

Cite as 2024 Ark. App. 135
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-23-643

DALIA HARRIS

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES AND MINOR CHILD

APPELLEES

Opinion Delivered February 28, 2024

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. 66FJV-21-402]

HONORABLE DIANA HEWITT
LADD, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Dalia Harris appeals the Sebastian County Circuit Court order terminating her parental rights to her minor child (MC), who was born in August 2021. On appeal, Harris argues that the circuit court erred by finding that the Arkansas Department of Human Services (DHS) proved a statutory ground for termination and that termination was in MC's best interest. We affirm.

On November 10, 2021, DHS filed a petition for emergency custody and dependency-neglect concerning MC. The petition named Harris as the mother and Hunter Williams¹ as the putative father. In the affidavit attached to the petition, DHS alleged that MC had

¹The court also terminated Williams's parental rights, but he is not a party to this appeal.

sustained a broken femur and a skull fracture and that MC's treating physicians believed Harris's explanation for the injury was not plausible. DHS noted that MC needed neurosurgery. DHS further stated that Harris suffers from delayed processing and that Williams is bipolar and schizophrenic. The affidavit additionally stated that a case against Harris and Williams had been opened the day following MC's birth for failure to provide. On the same day the petition was filed, the court entered an ex parte order for emergency custody. On December 8, the court entered a probable-cause order.

On April 12, 2022, the court entered an adjudication order. In the order, the court noted that Harris appeared with her court-appointed counsel and her guardian ad litem. The court adjudicated MC dependent-neglected due to failure to protect and parental unfitness. The court stated that Dr. Rachel Clingenpeel, a child-abuse specialist, found that MC had suffered a broken femur and two skull fractures and that those injuries were inconsistent with Harris's explanation that MC was dropped during an altercation with Williams. The court further noted that Dr. Clingenpeel concluded MC's injuries were likely the result of abuse or, at the very least, neglect. The court found that the abuser is "an unknown person," but "the juvenile was a small baby and was in the care of Dalia Harris and Hunter Williams at the time." The court set the goal of the case as reunification with a fit parent with a concurrent goal of adoption. The court ordered Harris to comply with the case plan, which included attending parenting classes, domestic-violence classes, and counseling. The case plan further included obtaining and maintaining employment, housing, and transportation.

On July 24, the court entered a review order. The court ordered Williams to comply with a no-contact order prohibiting contact with Harris. The court further found that Harris was not complying with the case plan and had not demonstrated progress towards the goal of the case.

On February 16, 2023, the court entered a permanency-planning order. The court again found that Harris had not complied with the case plan. Specifically, the court noted that Harris did not have adequate housing or employment and that she had not completed parenting or domestic-violence classes. The court also noted that Williams had a pending criminal charge with MC as the victim.

On March 2, DHS petitioned to terminate Harris's parental rights. It alleged the failure-to-remedy, the subsequent-factors, and the aggravated-circumstances grounds, and it further asserted that termination was in MC's best interest.

The court held a termination hearing on June 13. Kathy Jenkins testified that the case had been opened for about a year and a half and that she had been the DHS caseworker for most of the case. Jenkins explained that Williams had been found guilty of abusing MC and that he had been sentenced to five years' suspended sentence in mental health court and fined \$10,000.

As to Harris, Jenkins testified that she did not attend domestic-violence classes, and she had taken only four parenting classes about a year ago. She explained that four classes did not satisfy the course requirements, and because one year had passed, Harris needed to restart the course. She stated that Harris had attended counseling, but she had been

inconsistent and had not attended since she started working. She noted that Harris had been working full time at Simmons Foods for two or three months.

Jenkins testified that Harris had appropriate housing for one month, but she stated that Harris had moved multiple times during the case. She testified that Harris's two prior residences were unclean, and she noted that in her first home, there were animal feces throughout.

Jenkins additionally explained that Harris moved to Oklahoma to care for an ill relative for about a month and that DHS lost contact with her during that time. She stated that Harris had also "been back and forth to the Crisis Center because of domestic violence" with Williams. She noted that DHS had transported Harris to the Crisis Center on two occasions, but "she'll stay maybe half a day and then she's back in the home, and then he's back at the home." Jenkins testified that "there's no consistency, there's no stability." She further testified that Harris had difficulties paying her bills.

Jenkins acknowledged that Harris is a victim of domestic violence, not the aggressor, and she noted that Williams had harassed Harris. Jenkins stated that she did not "find any fault in" Harris as a victim.

Jenkins testified that Harris had consistently visited MC throughout the case except for the one-month period when she was in Oklahoma. She stated that DHS had arranged "one-on-one parenting" with Harris wherein DHS provided caregiving instructions, such as holding and feeding. Jenkins testified, however, that Harris "wasn't bonding" with MC and had difficulties "retaining what was taught during the sessions." Jenkins specifically noted

that Harris had “an issue with carrying [MC].” Jenkins did not believe that Harris had the capacity to care for MC.

Carol Jarvis testified that she is the current DHS caseworker and that she took over the case from Jenkins in early 2022. Jarvis stated that Harris had not completed any services since she took over the case and that there was little likelihood of reunification in the near future. She stated that MC is adoptable.

Harris testified that she is twenty-four years old and that MC is her only child. She testified that following MC’s birth, DHS visited her in the hospital and found that she had “neglected him.” She stated that DHS helped her at that time. As to the incident that led to MC’s removal, Harris stated that she and Williams “were arguing at that time and then [MC] slipped out of [Williams’s] arms, and then I tried to catch him but it just happened too fast.”

