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# ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-23-595

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| BROOKE HALL<br>APPELLANT<br><br>V.<br><br>ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN<br>APPELLEES | Opinion Delivered February 14, 2024<br><br>APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. 46JV-21-77]<br><br>HONORABLE BRENT HALTOM, JUDGE<br><br>AFFIRMED |

**ROBERT J. GLADWIN, Judge**

Brooke Hall appeals the June 14, 2023 order of the Miller County Circuit Court terminating her parental rights to her two children, MC1 and MC2.[1] She argues that the circuit court erred when it failed to consider the effect of the termination-of-parental-rights (TPR) decision on the sibling relationship as a part of its best-interest analysis. She also argues that the Arkansas Department of Human Services (DHS) generally failed to present sufficient evidence that TPR was in the children's best interest. We affirm.

I. *Facts and Procedural History*

[1]Bradley Chancellor was identified as the putative father and later adjudicated a parent on the basis of genetic testing. His parental rights were also terminated, but he did not file a notice of appeal and is not a party to this action.

On June 16, 2021, DHS exercised emergency custody of Brooke's two minor children due to allegations of inadequate supervision, drug abuse, and failure to protect as well as domestic violence between both parents. Specifically, Brooke (1) appeared to be under the influence when DHS investigators reported to the home; (2) claimed she did not know that her children were in the home instead of with her mother; and (3) refused to submit to a drug screen. DHS had closed a foster-care case with Brooke just a month prior that had been open between May 2020 and March 2021, with services again provided in May 2021.

On June 18, DHS filed a petition for ex parte emergency custody and dependency-neglect of the children, and on June 22, the circuit court entered an ex parte order for emergency custody. On June 23, the circuit court held a probable-cause hearing wherein it found that probable cause existed for the emergency order to remain in place.

On September 29, the circuit court held an adjudication hearing and made a dependency-neglect finding based on neglect and parental unfitness. The circuit court ordered that the case goal be reunification with a concurrent goal of relative placement. It ordered Brooke to follow the case plan and any recommendations made from those services; to obtain and maintain stable housing and employment; to submit to random drug screens; to remain drug-free; and to regularly visit her children.

On December 15, 2021, and March 2, 2022, the circuit court held review hearings at which it ordered the case plan goal to remain reunification with a concurrent goal of relative placement and that the children remain in the custody of DHS. The circuit court also found Brooke had not complied with the case plan and court orders because she continued to have

positive drug screens (even after completing drug treatment at Gateway Recovery); refused to address her drug problem; and had not visited consistently. The circuit court found DHS had made reasonable efforts by providing referrals for services, foster care, visitation, random drug screens, and home visits.

On June 1, the circuit court held a permanency-planning hearing, after which the circuit court continued the goal of reunification and ordered the children to remain in DHS's custody. The circuit court found that Brooke had complied with the case plan: she had successfully completed an outpatient drug-treatment program; had submitted to random drug screens; and remained drug-free. Additionally, the circuit court found that DHS had made reasonable efforts.

On September 7, the circuit court held another review hearing in which it continued a goal of reunification with a concurrent goal of relative placement and continued custody of the children with DHS—but authorized a transition to overnight visits up to a trial home placement. Again, the circuit court found that DHS had made reasonable efforts.

On January 11, 2023, the circuit court held a second permanency-planning hearing at which it continued the goals of reunification and relative placement. The circuit court specifically found within its resulting order that "[t]here are no safety concerns that prevent trial placement, return of custody, or other placement with the parent." However, the circuit court found Brooke had not complied with the case plan and court orders because she did not have employment; had not submitted to random drug screens; and had violated a

protective order between Bradley Chancellor and her. Additionally, the circuit court ordered that visitation again be supervised and found DHS had made reasonable efforts.

On February 6, a month after the January permanency-planning hearing was held but before the resulting order was entered, DHS filed a petition to terminate Brooke's and Bradley's parental rights to MC1 and MC2. DHS alleged that TPR was warranted under multiple statutory grounds and alleged that TPR was in the children's best interest.

