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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-23-534

SHANNON HALL-ELLIOT AND
TRAVIS WISE

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered February 7, 2024

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43JV-21-105]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

Appellants, Shannon Hall-Elliot and Travis Wise, separately appeal the May 2023 circuit court order that terminated their parental rights to their daughter born in January 2021. Both parents challenge (1) the circuit court’s permanency-planning order that changed the goal to termination of parental rights, and (2) the circuit court’s termination-of-parental-rights order finding that statutory grounds were proved and that termination of parental rights was in the child’s best interest. We affirm.

The Arkansas Department of Human Services (DHS) opened a case on this family in August 2021. Their daughter weighed only thirteen pounds at seven months of age. The parents were ordered to complete Safe Care parenting and were to inform DHS weekly about the child’s weight. In September 2021, the child was taken into DHS custody because both parents admitted to drug use (marijuana and methamphetamine), and Shannon had an

extreme outburst about the situation, throwing things and yelling, and discounting the severity of her daughter's malnourishment. In October 2021, the child was adjudicated dependent-neglected because the parents were unfit due to drug use.

The case was reviewed in January and March 2022 and various services were provided to the parents.¹ From the beginning, the family home was found to be unfit for a child to live in because it was cluttered with garbage and infested with roaches and mice. DHS provided two extermination services, glue traps, cleaning supplies, and trash bags.

By the permanency-planning hearing in October 2022, the home was still unfit for a child and the parents had not maintained significant, measurable progress. The home had trash bags piled up in the kitchen, glue traps with multiple mice on them, medications on the windowsills within reach of a small child, and cigarette butts around the house; the kitchen sink (which had a leak) was used as an ashtray. At that time, Shannon said that this was "as good as it was going to get" because they lived on twenty acres with a field and woods

¹Starting in January 2022, DHS had been ordered to provide services that included foster care for the child, therapeutic services, counseling, medical services, transportation, parenting classes, random drug screens, DHS worker visits, psychological evaluations, supervised visitation, drug assessments and treatment, intensive homemaker services designed to help the parents learn to clean the home and keep it sanitary enough for a child, provision of pest-control services, and provision of a window unit to provide heat and air conditioning. DHS provided trash bags, cleaning supplies, and one-on-one assistance in showing the parents how to clean the home. The orders provided for DHS to make home visits. The circuit court also appointed a guardian ad litem for Shannon and ordered that DHS find a Ph.D.-level counselor for her. In March, the circuit court required DHS to provide budgeting assistance, to pay for past-due utilities if necessary, to provide Shannon with a cell phone and minutes to use in relation to her DHS services, and to provide Travis with a gas card to use for transportation needs. In each of the circuit court's orders, DHS was found to have provided reasonable efforts.

so “we’re going to have mice; we’re going to have roaches.” Although Shannon had been given an application for food stamps, she never brought completed paperwork back to the DHS caseworker or asked for help in completing the paperwork. DHS was ordered to provide the parents with “at least 5 dozen” rodent traps that day, and the parents were ordered to refrain from smoking in the house. Shannon’s attorney ad litem was “equivocal” about whether Shannon should be given more time.

The circuit court was convinced that the parents had a defeatist attitude and were not going to try to move, were not going to benefit from the services that had been offered (other than drug rehabilitation and some counseling), and were not dissatisfied with living in squalor with mice and roaches everywhere. The circuit court ordered that visitation continue but not in this home. The circuit court also ordered that services continue and found that DHS had provided reasonable efforts to help the parents remedy the situation, but the goal was changed to termination of parental rights and adoption.

DHS filed a petition to terminate both parents’ parental rights in February 2023, alleging several statutory grounds against both parents and alleging that it was in their daughter’s best interest that termination take place. The termination hearing was conducted over two days in April 2023. Pictures were introduced as evidence showing improvement in the cleanliness of the home, which had just been cleaned by members of their new church. Two rooms were locked with latches, so no pictures were taken, and the contents were unknown, though Travis said he used those rooms to store his tools, gas cans, and other equipment. There was no entry or exit to the home, however, without using one of the

locked rooms, and this was deemed a safety hazard. A DHS case worker said she continued to see mouse droppings in the house over the course of the case.