Harris testified that her last domestic dispute with Williams occurred in December 2022 and that Williams violated the no-contact order. She noted that “he just started attacking me” and that she called 911. She stated that she has not seen or contacted Williams since the December 2022 incident, but she also stated that the no-contact order had been lifted. Harris testified that if Williams ever attacked her in MC’s presence, she would “run outside and get help to my house.” She acknowledged that her relationship with Williams is not good for her.

Harris testified that she suffers from depression and that she takes medication. She stated that she dropped out of high school in eleventh grade, and she noted that she was in special-education classes. Harris testified that she works full time at Simmons Foods. She

stated that she does not have transportation and that she relies on a friend for transportation to work. She further testified that she knows how to appropriately care for MC.

On June 25, the court entered an order terminating Harris's parental rights based on the failure-to-remedy and aggravated-circumstances grounds. The court further concluded that it was in MC's best interest to terminate Harris's parental rights. The court found that MC is adoptable and that he would be subjected to potential harm if returned to Harris's custody. In considering the potential harm, the court noted that Harris had not completed domestic-violence classes and that there had been ongoing contact between her and Williams.² The court further found Harris's testimony concerning her ability to care for MC not credible. Harris appealed the termination order to this court.

We review termination-of-parental-rights cases de novo. *Parnell v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264. The appellate inquiry is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Younger v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 138, 643 S.W.3d 487. 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 committed. *Gregg v. Ark. Dep't of Hum. Servs.*, 58 Ark. App. 337, 953 S.W.2d 183 (1997). On appellate review, this court gives a high degree of deference to the circuit court, which is in a far superior position to observe the parties before it. *Parnell*, 2018 Ark. App. 108, 538

²In the termination order, the court also found Williams to be MC's father on the basis of the DNA results.

S.W.3d 264. Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Friend v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 606, 344 S.W.3d 670.

In order to terminate parental rights, a circuit court must find by clear and convincing evidence that termination is in the best interest of the child, taking into consideration (1) the likelihood the child 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. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii) (Supp. 2023). The order terminating parental rights must also be based on a showing by clear and convincing evidence as to one or more of the grounds for termination listed in section 9-27-341(b)(3)(B).

On appeal, Harris argues that the circuit court erred by finding that a statutory ground supported termination of her parental rights. The circuit court found that the failure-to-remedy and aggravated-circumstances ground supported termination. Only one ground must be proved to support termination. *Reid v. Ark. Dep't of Hum. Servs.*, 2011 Ark. 187, 380 S.W.3d 918. For that reason, we address only the aggravated-circumstances ground.

Pursuant to Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(a)(3)(A) & (B), aggravated circumstances means, among other things, that a determination has been made by the circuit court that there is little likelihood that services to the family will result in successful reunification. *McLemore v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 57, 540

S.W.3d 730. To prevail on this ground, DHS was required to demonstrate that if appropriate reunification services were provided, there is little likelihood that reunification could be achieved. *Dejarnette v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 410, 654 S.W.3d 83.

Here, Harris argues that the evidence is insufficient to support the circuit court's aggravated-circumstances finding. She claims the evidence establishes that she was ready for MC to transition to her home at the termination hearing. She acknowledges that she did not complete the case plan, but she asserts that she had some compliance and worked towards reunification. She further points out that the evidence indicates Williams caused MC's injuries, not her, and she claims that she had successfully separated herself from him.

We hold that the circuit court did not clearly err by finding that the aggravated-circumstances ground supported termination of Harris's parental rights. At the time of the termination hearing, the case had been open for a year and a half. However, Harris had appropriate housing for only a month, she had attended only four parenting classes, and the DHS caseworker testified that Harris did not have the capacity to care for MC. Significantly, DHS had already provided Harris services at MC's birth. Moreover, DHS had removed MC due to serious injuries from a domestic dispute, and Harris had not attended any domestic-violence classes. Given this evidence and the high deference we give to the circuit court, we hold that the court's finding that there was little likelihood that services would result in successful reunification was not clearly erroneous.

Harris additionally argues that the circuit court erred by finding that it was in MC's best interest to terminate her parental rights. She does not challenge the court's adoptability

finding. She instead argues that DHS failed to prove that she posed a risk of potential harm to MC. She relies on her argument contesting the statutory ground, and she argues that at the termination hearing, she was ready for MC to return to her care.

We find no error by the circuit court. To find potential harm, the circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Kloss v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 389, 585 S.W.3d. 725. Potential harm must be viewed in a forward-looking manner and in broad terms, including the harm the child suffers from the lack of a stable, permanent home. *Collins v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 90. Additionally, the same evidence that supports an aggravated-circumstances finding may also support a potential-harm finding. *Kloss*, 2019 Ark. App. 389, 585 S.W.3d 725.

Such is true here. DHS removed MC from Harris's custody due to his serious injuries arising from a domestic dispute. After MC's removal, Harris did not complete parenting or domestic-violence classes, and the DHS caseworker testified that Harris did not have the capacity to care for MC. Accordingly, we cannot say the circuit court erred by finding that MC would be subjected to potential harm if returned to Harris's custody. We therefore affirm the termination order.

Affirmed.

VIRDEN and THYER, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

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

Dana McClain, attorney ad litem for minor child.