On May 17, the circuit court held a hearing on DHS's TPR petition. Alexis Lampkins, the primary DHS caseworker for the family, testified that the case began after DHS received a call alleging that the children had been "left unattended." She detailed the history of the case and noted that Brooke had completed the services provided by DHS, including a psychological evaluation, a drug-and-alcohol assessment, and outpatient treatment in May 2022. Ms. Lampkins noted that Brooke had two homes during the case and that she had not recently been able to view the home. Ms. Lampkins stated that Brooke had tested positive for drugs in March 2023 and that Brooke had admitted she would have tested positive in April. After the positive drug screens, Ms. Lampkins called an emergency staffing where Brooke disclosed that she had been using drugs. Ms. Lampkins testified that she did not believe that Brooke had "remedied" the cause of the children's removal due to her recent drug use and her current unemployment. Ms. Lampkins stated that Brooke had not "exhibit[ed] stability" and testified that it was time for the children to have permanency.

Ms. Lampkins detailed that an additional referral had been made that resulted in Brooke's completing a drug-and-alcohol assessment on March 17, 2023. Although the

assessment recommended outpatient treatment, Ms. Lampkins noted that she had advocated for Brooke to receive inpatient treatment because of her recent positive drug screens. Ms. Lampkins explained that Brooke originally had been scheduled to enter rehabilitation on May 3, but her start date had been rescheduled to May 18, which was the day after the TPR hearing.

Ms. Lampkins acknowledged that Brooke worked hard and complied with the case plan. She noted that although visitation did not progress to overnight visits, unsupervised visits had begun during the case. Brooke interacted with her children during the visitation. Ms. Lampkins also testified regarding the children. MC1 was with a relative, and MC2 was in a foster home. The relative was not able to adopt both children, but the children did visit one another. Both placements agreed to allow the children to continue to visit beyond TPR. Ms. Lampkins testified that DHS always looks to relatives for placement and seeks what is in the best interest of the children. She explained that DHS generally looks to place siblings together, but these children maintained their same separate placements throughout the case.

The next witness was Ruthanne Murphy, the DHS adoption specialist. She testified that the children are adoptable and that 249 families were potential matches. Ms. Murphy stated that she believed the children's current placements were willing to adopt them separately but maintain the sibling relationship.

After DHS rested, Brooke testified, explaining that she had a home where she had lived since April 2022. She stated that a CASA volunteer had recently been to her home and that she did not believe CASA had any issues with it. Although Brooke acknowledged that

she had lost her previous job, she testified that she was currently working with her mother cleaning homes. Brooke noted that she had last used drugs two weeks prior to the TPR hearing. She testified that she was willing to go to inpatient drug treatment, noting that she had attempted to go on March 3, 2023, but had been told by the facility they had not received the referral from DHS, so she had to delay reporting until May 18, 2023, the day after the TPR hearing, and the treatment was scheduled to last for three months. Brooke testified that when she visited with her children, they were happy to see her. Brooke expressed concern that if her parental rights were terminated, the children would be separated from one another, which would be detrimental because they "love each other." Brooke stated that she believed it was in their best interest for her to be allowed additional time to complete drug rehabilitation and be reunited with them. Brooke testified that she was committed to getting sober and being there for her children.

The final witness to testify at the hearing was CASA volunteer Kimberly Merrill. She testified that she believed the children's current placements were "what is best for them." Ms. Merrill also expressed her opinion that the current placements would allow the children to maintain contact with one another. She testified that she believed TPR, even if the children were adopted separately, was in the children's best interest.

At the conclusion of the hearing, Brooke acknowledged that her drug use was the cause of her issues in the case. She asked for additional time to enter drug treatment and reunify with her children. She believed it was in her children's best interest to reunify with her and with each other and requested that the petition be denied.

