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# ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-23-620

REGINALD MULL

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES AND MINOR  
CHILD

APPELLEES

Opinion Delivered February 14, 2024

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. 18JV-21-144]

HONORABLE KEITH CHRESTMAN,  
JUDGE

AFFIRMED

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**MIKE MURPHY, Judge**

Appellant Reginald Mull appeals from the Crittenden County Circuit Court's termination of his parental rights to his minor child, M.C. (DOB: 08-16-21). On appeal, Mull argues that the evidence failed to prove that termination was in M.C.'s best interest. We affirm.

The Arkansas Department of Human Services (the Department) exercised emergency custody of M.C. on August 19, 2021, because the mother, Della Lewis, tested positive for THC at the time of M.C.'s birth, and she had an unsuccessful history with the Department.<sup>1</sup> Specifically, Lewis and Mull were previously involved with the Department due to the same issues in 2018 and were offered services; however, the case resulted in the termination of

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<sup>1</sup>Lewis passed away in March 2023.

their parental rights. On August 23, the Department filed a petition for ex parte emergency custody and dependency-neglect of M.C., and on the same day, the circuit court entered an ex parte order for emergency custody.

On August 26, the court held a probable-cause hearing and found that probable cause existed for the emergency order to remain in place. The circuit court ordered Mull to comply with the case plan and obey all orders of the court. On October 1, the circuit court held an adjudication hearing and made a dependency-neglect finding based on Lewis's positive drug test at the time of M.C.'s birth. The court also ordered that the case goal be reunification. In addition to its prior orders from the probable-cause hearing, it ordered supervised visitation four hours a week.

On December 3, the court held a review hearing and found that Mull was in compliance with the case plan and that he signed an acknowledgment of paternity. Another review hearing was held on February 22, 2022. The goal remained reunification, and custody of M.C. remained with the Department. The court ordered that visitation could be modified to include a trial home placement so long as Lewis continued outpatient treatment and both parents continued to test negative for illegal substances. At a third review hearing held on April 28, the court authorized M.C. to begin the trial home placement, and the trial home placement was ordered to continue at the fourth review hearing. The court ordered that Lewis not be left alone with M.C. for more than five hours unsupervised due to a positive drug test.

On August 4, the circuit court held a permanency-planning hearing. At this hearing, the circuit court continued the goal of reunification and ordered that M.C. remain in the Department's custody. The court found that Mull had substantially complied with the case plan. Additionally, the circuit court continued the trial home placement with continued monitoring.

After three missed court-ordered drug screens, the Department filed a termination-of-parental-rights petition on March 15, 2023. The petition noted that Lewis had passed away on March 1, 2023. The following grounds were pleaded: twelve months, failure to remedy; willfully failing to provide significant material support or maintain meaningful contact; subsequent factors; aggravated circumstances; and a prior involuntary termination.

The termination hearing was held July 18. Miranda Monroe, the family service worker assigned to the case, testified that the trial home placement began in April 2022 and ended August 4, 2022. She testified that Mull inconsistently attended visits since Monroe had taken over the case in December 2022. She testified that Mull lacks stable housing because he lives with his mother in a one-bedroom apartment. Upon her visit to the apartment, there was not any furniture or safeguards in place for a child. Monroe testified that the trial home placement ended due because Mull had been arrested. She testified that M.C. is adoptable and is a healthy and active child. She contended it would be harmful to place M.C. with Mull because the Department is unaware of the status of Mull's probation or any possible pending criminal issues; the Department has not been able to observe Mull interacting with M.C. for more than two hours at a time; and Mull lacks stable and appropriate housing. She

acknowledged that Mull attended inpatient treatment, but she could not say for certain whether he did it for himself or because he was ordered to attend to satisfy his probation.

Mull testified that he receives monthly disability income and that he will soon be moving into his own apartment. He said he was “falsely arrested” for possession of a controlled substance but that he never had drugs on him. He testified that he is currently on probation. Mull testified he has not exercised the full visitation time with M.C. because he has been focused on completing his probation. He said his most recent positive hair-follicle test must have been error because he has been drug-free for four years. He testified that he felt relieved when Lewis died because she weighed him down in trying to get M.C. back.

Marissa Selden, the foster parent, testified she is interested in adopting M.C.

Following the termination hearing, the circuit court entered an order terminating Mull’s parental rights. He now appeals.

We review termination-of-parental-rights cases de novo. *Heath v. Ark. Dep’t of Hum. Servs.*, 2019 Ark. App. 255, at 5–6, 576 S.W.3d 86, 88–89. We review for clear error, and 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.* A court may order termination of parental rights if it finds clear and convincing evidence to support one or more statutory grounds listed in the Juvenile Code, Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2023), and that termination is in the best interest of the child, taking into consideration the likelihood of adoption and the potential harm to

the health and safety of the child that would be caused by returning him or her to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A).

On appeal, Mull challenges only the potential-harm prong of the best-interest finding. In assessing the potential-harm factor, the circuit court is not required to find that actual harm would result or to identify specific potential harm. *Gonzalez v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 425, at 12, 555 S.W.3d 915, 921. Potential harm must be viewed in a forward-looking manner and in broad terms, but a court may consider a parent's past behavior as a predictor of future behavior. *Id.* at 12, 555 S.W.3d at 921. A parent's failure to comply with court orders is sufficient evidence of potential harm, and a failed trial home placement may be considered evidence of potential harm. *Id.* at 12-13, 555 S.W.3d at 921-22.

Sufficient evidence supports the court's best-interest finding. The Department provided appropriate services, but the evidence was uncontroverted that Mull lacked stable housing and that a trial home placement was disrupted because, one year into the case, he could not remain drug-free or law abiding as evidenced by his arrest for illegal drugs. Mull was not in compliance with the court's orders to submit to a hair-follicle test and nail-bed test after his August arrest. Following his release, he tested positive for illegal substances, and despite lab-tested confirmation, he maintained that he never used the drugs for which he tested positive. Last, he regularly left the supervised visits early.

On appeal, Mull argues that there was no issue regarding illegal substances that posed a risk to M.C., but he acknowledges that he did not have flawless compliance with the case

plan, particularly after the trial home placement ended. We reject this argument because it is nothing more than a request to reweigh the evidence, which we will not do. *Boomhower v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 397, at 8, 587 S.W.3d 231, 236.

Accordingly, we cannot say that the circuit court clearly erred in terminating Mull's parental rights.

Affirmed.

KLAPPENBACH and BARRETT, JJ., agree.

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

*Kaylee Wedgeworth*, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

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