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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-23-493

PAULA ROBINSON AND TYRONE ROBINSON APPELLANTS V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	Opinion Delivered January 31, 2024 APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. 28JV-21-121] HONORABLE MARY LILE BROADAWAY, JUDGE AFFIRMED

WENDY SCHOLTENS WOOD, Judge

Paula and Tyrone Robinson appeal two orders entered by the Greene County Circuit Court in this dependency-neglect case: the order of permanency planning and the order terminating their parental rights to their two children—Minor Child 1 (MC1), born on June 24, 2021, and Minor Child 2 (MC2), born on May 1, 2020.[1] The parties have filed separate briefs challenging the circuit court's permanency-planning order changing the goal of the case from reunification to adoption and challenging both the circuit court's findings of

[1]Paula has two other children, MC3, born on September 29, 2014, and MC4, born on April 12, 2011, who were also removed from her custody at the initiation of this dependency-neglect case. The circuit court placed them with their biological father, Joshua Templeton, who shared joint legal custody of the children with Paula. The court dismissed Templeton, MC3, and MC4 from the case at the first review hearing.

statutory grounds to support termination and that termination is in the children's best interest. We affirm the circuit court's orders.

This case began on May 19, 2021, when the Arkansas Department of Human Services (DHS) answered a call to the child-abuse hotline in which the caller alleged that MC3 had come to school with cuts, bruises, and welts. DHS interviewed MC3 and was told that he got a carpet burn on his ear when Tyrone pushed him under the bed to get his brother's bottle. MC3 said that he was afraid of Tyrone and that Tyrone spanks him with a belt. He showed the caseworker multiple bruises. He also said that his mother is home when Tyrone hits him, but she "doesn't care." The caseworker noted that, although there were three cars in the driveway when she attempted to contact the parents, no one answered the door.

On May 20, a seventy-two-hour hold was placed on MC3 and MC4, who were picked up at school by DHS. MC3 told the caseworker he was sent to bed without supper the night before as punishment for talking with school personnel about his injuries. MC3 was wearing long sleeves and long pants, although the temperature was warm outside, and the school social worker told the caseworker that Paula had contacted the school that morning to inform them that MC3 had "fallen at home." DHS again attempted to contact Paula, who was standing in the carport when DHS arrived at the Robinsons' home, but she refused to allow the caseworkers inside and stated that she had taken MC2 to her mother's home out of state. Paula refused to provide her mother's contact information, denied that Tyrone ever hit the children, and said MC3's bruises were caused by his sister, MC4, or by a paddle at school.

On May 24, DHS filed a petition for ex parte emergency custody and dependency-neglect regarding MC2, MC3, and MC4. In addition to the facts set forth above, the caseworker's affidavit attached to the petition indicated that there were numerous unsubstantiated reports of child abuse against Tyrone and one true finding in 2016 for "striking a child with a closed fist, extreme or repeated cruelty, abuse with a deadly weapon, suffocation, threat of harm, kicking a child, extreme or repeated cruelty and immersion." On May 25, the court granted the petition for emergency custody. At the probable-cause hearing on May 26, Paula testified that she did not know where Tyrone and MC2 were located. The court ordered her to turn over custody of MC2 to DHS.[2] On July 7, DHS discovered that Paula had delivered a baby, MC1, on June 24, 2021, and the court entered an ex parte order on July 13 placing MC1 in DHS custody. The court subsequently adjudicated all four children dependent-neglected and set the goal as reunification.

At the first review hearing on December 9, the court found Paula compliant and Tyrone substantially compliant with the case plan and continued the goal of reunification, noting that MC1 and MC2 had been placed in foster care with their maternal aunt. The court reserved a finding that DHS had made reasonable efforts to provide family services until DHS completed domestic-violence referrals for the parents. The court found that neither parent was to have contact with MC2 pursuant to a criminal no-contact order and

[2]The court entered an order that same day holding Paula in contempt and detaining her in the Greene County jail until MC2 was located.

ordered the parents to continue to have no contact if the criminal order was lifted until the court held a hearing to review the matter.[3] The parents were allowed Zoom visitation with MC1. A second review hearing was held on April 18, 2022, in which the court again found Paula compliant and Tyrone substantially compliant with the case plan. The court also found that DHS had made reasonable efforts to provide family services and authorized supervised in-person visitation with both children.

