3d 276. There was none here.

After reviewing the record and counsel's brief, we agree that an appeal from the circuit court's decision to terminate Mikayla's parental rights would be wholly without merit. Because counsel has adequately addressed the sufficiency of the evidence in the no-merit brief and has complied with the requirements of *Linker-Flores, supra*, and our rules, we affirm the termination order and grant counsel's motion to withdraw. *Rocha v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 454, 637 S.W.3d 299.

Affirmed; motion to withdraw granted.

GLADWIN and HIXSON, JJ., agree.

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

One brief only.