The circuit court ruled from the bench that it was granting DHS's TPR petition. The circuit court discussed Brooke's sibling-separation argument, noting that the possibility that the children would be permanently separated following the TPR was not an issue for the circuit court to decide that day, and it would "worry about that at the proper time; if and when parties file the proper paperwork for the children to be adopted." In the TPR order entered June 14, the circuit court found that DHS clearly and convincingly proved that TPR was in the children's best interest and was supported by multiple statutory grounds. Brooke filed a timely notice of appeal on June 26.

## II. *Standard of Review and Applicable Law*

On appeal, appellate courts review TPR cases de novo. *E.g.*, *Ring v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 146, at 5, 620 S.W.3d 551, 555. Additionally, appellate courts will not reverse a circuit court's TPR order unless the findings were clearly erroneous, meaning "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.* at 5–6, 620 S.W.3d at 555. Further, appellate courts give great weight to the circuit court's ability to observe and assess witnesses. *Id.*

To terminate parental rights, a circuit court must find by clear and convincing evidence at least one statutory TPR ground, *see* Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2023), and that TPR is in the juvenile's best interest. *Ring*, 2021 Ark. App. 146, at 6, 620 S.W.3d at 555. Clear and convincing evidence is that degree of proof that will produce in

the finder of fact a firm conviction of the allegation sought to be established. *Id.* at 5, 620 S.W.3d at 555; *see* Ark. Code Ann. § 9-27-341.

The circuit court determines whether TPR is in the juvenile's best interest by considering two factors: (1) the likelihood that the juvenile will be adopted if parental rights are terminated and (2) the potential harm caused by continuing contact with the parent. *Id.*; *see also McNeer v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 512, at 5, 529 S.W.3d 269, 272. The TPR statute does not require clear and convincing evidence of each of these factors; rather, it is the best-interest finding itself that must be supported by clear and convincing evidence. *E.g.*, *Holdcraft v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 151, 573 S.W.3d 555. Because DHS must prove both, a successful challenge of the best-interest prong is sufficient to reverse a TPR decision. *Conn v. Ark. Dep't of Hum. Servs.*, 79 Ark. App. 195, 85 S.W.3d 558 (2002).

## III. *Discussion*

Brooke argues that DHS failed to present sufficient evidence that TPR was in her children's best interest. She claims that they were not served by terminating her parental rights in light of the progress she had made, particularly considering that the children's future as a sibling group was questionable and not considered by the circuit court as a part of its best-interest analysis. Brooke maintains that her desire to keep the siblings together combined with her progress warranted the circuit court's granting her request for more time.

She cites *Clark v. Arkansas Department of Human Services*, 2016 Ark. App. 286, 493 S.W.3d 782, in support of the proposition that when determining whether TPR is in a child's

best interest, the circuit court is tasked with considering all the circumstances, including the risk of potential harm; the likelihood the children will be adopted; the least restrictive alternative; the preference for relative placement; and the sibling relationship. In *Clark*, this court held that "[o]ne factor the court must consider in determining the best interest of the child is whether the child will be separated from his or her siblings." *Id.* at 10, 493 S.W.3d at 789. We held that the circuit court's best-interest finding in *Clark* was insufficient because the circuit court failed to address what effect, if any, the child's separation from his half siblings would have on him. *Id.* As such, this court reversed due to the circuit court's failure to consider all the relevant factors. *Id.*

Although *Clark* concerned a custody issue rather than a TPR matter, this court—citing *Clark*—has noted that the sibling-separation issue is a factor in TPR cases. *See Minchew v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 95, at 10, 660 S.W.3d 909, 916. Brooke argues that the evidence presented at the TPR hearing demonstrated that the siblings were sufficiently bonded, and the circuit court erred as a matter of law in refusing to consider the impact of the sibling situation and finding that the sibling separation issue was not a relevant factor to be considered as part of the TPR decision.