I. *Permanency-Planning Hearing*

On September 23, the court held a permanency-planning hearing. Dusty Brown, the primary caseworker for the Robinsons, testified that MC1 and MC2 were placed with Paula's sister in foster care and were doing well. Dusty said that when she and another caseworker visited the Robinsons on July 27, Tyrone was outside, Paula was sitting in her car, and they appeared to be arguing. When they spoke with Paula alone during the visit, she seemed "on edge" and very nervous that they were there, and she had to ask Tyrone for permission to show them around the home. Dusty noticed a bruise on the back of Paula's shoulder blade that Paula said happened at work when she fell against a wall. Paula worked as a CNA at an assisted-living facility. Dusty said Paula first told her the bruise was caused directly by a resident and then said she hit a wall when she was pulling away from the resident. Tyrone denied having seen the bruise when Dusty asked him about it. But before Tyrone could

[3]The no-contact orders were entered after the parents refused to turn over custody of MC2 to DHS on May 27, 2021. They were also convicted of interference with custody in orders entered on January 10, 2022.

answer further, Paula interrupted and said, "Remember, it's where I fell." Dusty testified that Paula's explanation did not seem to "fit the bruise" and that she called Paula's employer, who had no record of Paula's fall. The employer confirmed the absence of any report about Paula's injury in her testimony at the hearing. Dusty testified that she was concerned for Paula's safety, believed that domestic violence was continuing to occur, and did not believe that Paula could protect herself or the children if they were returned to her. During the home visit, Dusty and Paula discussed Dusty's concerns about domestic abuse and the possibility of Paula leaving Tyrone, and Dusty explained to Paula that Tyrone was "the problem." Paula replied that she was "fine." Dusty admitted that both parents had complied with the case plan but testified that there were no services DHS could provide that would alleviate her concerns for the children's safety. DHS recommended that the goal be changed to adoption.

Paula testified that Tyrone had never been violent toward her, that she believed he was safe around her children, and that he had not abused MC3 as had been alleged. She admitted that there had been an incident in August when she could not find her house keys, she and Tyrone were having a disagreement, and she got emotional and called the police because she "felt trapped." She said that Tyrone had not done anything to prompt her call; that it was her fault the police came to the house; and that she should have simply gone inside, read a book, and calmed down. She posted on Facebook later that day that the police would "not do anything" if you requested their help. When asked at the hearing about the post, she testified that she had called the police to help her find her keys because "cops are

supposed to help you when you need help." She denied that she had needed help with Tyrone. Her explanation for the large bruise Dusty saw on her back was that she tripped while taking care of an elderly woman at work and that she had reported the injury. She testified that she was not aware that Tyrone had been charged or convicted of kidnapping his ex-wife, Gloria Jackson, in Louisiana, but she was aware of an order of protection against Tyrone in favor of Gloria and her children. Paula said that Gloria had lied to get the order. Paula claimed that Tyrone was not abusive, that the first time she had heard anything about Tyrone's abusive nature was "today in court," and that she would leave him if she could have MC1 and MC2 back.

Tyrone denied in his testimony that he has a history of violence, but he admitted his convictions for terroristic threatening and aggravated assault in 2015; assault in 2019; and domestic battery in January 2022. He also admitted that he "went to jail" for "simple kidnapping" of Gloria and that Gloria obtained a ten-year order of protection against him in 2016 but denied that he had been violent toward her. He also denied ever getting angry with Paula, but he admitted that he had been arrested and taken into custody in January 2020 when Paula told police he had hit her. He testified that Paula later admitted she lied to the police, and the charges were dismissed. He testified that there are locks on all the doors inside his house and that the doors stay locked when he is home. He said someone would need a key to get into a room. He testified that Paula also had a set of keys to all the doors and that these were the keys that she had asked the police to help her locate. When asked about his income, Tyrone testified that he receives $900 a month from Social Security

disability. He also testified that he had been in therapy his entire life for depression, suicidal thoughts, and trauma and admitted having suicidal thoughts as he was testifying. He said that Paula has anger issues. At the conclusion of his testimony, he said he would voluntarily leave Paula if DHS would allow her to have a trial placement with the children.

The attorney ad litem recommended that the goal be changed to termination of parental rights and adoption. She admitted that the parents had both "checked the boxes" and complied with the case plan, but she opined that this was one of the rare cases in which reunification was still not appropriate. Her concern was that neither parent realized or admitted that anything was wrong or that Tyrone's violent history presented a problem; thus, no services or therapy offered by DHS would help improve the situation.