Shannon attended and completed inpatient rehabilitation; Travis went to treatment twice but never completed drug treatment. Both parents had been ordered to attend AA/NA meetings twice a week starting in September 2021, but at the April 2023 hearing, Shannon presented proof of attending only thirty-five times and Travis only thirty-one times, most of which happened after the permanency-planning hearing. Travis said he was working on the twelve-step program and was on step two, although he did not know the name of step two but usually looked it up. The circuit court found that Travis was not credible.

The parties continued to live together at the same residence throughout the case and were urged to apply for HUD housing, but Shannon saw no reason to move and further asserted that they would not qualify for federal assistance because Travis has a felony record. She had no intention of leaving Travis. Shannon was known to have a low IQ, and DHS tried to help her with a budget and with learning how to properly, consistently keep a sanitary home. Shannon chalked up her recent inability to consistently keep the home clean due to a knee injury. Shannon paid their bills with her \$851 monthly SSI check, and Travis reportedly made \$11,000 in 2022 working odd jobs, but he contributed nothing toward household expenses. They spent \$48 a week on cigarettes. Travis worked for one week in October 2022 at Kentucky Fried Chicken before getting fired, and he stated that he had been working at WalMart for about a month. The parents took advantage of a church food

pantry in March 2023, so at the time of the termination hearing, there was some food in the house.

The parties never graduated past limited supervised visitation, during which they often argued, and Travis was heard berating Shannon. Although DHS provided parenting classes, they did not benefit from the classes.²

The circuit court concluded that Travis had been untruthful and “entirely incredible” with the court, that he did not have the tools to prevent drug relapse, that he did not comply with the case plan, that he did not have a stable income, and that he did not help around the house. Trash, rodents, roaches, and squalor had been issues throughout the case. The home had been cleaned only one month before the termination hearing, and then it was done by church members. The circuit court found that Shannon completed inpatient drug treatment but was incapable or unwilling to correct the environmental neglect, which the court described as not simple clutter but “outrageous filth with rodents running over every item in the house” despite DHS’s providing two extermination services and rodent-eradication devices. The circuit court found that these parties lacked the ability to provide basic necessities such as food and a safe environment. It found statutory grounds had been proved against both parents: out of custody for a year and failure to remedy, and

²Shannon admitted that she did not have custody of two older children, a son and a daughter. She gave up her parental rights to her son, and she said that her teenage daughter was being cared for by paternal relatives.

incapacity or indifference to remedy subsequent other factors.³ The circuit court also found it to be in the child's best interest to terminate parental rights, having considered that this child was highly likely to be adopted with more than three hundred possible adoption matches, the child's health and weight improved dramatically after being removed from her parents' care, and the potential harm in returning this child to her parents with their unwillingness or inability to provide for a child's most basic needs and safety. The parents appeal. Both parents challenge the circuit court's permanency-planning order that changed the goal to termination of parental rights and the termination order.

We first address the permanency-planning order. The burden of proof in a permanency-planning hearing is preponderance of the evidence. *Yelwington v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 337, 580 S.W.3d 874. According to the Juvenile Code, the preferred goal is for the circuit court to authorize a plan to place the children back with the parents if they can show that they are complying with the established case plan and court orders, making significant measurable progress, and the child can be returned within three months. Ark. Code Ann. § 9-27-338(c) (Repl. 2020); *Johnston v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 615, 534 S.W.3d 200. We review findings in dependency-neglect proceedings de novo, but we will not reverse the circuit court's findings unless they are clearly erroneous. See *Johnston, supra*. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, based on the entire evidence, is left with a definite and

³The circuit court also found the statutory ground of aggravated circumstances, but that was not alleged by DHS in its petition.

firm conviction that a mistake has been committed. *Id.* This court defers to the circuit court's evaluation of the credibility of witnesses.

