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ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-23-584

LARRY JACKSON APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	**Opinion Delivered** February 14, 2024 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION [NO. 60JV-21-420] HONORABLE TJUANA BYRD MANNING, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Larry Jackson appeals from the Pulaski County Circuit Court's order terminating his parental rights to his children, MC3, MC4, and MC5.[1] On appeal, Jackson argues (1) he was not appointed legal counsel in a timely manner and (2) the evidence is insufficient to support the circuit court's finding that termination was in the children's best interest. We affirm.

On June 24, 2021, the Arkansas State Police Crimes Against Children Division received an investigation referral for sexual abuse against Evon Medlock concerning her children. The report alleged that the family was living in a hotel and that Medlock works as a prostitute and performs sexual acts in front of the children. The report further alleged that Medlock uses drugs and abuses the children when she is under the influence. Additionally, the report urged an investigation into the

[1]The minor children (MCs) are numbered by birth order, eldest to youngest.

recent death of one of Medlock's youngest children. Following an investigation, on June 25, the Arkansas Department of Human Services (DHS) exercised an emergency seventy-two-hour hold on Medlock's children, MC2, MC4, MC5, and MC6. A second seventy-two-hour hold was exercised on June 28. DHS was unable to exercise an emergency hold on MC1 and MC3 because they were in the care of out-of-state relatives at the time.[2]

On July 1, DHS filed a petition for emergency custody and dependency-neglect of the juveniles stating that they were at substantial risk of serious harm as a result of neglect and parental unfitness. DHS further alleged aggravated circumstances as defined in section 9-27-303(6)[3] of the Arkansas Juvenile Code. In the body of the petition, Jackson was identified as the putative father of MC2, MC3, MC4, and MC5. That same day, the circuit court entered an ex parte order for emergency custody, placing custody of the children with DHS, including MC1 and MC3. A probable-cause order was entered on July 8, finding that probable cause for the children's removal existed and continued to exist. Additionally, Jackson was referred for DNA testing.

An amended petition for ex parte emergency custody and dependency-neglect was filed on July 27. The petition was amended to add Jackson as the acknowledged father of MC3, MC4, and MC5. On August 6, the circuit court entered an order of emergency custody reflecting that MC1 and MC3 were now in the physical custody of DHS.[4]

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[2]MC1 was reportedly residing in California with his maternal aunt. MC3 was residing with her maternal aunt in Texas.

[3](Supp. 2023).

[4]DHS received physical possession of MC1 on July 23 and physical possession of MC3 on July 26.

In an order entered on October 8, the juveniles were adjudicated dependent-neglected based on neglect and parental unfitness. Specifically, four of the children had positive hair-shaft drug tests—positive for amphetamine, methamphetamine, and cocaine—and neither parent was able to provide a reasonable explanation. Additionally, neither parent had provided evidence of stability, and there was an open case concerning the death of the juveniles' sibling. The circuit court further noted that Medlock had a prior involuntary termination of her parental rights on the basis of abandonment and aggravated circumstances that involved drug use. In the adjudication order, the "Court finds that Larry Jackson is the noncustodial parent of [MC3, MC4, and MC5] and did contribute to the dependency-neglect of the juveniles because the father is unable to provide a reasonable explanation of the positive hair shafts for the children. Mr. Jackson is not fit for custody today and there is no evidence of stability." The case goal was established as reunification with a concurrent case goal of custody with a fit and willing relative. Jackson was ordered to complete a psychological evaluation and drug-and-alcohol assessment and follow the recommendations; maintain stable housing and income; obtain sobriety and remain drug-free; submit to drug screens; submit to DNA testing; and provide the names of family members for consideration for placement of the children.

The circuit court held a review hearing on October 28. DHS supervisor Brooke Gillum testified that when she began working on the case the week prior, she noticed that "referrals were not done for this family as they should have been done" but that since then, she "has made the necessary referrals for the mother and Mr. Larry Jackson." Jackson was found to be in compliance to the extent that he could be, but the children could not be returned to him because he "needs to be further vetted."