The circuit court entered a permanency-planning order on November 16, changed the goal to adoption, and authorized DHS to file a petition for termination of parental rights. The court found that both parents were compliant with the case plan but that neither had made substantial, measurable progress. It specifically found that neither parent's testimony was credible; that they had failed to recognize and address significant issues concerning the health, safety, and best interest of the children; that anger and domestic-violence issues continued to plague them; and that they had refused to acknowledge or were incapable of acknowledging these issues. Finally, the circuit court suspended its finding of reasonable efforts on behalf of DHS "due to the fact that a staffing was not held" in the case for five and a half months.

II. *Termination Hearing*

On November 3, DHS filed a petition to terminate the parental rights of both parents, and the court held a termination hearing on March 15, 2023. DHS called several law enforcement officers as witnesses. The first, Sergeant Ashten Jackson, testified that on September 21, 2021, she responded to a call at the Robinsons' home and discovered Paula outside and upset because Tyrone would not give her "the keys." Sergeant Jackson went inside and asked Tyrone for the keys, which he provided. She testified that when she returned to give the keys to Paula, Paula had walked down the street. Corporal Kevin Eddings testified that he was dispatched to the Robinsons' home on August 21, 2022, where he discovered the parties outside fighting over keys. He said that Paula left the home on foot.

Steven Evans testified that he had provided marriage counseling to the Robinsons for sixteen months. He said that although he believed there was "still some work that needs to be done," he had stopped providing counseling to them because he felt that he "couldn't do any more to help them." He said they argued a lot during their sessions and that he had difficulty redirecting their arguments. He said he did not alert Paula or Tyrone that he was withdrawing but told Dusty that he did not feel like he could continue to help them and that he believed Dusty could refer them to someone else.

Dusty testified that MC1 and MC2 were still with Paula's sister, Ashley, and doing well but that Ashley did not want to adopt them. Dusty said that she had visited the Robinsons' home on September 21, 2022, and noticed that Paula had another bruise and that she changed her story several times about how it occurred. Dusty said Paula seems like "a battered wife" and "scared for her life" whenever she visits. She testified that as a

caseworker she had a lot of experience with battered women. She explained that Paula does not do anything in the home without Tyrone's permission and will not show the caseworkers around the house without first asking Tyrone. Dusty also said that Tyrone said he had told Paula that he was overwhelmed and not to leave him with the children. He said, "Look what happened to [MC3]."

Dusty also visited the Robinsons on March 13, a few days before the termination hearing. During her walk-through, she noticed that there were no baby items in the room set aside for MC1. Tyrone explained, "[MC1] doesn't have a room here. . . . She's not coming back to this house." Dusty testified that there were no baby items in the home for either of the children and that it was not set up for them to live there. She said both Tyrone and Paula told her that they wanted to sign consents to terminate their rights. Paula said if she could not have all four of her children, she did not want MC1 and MC2. Tyrone said that he was in bad health and could not raise two children. Dusty testified that DHS had provided counseling referrals, domestic-violence-class referrals, transportation, and parenting classes and that the parents had been compliant, but she still did not believe the children would be safe if returned to the Robinsons' custody.

Amber Lenderman, the DHS supervisor on this case, testified that although the Robinsons had completed most of the services, DHS had also asked that they "display a behavior change," and they had not done so. She said proof of a behavior change would include accomplishing their goals in marriage counseling, from which they were discharged without meeting these goals, and a less tense atmosphere in the home during visits. Amber

also expressed concern about Paula's bruises throughout the case, the various police reports, and the fact that the Robinsons drive separately to visitation, suggesting to her that they cannot be together for extended periods of time.

Gloria Jackson testified that she had filed an order of protection against Tyrone in 2016 to have him "stay away," but she said it was not anything "major" and that she "loves" Tyrone and Paula. After testifying that she did not recall what reason she provided for needing an order of protection, she was asked to read aloud the affidavit she filed with the court in 2016 to obtain it. She stated in the affidavit that she was afraid of Tyrone, that he hit her children, busted one's lip, kicked one, hit her, locked her out of the house, and dragged her inside the house. After reading the affidavit, she said that all of the details in the affidavit were lies, that DHS told her what to say in the affidavit, and that she had been afraid DHS would take her children if she did not comply.

Paula and Tyrone both testified consistently with their testimony at the permanency-planning hearing. Tyrone again denied that he had ever harmed anyone, including Gloria, Paula, or his children. Regarding MC3 and the incident that started the case, Tyrone "admitted" that he "shouldn't have asked a five-year-old to go under a bed."