Shannon argues that at this stage (October 2022), she was making significant and measurable progress and just needed more time. She completed drug treatment and was sober, and the only impediment was the condition of the home. Shannon adds that DHS failed to provide the necessary services to help her, particularly considering that she had intellectual impediments. We disagree that Shannon has demonstrated clear error or that it was clearly against the preponderance of the evidence to change the goal to termination. The child had been out of her mother's custody for more than a year. DHS provided intensive in-home services and supplies to show Shannon how to keep a house clean enough that her daughter would be safe. DHS provided two different professional extermination services and rodent traps. Shannon's attorney ad litem did not request specific or particularized services for Shannon and was equivocal about whether more time should be given to her. Shannon knew they were not eligible for HUD housing due to Travis's felony record. Moreover, the termination hearing did not happen until the spring of 2023, during which the circuit court ordered DHS to continue services to the family, so Shannon *was* allowed more time to provide a safe, stable home that her child needed. Given the credibility determinations made by the circuit court, we are not left with a distinct and firm impression that the circuit court committed reversible error in changing the goal to termination and adoption.

The same is true for Travis. He argues that DHS should have done more, meaning provide more rodent traps every time he asked for them and provide help with housing vouchers. This, Travis argues, establishes that DHS failed to provide reasonable efforts to help the parents reunify with their daughter. We disagree. A de novo reading of this record establishes that Travis was not helpful with keeping the home clean, nor was he capable or willing to maintain meaningful employment or help provide for his family.

We now consider the order that terminated the parents' rights. Termination of parental rights is a two-step process requiring a determination that the parent is unfit and that termination is in the best interest of the child. *Gilbert v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 256, 599 S.W.3d 725. The first step requires proof of one or more statutory grounds for termination; the second step, the best-interest analysis, includes consideration of the likelihood that the juvenile will be adopted and of the potential harm that would be caused by returning custody of the child to the parent. *Id.* Statutory grounds and a best-interest finding must be proved by clear and convincing evidence. *Id.* We review termination-of-parental-rights cases de novo. *Id.* The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is 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.*

This DHS case was pending for approximately eighteen months, during which the parents completed some of the requirements of the case plan with help from DHS, but

neither parent gleaned the benefits of those services, although Shannon did benefit from drug treatment. 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. *Best v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 485, 611 S.W.3d 690. A parent's past behavior is often a good indicator of future behavior. *Id.*

The parents were unwilling or unable to maintain any level of basic cleanliness necessary to provide a safe environment for their daughter. The parents could not or would not complete the necessary paperwork so that they could get government assistance with food. They were not qualified for housing assistance and did not appreciate the need to move to a more suitable environment. Travis did not complete drug rehabilitation, and he failed to attend AA/NA meetings with regularity. Despite the provision of counseling, the parents had an unhealthy relationship evidenced by frequent arguments; Travis had been verbally abusive toward Shannon.

On de novo review of this evidence, we cannot say that the circuit court clearly erred in finding that it was in this child's best interest to terminate Travis and Shannon's parental rights and that DHS proved the subsequent-other-factors ground⁴ by clear and convincing evidence. This child needed permanency, which is the goal of the Juvenile Code, and it could not be achieved with her parents in a reasonable period of time as viewed from the child's perspective.

⁴Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Supp. 2023).

In sum, both parents essentially ask this court to reweigh the evidence. We will not reweigh the evidence on appeal, and credibility determinations are left to the circuit court. *Miller v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 280, 626 S.W.3d 136. Although parents have a fundamental constitutional right to direct the care and upbringing of their children, the State of Arkansas has an equally compelling interest in the protection of its children. *Porter v. Ark. Dep't of Hum. Servs.*, 374 Ark. 177, 286 S.W.3d 686 (2008). We have reviewed the record de novo, and we hold that the circuit court did not clearly err in terminating both parents' parental rights.

Affirmed.

BARRETT and MURPHY, JJ., agree.

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