A second review hearing was held on February 1, 2022. The court found that Jackson had not complied with the case plan and court orders. Specifically, he went to a scheduled drug-and-alcohol assessment but did not complete it, he had not submitted to any drug screens when requested by DHS, he had not submitted to a hair-shaft drug screen, and he had not visited with the children since the last hearing. The goal of the case remained reunification. DHS was found to have complied with the case plan and orders of the court. DHS provided, referred, or otherwise offered services, including individual counseling for the parents, drug-and-alcohol assessments for the parents, psychological-evaluation referrals, visitation, DNA-testing referral, hair-shaft drug tests, housing assistance for the mother, foster placement, and outpatient substance-abuse treatment for the mother. The court noted that Jackson is a parent as defined by Arkansas Code Annotated section 9-27-303;[5] he signed an acknowledgment of paternity for MC3, MC4, and MC5. The court additionally stated that counsel would be appointed for Jackson prior to the next hearing.

A permanency-planning hearing was held on June 14. Jackson was not present at the hearing; however, the record demonstrates that he was represented by counsel. The circuit court found that MC3, MC4, and MC5 could not be placed in the custody of Jackson because he had minimally complied with the case plan and court orders and had not participated in services since the last hearing. Jackson was found to have made minimal progress towards remedying the issues that prevented the children from being placed with him.

Another review hearing was held on September 27. The court granted a continuance at the request of DHS. A fifteen-month review hearing took place on November 30. The goal of the case

[5](Supp. 2023).

was changed to adoption for all of the children except MC1,[6] whose goal remained placement with a fit and willing relative. Jackson was found to be in partial compliance with the case plan and court orders. The court expressed concern that Jackson had visited with the children unsupervised since that was not in accordance with the court's order. The court further noted that Jackson tested positive for cocaine. Jackson was ordered to submit to a psychological evaluation, DNA paternity testing, and the hair drug test previously referred and to follow recommendations of any additional services if recommended. DHS was ordered to file a termination-of-parental-rights petition.

Accordingly, on March 23, 2023, DHS filed a petition seeking to terminate Jackson's parental rights alleging multiple statutory grounds and stating that termination was in the best interest of the children. Following the April 25 hearing, the circuit court entered an order terminating Jackson's parental rights to MC3, MC4, and MC5. He now appeals from the termination order.[7]

This court reviews termination-of-parental-rights cases de novo.[8] Grounds for termination of parental rights must be proved by clear and convincing evidence, which is that degree of proof that will produce in the finder of fact a firm conviction of the allegation sought to be established.[9] The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous.[10] A finding is clearly erroneous when, although there is

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[6]MC1, the eldest of the children, was fifteen years old.

[7]Medlock's parental rights to MC2, MC3, MC4, MC5, and MC6 were also terminated; however, Medlock is not a party to this appeal.

[8]*Dinkins v. Ark. Dep't of Hum. Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

[9]*Tillman v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 119.

[10]*Id.*

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.[11] In resolving the clearly erroneous question, we give due regard to the opportunity of the circuit court to judge the credibility of witnesses.[12]

To terminate parental rights, a circuit court must find by clear and convincing evidence that termination is in the best interest of the juvenile, taking into consideration (1) the likelihood that the juvenile will be adopted if the termination petition is granted and (2) the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent.[13] The circuit court must also find by clear and convincing evidence that one or more statutory grounds for termination exist.[14] Proof of only one statutory ground is sufficient to terminate parental rights.[15] Termination of parental rights is an extreme remedy and in derogation of a parent's natural rights; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child.[16] 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

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[11]*Id.*

[12]*Id.*

[13]Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii) (Supp. 2023).

[14]Ark. Code Ann. § 9-27-341(b)(3)(B).

[15]*Tillman*, *supra*.

[16]*Id.*

to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective.[17]

On appeal, Jackson first argues that the circuit court erred in proceeding on the termination petition because he was not appointed counsel until after the petition to terminate his parental rights was filed. He contends that he was identified as the legal father of MC3, MC4, and MC5 early in the case, specifically, in the amended petition for ex parte emergency custody and dependency-neglect, and that, as such, he was entitled to appointed counsel at that juncture.