Paula again insisted that she was not a battered wife and that Tyrone had never hurt her. She testified that she earned the money for the household, that Tyrone does not have a job or contribute funds to the household but cleans and cooks, and that she pays all the bills. She said that she was aware he receives a monthly check from Social Security, but she did not know why he receives it or the amount of the check. She explained her statement to

Dusty regarding voluntary termination of her parental rights to MC1 and MC2 by stating that she did not see the point of retaining custody of MC1 and MC2 if she did not have custody of MC3 and MC4. She said she does not want to "live with the regret that I . . . picked and chose kids." Notably, she did not recant the statement at the termination hearing or express that she had reconsidered her position. Finally, she admitted that Dusty had talked to her about leaving Tyrone in order to get custody of her children, but she said she was "not leaving somebody that's never hurt me."

On May 1, 2023, the circuit court entered an order terminating the parental rights of both parents on the grounds of subsequent factors and aggravated circumstances. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii), (ix)*(a)(3)* (Supp. 2023). The court further found that termination was in the best interest of MC1 and MC2. The parents filed this appeal from both the permanency-planning order and the order terminating their parental rights.

III. *Appeal from Permanency-Planning Order*

Before we consider the parents' challenge to the circuit court's permanency-planning order, we first address DHS's contention that the parents' appeals from the circuit court's permanency-planning order are untimely. Specifically, DHS argues that because the circuit court changed the goal from reunification solely to adoption with no concurrent goal, the permanency-planning order constituted a final order from which the parties were required to appeal immediately. In other words, it was not an order that could be appealed with the order of termination. DHS cites *Hutchins v. Arkansas Department of Human Services*, 2023 Ark. App. 392, 674 S.W.3d 765; *Littleton v. Arkansas Department of Human Services*, 2023 Ark. App.

411, 675 S.W.3d 893; and *Arkansas Department of Human Services v. Denmon*, 2009 Ark. 485, 346 S.W.3d 283, in support of its argument. Those cases are inapposite, and we hold that the appeals are timely.

In *Hutchins*, the father was dismissed from the case in the permanency-planning order and failed to appeal the order, which was final as to him. 2023 Ark. App. 392, at 9, 674 S.W.3d at 772. Here, neither parent was dismissed in the permanency-planning order, and both remained parties in the case. In *Littleton*, the court simply said if parents make a least-restrictive-placement argument in an appeal from the order of termination where the goal of the case was changed to adoption in the permanency-planning order, they are required to designate the permanency-planning order and hearing in their notices of appeal. 2023 Ark. App. 411, at 7, 675 S.W.3d at 897–98. Here, both parents designated the permanency-planning order in their notices of appeal and included a transcript of the permanency-planning hearing in the record. Finally, the issue in *Denmon* was whether the permanency-planning order constituted a final order of custody and therefore whether it was appealable under Rule 2(d) of the Arkansas Rules of Appellate Procedure–Civil. The supreme court held that the permanency-planning order awarding permanent custody of a child to the child's aunt but keeping the goal of the case as reunification with the mother was not a final order of custody, stating that the final or temporary nature of a custody order is not dependent upon the style of the order. *Denmon*, 2009 Ark. 485, at 5, 346 S.W.3d at 287. The circuit court in this case never awarded permanent custody of MC1 and MC2 to anyone. *See West v. Ark. Dep't of Hum. Servs.*, 373 Ark. 100, 281 S.W.3d 733 (2008) (holding a

permanency-planning order granting permanent custody of two of four children to their biological father was a final, appealable order under Rule 2(d) of the Arkansas Rules of Appellate Procedure–Civil and was not in conflict with Rule 6-9 of the Arkansas Supreme Court Rules). Therefore, the permanency-planning order entered in the Robinsons' case was not a final order of custody. Accordingly, Paula's and Tyrone's appeals of the permanency-planning order are timely.

The burden of proof in permanency-planning proceedings is a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(A)(ii) (Supp. 2023). The standard of review on appeal is de novo, and we will reverse only if the circuit court's findings are clearly erroneous. *Bean v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 77, at 6, 513 S.W.3d 859, 864–65. Arkansas Code Annotated section 9-27-338(a)(1) provides that a "permanency planning hearing shall be held to finalize a permanency plan for the juvenile." Subsection (c) sets forth in relevant part the order of preference for those plans:

> At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest, health, and safety of the juvenile:
>
> (1) Placing custody of the juvenile with a fit parent at the permanency planning hearing;
>
> (2) Returning the juvenile to the guardian or custodian from whom the juvenile was initially removed at the permanency planning hearing;
>
> (3) Authorizing a plan to place custody of the juvenile with a parent, guardian, or custodian only if the court finds that:
>
> (A)(i) The parent, guardian, or custodian is complying with the established case plan and orders of the court, making significant measurable progress toward achieving the goals established in the case plan and diligently working

toward reunification or placement in the home of the parent, guardian, or custodian.