We disagree. Although keeping siblings together is an important consideration, it is not outcome determinative because the best interest of each child is the polestar consideration. *Martin v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 192, at 6, 596 S.W.3d 98, 102. Evidence of a genuine sibling bond is required to reverse a best-interest finding on the basis of severance of a sibling relationship. *Id.* Here, the only evidence of such a bond is a

statement by Brooke that the siblings love each other, which is insufficient to override the entirety of the evidence supporting TPR. *See Brown v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 370, at 11, 584 S.W.3d 276, 283. Moreover, there was uncontroverted evidence that the separate placements were committed to ensuring continuing sibling contact. *See Blankenship v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 63, at 20, 661 S.W.3d 227, 238.

The circuit court's order found that TPR was in the best interest of the children even after hearing the testimony that it could result in separate permanent placements, noting that separation was not a foregone conclusion. Further, there was evidence presented that MC1's current placement was specifically in the child's best interest, but that placement was not able to also adopt MC2. It was undisputed that the children had been placed separately the entire case, had been doing very well in their placements, and all of their needs had been met.

Moreover, we hold that sufficient evidence supports the circuit court's TPR findings. Notably, Brooke fails to challenge the circuit court's findings regarding grounds and adoptability; thus, this court is not required to address these findings. *See, e.g.*, *Easter v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 441, at 8, 587 S.W.3d 604, 608. Brooke does, however, challenge the potential-harm factor of the best-interest finding. Regarding potential harm, the circuit court does not have to find actual harm would occur nor does it have to affirmatively identify a potential harm. *Phillips v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 169, at 6, 596 S.W.3d 91, 96. Additionally, evidence must be viewed in a forward-looking

manner and considered in broad terms. *Id.* And a parent's past behavior is often a good indicator of future behavior and may be viewed as a predictor of likely potential harm. *Id.*

The record before us indicates that Brooke admitted that she was not in a position to take custody of the children at the time of the TPR hearing and that she had used methamphetamine a mere two weeks before the hearing. This court has consistently held that continuing drug use demonstrates potential harm. *See Jackson v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 440, at 7, 503 S.W.3d 122, 126. Additionally, throughout the case and in testimony at the TPR hearing, there was evidence that Brooke repeatedly was either unwilling to address her drug abuse or was dishonest about her drug use even as help was being offered by DHS. And Brooke and Bradley also continued to have domestic-violence issues even after completing a prevention program. *See Davis v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 406, at 15, 587 S.W.3d 577, 585.

Ms. Lampkins specifically testified that while Brooke took advantage of a number of the services offered, there still had not been a consistent change in her behavior, which posed a great risk of potential harm. *See Bailey v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 134, at 6, 572 S.W.3d 902, 906 ("Our case law is clear that 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.").

Although Brooke claims she suffered only one simple relapse, the record indicates otherwise. DHS had been involved with Brooke just before this case started, during which it offered drug treatment, but Brooke relapsed, which led to both children coming into care—

for MC1, a second time. Additionally, Brooke admitted using methamphetamine as recently as two weeks prior to the TPR hearing after having had multiple positive drug screens throughout the pendency of the case. Multiple times, Brooke claimed that she was unable to attend inpatient treatment due to a delay on the part of DHS; however, the circuit court did not believe this excuse, and again, it is not the job of this court to 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. Moreover, services are irrelevant to a best-interest analysis. *See Holdcraft*, 2019 Ark. App. 151, at 11, 573 S.W.3d at 562.

This case is factually similar to *Jacobs v. Arkansas Department of Human Services*, 2017 Ark. App. 586, 532 S.W.3d 627, in which TPR was upheld where the mother had multiple DHS cases, continued to test positive for drugs, had a lengthy relapse, and missed appointments for drug assessments and treatment, and the children had been out of the home for twenty months. In *Jacobs*, we held that the children's need for permanency and stability overrode the parent's request for additional time to improve their circumstances. *Id.* at 9–10, 532 S.W.3d at 632.

Brooke is asking that the evidence be reweighed in a way that favors her, which is not the role of this court. *See Jennings v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 429, at 12, 636 S.W.3d 119, 126; *see also Boomhower v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 397, at 8, 587 S.W.3d 231, 236.

Affirmed.

VIRDEN and WOOD, JJ., agree.

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