Arkansas Code Annotated section 9-27-316 provides in pertinent part as follows:

> (h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings.
>
> (B) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian, the parent or custodian *from whom custody was removed* shall have the right to be *appointed* counsel, and the court shall appoint counsel if the court makes a finding that the parent or custodian *from whom custody was removed* is indigent and counsel is requested by the parent or custodian.
>
> (C) Parents and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, *if eligible*.
>
> (D) *All parents* shall have the right to be *appointed* counsel in *termination of parental rights hearings*, and the court shall appoint counsel *if* the court makes a finding that the parent is indigent and counsel is requested by the parent.

(Emphasis added.)

Here, Jackson was not a parent "from whom custody was removed." He acknowledges in his appellate brief that he was a "noncustodial father," and the children were physically removed from

[17]Ark. Code Ann. § 9-27-341(a)(3).

the custody of their mother. While he had a right to be represented at all stages of the dependency-neglect proceedings, under the statute, he was not entitled to appointed counsel until the termination-of-parental-rights hearings. Jackson concedes that he was appointed counsel once the termination-of-parental-rights petition was filed. Accordingly, because Jackson was not entitled to appointed counsel until the termination stage, we find no merit to his argument.[18] Moreover, the record does not indicate that Jackson requested counsel as the statute requires.

Next, Jackson does not challenge the statutory grounds for termination of his parental rights but rather challenges the circuit court's finding that termination was in the best interest of his children. A best-interest finding must be based on the circuit court's consideration of at least two factors: (1) the likelihood of adoption if parental rights are terminated and (2) the potential harm caused by continuing contact with the parent.[19]

In making his best-interest argument, Jackson does not challenge the finding that the children are adoptable. Because he fails to challenge the circuit court's adoptability finding, this court is not required to address it on appeal.[20] Instead, he focuses his argument on the potential-harm prong of the best-interest analysis, contending that "Jackson was not perfect, but he did not pose a danger to his children." The circuit court, in the termination order found that

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[18]Despite Jackson's argument that he was not appointed counsel until after the termination petition was filed, the record demonstrates that Jackson was represented by counsel well before that time, as early as the permanency-planning hearing held on June 14, 2022. The termination hearing was not held until April 25, 2023.

[19]*Baxter v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 508.

[20]*Easter v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 441, 587 S.W.3d 604.

> the children would be at substantial risk of potential harm of further physical abuse based on the allegations of volatility of Ms. Medlock and the physical violence observed by [MC1] of Mr. Jackson, drug exposure as Mr. Jackson's sobriety is not certain, and neglect if returned to either parent.

For potential harm, the evidence must be viewed "in a forward-looking manner and considered in broad terms, but a circuit court is not required to find that actual harm will result or to affirmatively identify a potential harm."[21] Here, Jackson failed to participate in services until late in the case. He started counseling in October 2022, approximately sixteen months after the case had begun. He did not complete his psychological evaluation, although he had multiple appointments scheduled for it. Jackson completed the outpatient substance-abuse treatment recommended by his drug-and-alcohol assessment; however, he had still not achieved sobriety. He tested positive for THC in October 2022 and positive for cocaine in November 2022. Furthermore, Jackson did not complete the nailbed test, nor was there evidence that he submitted to the hairfollicle drug test ordered at the beginning and throughout the case. There is no evidence that Jackson remedied his drug-abuse issues. Evidence of a parent's continued drug use and failure to comply with the case plan and court orders supports a potential-harm finding.[22] Failure of a parent to submit to drug screens is evidence of potential harm.[23]

Nevertheless, Jackson contends that there is no evidence that he ever abused the children, the court erroneously relied on MC1's testimony that he observed physical violence by Jackson, the

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[21] *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, 554 S.W.3d 285.

[22] *Middleton v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 97, 572 S.W.3d 410.

[23] *Skaggs v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 229.

court "downplayed" the evidence of Jackson's sobriety—his sobriety was clear and his drug "use was so isolated"—and he had completed many of the services referred by DHS. We find Jackson's best-interest arguments as a request to reweigh the evidence, which we will not do.[24]

We affirm the circuit court's order terminating Jackson's parental rights to his children.

Affirmed.

GRUBER and THYER, JJ., agree.

Leah Lanford, Arkansas Commission for Parent Counsel, for appellant.

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor children.

[24]*Bentley*, *supra*.