(ii) Regardless of when the effort was made, the court shall consider all evidence of an effort made by the parent, guardian, or custodian to remedy the conditions that led to the removal of the juvenile from the custody of the parent, guardian, or custodian and give the evidence the appropriate weight and consideration in relation to the safety, health, and well-being of the juvenile.

(iii) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to authorize a plan to return or be placed in the home as the permanency goal;

(B) The parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that:

(i) Caused the juvenile's removal and the juvenile's continued removal from the home; or

(ii) Prohibit placement of the juvenile in the home of a parent;

. . . .

(4) Authorizing a plan to obtain a guardianship or adoption with a fit and willing relative;

(5) Authorizing a plan for adoption with the department's filing a petition for termination of parental rights unless:

(A) The juvenile is being cared for by a relative and the court finds that:

(i) Either:

(a) The relative has made a long-term commitment to the child and the relative is willing to pursue guardianship or permanent custody; . . .

Ark. Code Ann. § 9-27-338(c) (Repl. 2020).

Paula and Tyrone both argue that the evidence does not support the circuit court's decision to change the goal from reunification to adoption and termination of their parental rights. Specifically, they contend that there was no definitive proof of domestic violence

between them after the case was initiated and that the circuit court's opinion otherwise was based on speculation. Alternatively, they argue that the circuit court should have made findings consistent with "obtain[ing] a guardianship or adoption with a fit and willing relative," which is the goal listed before adoption in the permanency-planning statute. Ark. Code Ann. § 9-27-338(c)(4). Tyrone also contends that the court's failure to make findings concerning DHS's reasonable efforts to provide services during the case prejudiced the parents and thwarted their reunification.

In their arguments on appeal, the parties point to their own testimony that Tyrone is not abusive, that Paula is not afraid of Tyrone, that they do not argue, and that there have been no incidents of domestic violence since the case began. But the circuit court specifically found that neither parent was credible, that anger and domestic-violence issues continued to exist, and that they had refused to acknowledge or were incapable of acknowledging these issues. Dusty, the caseworker, testified that Paula and Tyrone were outside arguing when she visited on July 27 and that Paula seemed on edge and had to ask Tyrone for permission to show the caseworkers around the house. Dusty also found it troubling that there were locks that required keys on all the interior doors in the Robinsons' home, including deadbolts and a padlock. She also testified that she saw a large bruise on Paula's back and that while Paula said she had fallen at work and reported it, her employer had no record of the fall, Paula's story about the injury changed, and Tyrone denied knowing anything about it. There was also evidence that Paula had called police for help when she and Tyrone were arguing. The court was not required to believe Paula's explanation that she called police simply to find

her keys. Dusty believed domestic violence was occurring and was concerned for Paula's safety. Moreover, although Tyrone denied having ever been violent around Paula, he admitted there was a ten-year order of protection against him by his ex-wife; that he had been convicted of terroristic threatening in 2015, assault in 2019, and domestic battery in 2022; that he had been arrested and taken into custody in January 2020 after Paula told police he hit her; and that he often experienced suicidal thoughts and was even experiencing them at the hearing.

The credibility of the witnesses' testimony is to be assessed by the circuit court, which may believe all, part, or none of any witness's testimony. *Long v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 372, at 22, 675 S.W.3d 158, 172. Here, the circuit court listened to the parents' testimony, observed their demeanor, and specifically found them not credible. The court determined that, despite complying with the case plan for over a year, they still failed to recognize and address the issue of domestic violence and thus had made no substantial measurable progress in order to obtain custody of their children. We do not act as a super fact-finder, nor do we second guess the circuit court's credibility determinations. *McCord v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 244, at 11–12, 599 S.W.3d 374, 381. On the basis of this evidence, we cannot say that the circuit court erred in changing the goal of the case to adoption and termination of parental rights.

We reject the parents' argument that the court failed to properly consider the goal of placement with a relative. Although the statutory preferences list authorizing a plan to obtain a guardianship or adoption with a fit and willing relative before authorizing a plan for

adoption, the relative preference outlined in the statute must be balanced with the individual facts of each case. *Littleton*, 2023 Ark. App. 411, at 10, 675 S.W.3d at 899. Here, there is no evidence in the record of a "fit and willing relative" who had expressed an interest in becoming a guardian or adopting the children. Paula's sister, who was serving as the children's foster parent, had not made a long-term commitment to the children, and there was no testimony that she wanted to adopt them. The court determined there was no hope for reunification because the parents failed to recognize the anger and domestic-violence issues; thus, there was no reason to further delay permanency.

Finally, we turn to Tyrone's argument that the circuit court's failure to make reasonable-efforts findings in the case prevented the court from changing the goal to adoption because the lack of appropriate services thwarted the parents' reunification.[4] He cites the following language from the statute listing permanency-planning goals in support of his argument:

> (5) Authorizing a plan for adoption with the department's filing a petition for termination of parental rights unless:
>
> . . . .
>
> (C)(i) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services as the department deemed necessary for the safe return of the juvenile to the juvenile's home if reunification services were required to be made to the family.

[4]As an example, he claims that he and Paula were "willing to separate" but were "always under the impression" that reunification was possible if they stayed together and that if DHS had held a staff meeting to discuss an appropriate plan for reunification, their misunderstanding could have been resolved.

Ark. Code Ann. § 9-27-338(c)(5)(C)(i).

First, to clarify, the circuit court never made a finding of no reasonable efforts. And while there were two instances when the court reserved making the reasonable-efforts finding, it ultimately did make the finding in both circumstances.[5] Second, Tyrone's argument is not well taken because there is no dispute that DHS provided the services it "deemed necessary for the safe return" of the children in this case. Indeed, there is no dispute that both Paula and Tyrone had completed all those services. The problem is that, even after completing the services, neither parent had made substantial, measurable progress—that is, neither had recognized or addressed the issues preventing reunification. Tyrone speculates that a staff meeting would have offered DHS the opportunity to alert the parents that their separation might further their reunification with the children. There is nothing in the record to support this speculation, and the caseworker testified that she had already approached Paula about leaving Tyrone and told her that he was the problem with reunification, but Paula had insisted that she was "fine." Again, we will not reweigh the evidence, and we hold the circuit court's change of the goal from reunification to adoption is not clearly erroneous.

[5]The court reserved making a finding of reasonable efforts at the December 2021 review hearing until DHS completed its referral for domestic-violence classes. Once DHS made that referral, the circuit court, in an order entered on April 22, 2022, found DHS had made reasonable efforts to provide family services to achieve the goal of reunification by providing the services listed in the case plan. And while the circuit court at the permanency-planning hearing suspended a finding of reasonable efforts because DHS had failed to hold a staffing in the case for five and a half months, the court later (in its termination order) found that DHS had "made reasonable and meaningful efforts to provide appropriate family services to the family."

IV. *Appeal of Termination Order*

We review termination-of-parental-rights cases de novo. *Cheney v. Ark. Dep't of Hum. Servs.*, 2012 Ark. App. 209, at 6, 396 S.W.3d 272, 276. We will not reverse the circuit court's decision unless its findings are clearly erroneous. *Perry v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 323, at 10, 669 S.W.3d 865, 872. An order terminating parental rights must be based on a finding by clear and convincing evidence that one of the statutory grounds is satisfied and that termination is in the children's best interest. Ark. Code Ann. § 9-27-341. In making a best-interest determination, the circuit court is required to consider two factors: (1) the likelihood that the child will be adopted, and (2) the potential harm to the child if custody is returned to a parent. *Brown v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 725, at 4, 478 S.W.3d 272, 275. Credibility determinations are left to the finder of fact. *Kerr v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 271, at 6, 493 S.W.3d 342, 346.

The intent behind the termination-of-parental-rights statute is to provide permanency in a child's life when it is not possible to return the child to the family home because it is contrary to the child's health, safety, or welfare, and a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3). 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 his or her child. *Schaible v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 541, at 8, 444 S.W.3d 366, 371. Moreover, a child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. *Id.*, 444 S.W.3d at 371.

The circuit court found that the subsequent-factors ground supported termination of the Robinsons' parental rights. Under the subsequent-factors ground, the court may terminate parental rights if subsequent to the filing of the original petition for dependency-neglect, other factors arose that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare, and despite the offer of appropriate family services, the parent manifests the incapacity or indifference to remedy the subsequent factors or rehabilitate the parent's circumstances that prevent placement with the parent. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)*(a)*.

Both parents challenge the circuit court's finding that the subsequent-factors ground supports the termination. The essence of their argument is that there is no evidence of continued domestic violence in their family after the children were removed from their custody, they were both fully compliant with the case plan, and the court's credibility findings are not sufficient to support its order.[6] We disagree.

The circuit court's subsequent-factors finding was premised on its conclusion that domestic-violence and anger issues occurred in the home after this case was opened, and there is evidence in the record to support this finding. After this case was opened, the caseworker noticed bruising on multiple areas of Paula's body on two different visits that were inconsistent with her explanations, law enforcement was called to the Robinsons' home

[6]Tyrone also argues that DHS failed to present sufficient evidence that it offered the appropriate family services, relying on his argument against the permanency-planning order regarding the court's reasonable-efforts findings or lack thereof. We reject this argument for the reasons we set forth in the section addressing the court's permanency-planning order.

on at least two separate occasions when the couple was arguing, and the couple's marriage counselor released them from treatment before they had completed therapy because they could not manage their anger during sessions. The evidence in the record also shows that Tyrone has a long history of abusing women and children, and the record contains evidence that supports the court's finding that the abuse was ongoing. In addition to the previously discussed evidence of bruising on Paula and the arguments between Paula and Tyrone that required the help of law enforcement, Dusty, the caseworker, testified that there were deadbolt locks on the interior doors in the Robinsons' home and that Paula appeared on edge and nervous around Tyrone every time Dusty visited. The court found in its letter opinion that Tyrone's ex-wife Gloria appeared to be "low functioning, confused, was inconsistent in her testimony, and constantly looked at Paula and Tyrone Robinson for assistance in answering her questions." The court noted that neither Gloria nor Paula was willing to speak negatively about Tyrone despite "substantial evidence to the contrary." The court also found in its letter opinion that the marriage therapist was very credible but "looked uncomfortable, and almost fearful, of the parents."

Moreover, the circuit court found that the parties had been offered and completed many family services, yet they failed to remedy the subsequent factors or rehabilitate the circumstances that prevented reunification. The court found that both Tyrone and Paula refused to acknowledge that there was a true finding of abuse to MC3, which precipitated this case. Paula referred to her son as having "carpet burns" despite the child sustaining significant injuries that were at variance with the history given. Although Tyrone admitted

that he "shouldn't have asked a five-year-old to go under a bed," he did not mention MC3's bruises or fear of Tyrone. The Robinsons' marriage counselor opined that despite sixteen months of therapy, he could not do anything more to help them with their issues of aggression, lack of communication, and trust. The court specifically noted in its order that a problem cannot be resolved until it is admitted that there is one, and the parties' continued denial of the existence of anger and domestic-violence issues prevented them from remedying the subsequent factors. *See Scroggins v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 16, at 9, 659 S.W.3d 305, 310 ("Continuing in a relationship with a dangerous partner is sufficient evidence of factors arising subsequent to removal and can demonstrate a parent's incapacity or indifference."); *Collins v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 90, at 5 ("We have upheld the termination of parental rights in cases where there has been compliance with the case plan, but a refusal to accept responsibility for or to explain the abuse of a child.").

We reject the parents' argument that they completed all the services offered and that DHS should have offered additional services to rehabilitate Tyrone. DHS workers testified that there were no additional services they could offer that would help rehabilitate the parents. But the issue in this case is not the services offered but whether the services resulted in rehabilitating the parents' circumstances that prevent placement. *Wright v. Ark. Dep't of Hum. Servs.*, 83 Ark. App. 1, at 7, 115 S.W.3d 332, 335 (2003). Mere compliance with the orders of the court is not sufficient if the root of the parents' deficiencies is not remedied. *Myers v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 46, at 15, 660 S.W.3d 357, 368.

Here, except for their dismissal from marital therapy, the parents completed the services. But two days before the termination hearing, Tyrone told the caseworker that he was overwhelmed and that he was not in good enough health to raise two children. Moreover, both parents said that they wanted to sign consents to termination. Compliance with a case plan cannot cure a parent's lack of commitment or desire to be reunited with his or her children, and it was not clear error for the circuit court to consider these statements in determining whether the parents manifested an incapacity or indifference to remedying the subsequent factors or rehabilitating the circumstances that prevented placement of the children with them. Most importantly, however, the circuit court found that neither parent had recognized, much less addressed, the primary deficiency that prevented the children from returning home—domestic violence.

Paula cites several cases in support of her argument that a court may not rely solely on its speculation of continued contact with a harmful coparent and lack-of-credibility determinations to justify grounds for termination but must rely on "actual proof." She cites *Perry v. Arkansas Department of Human Services* and *Mason v. Arkansas Department of Human Services* in support of her argument that the circuit court erred because she was never put on notice that she needed to separate from Tyrone to regain custody of her children. *Perry*, 2023 Ark. App. 323, 669 S.W.3d 865; *Mason*, 2022 Ark. App. 124, 642 S.W.3d 260.

First, the circuit court did not terminate Paula's rights because she did not separate from Tyrone or because of its "speculation" of her continued contact with him, nor did it ever order her to separate from Tyrone to obtain custody. The circuit court was clear that its

principal reason for termination was the couple's issue with domestic violence, incapacity or indifference to recognizing or addressing the issue, and inability to safely parent the children until the issue is addressed. Moreover, Dusty and Paula both testified that they had discussed the impediment DHS believed Tyrone posed to Paula's regaining custody of the children, and, even at the termination hearing, Paula stated that she was "not leaving somebody that's never hurt me." Further, to the extent she cites these cases and others arguing that the circuit court arrived at its domestic-violence conclusion based solely on the fact that Paula was a noncredible witness, her reliance is misplaced. The circuit court did not determine there were domestic-violence issues based solely on the fact that the parents were not credible witnesses. Rather, the circuit court heard from multiple witnesses about Paula's bruises, the involvement of law enforcement at the Robinsons' home, Tyrone's history of abuse, and the parties' anger issues, and it ultimately chose to disbelieve Paula and Tyrone and find that the bruises and police visits were a result of domestic violence.

The circuit court's ability to judge the credibility of all witnesses in this case was critical. The court specifically found that both Paula's and Tryone's testimony was not credible, while the testimony of the two DHS caseworkers and the parties' marriage counselor was credible. Where there are inconsistencies in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the circuit court, which heard and observed those witnesses firsthand. *Collins*, 2013 Ark. App. 90, at 4. For

these reasons, we hold that the circuit court did not clearly err in finding there was sufficient evidence to support the subsequent-factors ground.[7]

Finally, both parents challenge the circuit court's best-interest finding on the basis of the potential-harm factor.[8] Paula argues that the court's finding was clearly erroneous and makes the same arguments she made regarding the court's findings to support its permanency-planning order and the grounds for termination—Paula was compliant with the case plan, and the circuit court's findings of domestic-violence and anger issues were based on nothing but speculation. Tyrone contends that the court improperly considered his past criminal history to support its finding of potential harm, the court should have considered placing the children with a relative, and the court failed to take into account the impact of termination on the sibling relationship.

In assessing the potential-harm factor, the circuit court is not required to find that actual harm would ensue if the child were returned to the parent nor to affirmatively identify a potential harm. *Sharks v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 435, at 10, 502 S.W.3d 569, 577. The potential-harm analysis is to be conducted in broad terms. *Long*, 2023 Ark. App. 372, at 23, 675 S.W.3d at 172. Contrary to Tyrone's argument, past actions of a parent

[7]The parties also challenge the circuit court's finding of aggravated circumstances. Because proof of only one statutory ground is sufficient to terminate parental rights, we need not address the parties' arguments. *Younger v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 138, at 5, 643 S.W.3d 487, 491.

[8]Neither parent challenges the court's findings regarding adoptability; thus, we need not consider that issue. *Long v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 372, at 23, 675 S.W.3d 158, 172.

over a meaningful period of time are good indicators of what the future may hold, and to the extent the circuit court considered Tyrone's history of abuse, its consideration was not erroneous. *Id.*, 675 S.W.3d at 172; *Bratton v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 392, at 7, 586 S.W.3d 662, 666 ("A parent's past behavior may be viewed as a predictor of likely potential harm should the child be returned to the parent's care and custody").

Turning to Paula's arguments that the circuit court failed to consider the parties' compliance with the case plan and that its findings were made purely on the basis of speculation, we have addressed these arguments already and disagree that they have merit. Regarding Tyrone's relative-placement argument, there was no evidence of a relative who was ready, willing, and able to have custody of the children. The parents never even mentioned the name of a relative, and Dusty testified that Ashley, Paula's sister and the children's foster mother, was not interested in long-term custody. *Minchew v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 95, at 12, 660 S.W.3d 909, 917 (holding that to even make a "least-restrictive-placement/relative argument" on appeal, at a minimum, there must be an appropriate and approved relative in the picture). Finally, Tyrone's contention that the circuit court failed to consider the potential for sibling separation after termination was not raised in the circuit court, which is a requirement for it to be considered on appeal. *Id.* at 13, 660 S.W.3d at 917. Accordingly, the circuit court did not clearly err in finding termination of Paula's and Tyrone's parental rights was in the best interest of MC1 and MC2.

Affirmed.

VIRDEN and GLADWIN, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for separate appellant Tyrone Robinson.

Dusti Standridge, for separate appellant Paula Robinson.

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