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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-560

JESSICA EDWARDS AND GARY
TACKER

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered February 28, 2024

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. 66FJV-21-315]

HONORABLE SHANNON L. BLATT,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

This is an appeal from the termination of the parental rights of parents Jessica Edwards and Gary Tacker to their children, MC1 (07/25/18), MC2 (12/23/19), and MC3 (06/03/21). On appeal, they challenge both the statutory grounds supporting termination and the potential-harm prong of the court's best-interest determination. We affirm.

I. Relevant Facts

On August 30, 2021, the Arkansas Department of Human Services (Department) exercised a seventy-two-hour hold over MC1, MC2, and MC3 due to alleged dependency-neglect. Specifically, the family refused the Department access to a child; there was reason to believe that the family would flee; there was inadequate food, shelter, and medical care; and the parents had serious substance-abuse problems. The affidavit attached to the petition for

dependency-neglect included the following information. In June 2021, a protective-services case pursuant to Garrett's Law was opened when Jessica delivered MC3 at home. From June 23 to August 30, Jessica tested positive for methamphetamine five times out of six and tested positive for amphetamines twice. Gary, who was a putative parent at this time, admitted using methamphetamine but was only tested once on July 14, and that test was positive. Jessica completed drug-and-alcohol assessment but did not begin outpatient services as recommended and did not attend her scheduled diagnostic appointment. Jessica refused inpatient treatment after initially stating that she would participate. Jessica and her children were unable to stay in a shelter because of her positive drug tests, and she did not show up for her Salvation Army shelter appointment/check in. Jessica and Gary had domestic-violence issues, and Gary would not allow Jessica to speak with the family service worker (FSW). Gary had been incarcerated three times and was on parole at the time of the children's removal. He was noncompliant with the terms of his parole and avoided contact with the agency. Jessica was not receiving food stamps. MC1 had scabies, MC2 was diagnosed with craniosynostosis (a birth defect in which bones of skull join too early) and had not seen a doctor in a year, and all three children were underweight and had severe diaper rash. Jessica claimed she was unable to contact a FSW; however, each of the FSWs had noted that Jessica possessed a cell phone. At the last home check, Gary admitted he had just gotten out of jail that morning: he had been arrested the night before due to an altercation with Jessica. There were several people asleep in the living room, and when Gary was informed that they were exercising a hold on the children and the police were coming, he and three others left the

apartment. Jessica, who had been down the hall at a different apartment when the caseworker arrived, tested positive for methamphetamine and amphetamines. Cigarette butts, old food and drinks, and drug paraphernalia were within reach of the children.

On September 3, after a hearing, an ex parte order for emergency custody was entered. The court found that removal from the parents' custody was necessary to protect the health and safety of the children, and the Department had made meaningful efforts to prevent removal of the children. The same day, Gary was ordered to establish paternity.

On October 4, a probable-cause order was entered. The court found probable cause that emergency conditions existed such that removal was necessary to protect the juveniles, and it was in the best interest of the children to remain in the Department's custody. The court ordered supervised visitation three times a week. The court noted that if Jessica sought help through the Specialized Women's Substance Abuse Treatment Services, the children may be placed with her. The Department was ordered to develop an appropriate case plan.

On December 29, the circuit court entered an adjudication order, finding that the Department had made meaningful efforts to prevent or eliminate the need for removal, and the children would remain in Department custody. The children were adjudicated dependent-neglected because of parental drug use, and the court found the allegations in the petition and accompanying affidavit were substantiated on the basis of the proof and the parents' stipulation. The court designated the case as a "Safe Babies" case, wherein the parents receive additional support. The goal of the case was reunification with the concurrent goal of adoption. The parents were ordered to obtain and maintain sufficient income to

support the family, appropriate transportation sufficient for the family, and appropriate housing sufficient for the family. They were ordered to complete a drug-and-alcohol assessment and any recommended treatment; comply with random drug screens, alcohol swabs, and hair-follicle tests; complete parenting classes and demonstrate the skills learned therein; and attend individual counseling.

In the February 16, 2022 review order, the circuit court found that the Department was in compliance with the case plan and had made meaningful efforts to provide services. The court found that Jessica was compliant with the case plan, residing at Gateway Recovery Center and undergoing inpatient treatment there. The circuit court found that Gary, still a putative father, was not in compliance because he had no housing, income, or transportation. On the day of the review hearing, Gary underwent DNA testing to establish paternity, and the order of paternity was entered on April 28. Gary was proved to be the father of all three children.¹

In the March 28 review order, the circuit court found that the Department had complied with the case plan and made meaningful efforts to provide family services and finalize a permanency plan for the children. The court found that the children were placed together in a foster home, and Jessica was living at Gateway and compliant with the transitional program there. Gary was not compliant with the case plan and presented the same the transportation, housing, and income issues as before.

¹Tony Edwards, whose name is on MC1's birth certificate, initially was found to be the father of MC1.

In the May 24 review order, the circuit court found the Department in compliance with the case plan. Gary was found noncompliant with the case plan, and the court noted the same housing, income, and transportation issues. Gary was ordered to see a doctor about his diabetes. The court found Jessica partially compliant with the case plan and court orders and ordered her to complete domestic-violence classes. She had been discharged from Gateway and had been referred to drug treatment through Western Arkansas Counseling and Guidance.

After the June 6 hearing, the court entered the review order on June 22, finding the goal of the case to be reunification with the concurrent goal of adoption. The Department was found to be in compliance with the case plan and to have made meaningful efforts to provide services. Jessica was found partially compliant with the case plan because she had begun working and had begun services, and Gary was found noncompliant and incarcerated. The circuit court found Jessica partially compliant with the case plan and additionally ordered a ninety-day hair-follicle drug test.

After a hearing, the circuit court entered the permanency planning order on September 22, finding that the goal of the case was reunification with the concurrent goal of adoption “because the parents have made substantial, measurable progress toward the goals of the case plan.” Jessica was found to be partially compliant with the case plan, and the court reiterated that she was working and had begun services. Again, the court found Gary noncompliant and that he was incarcerated.

In the October 11 review order, the circuit court changed the goal of the case to adoption. The Department was found to have complied with the case plan and had made meaningful efforts to provide services. The court found that the parents “had completed some services, but ultimately they are not compliant with the case plan and orders of the court. One of the central issues in this case has been drug use, and the parents’ hair follicle tests indicate continued, heavy methamphetamine usage.” The court ordered the Department to continue to provide reunification services pending termination.

On February 13, 2023, the circuit court ordered a sixty-day hair-follicle test on both parents. On February 22, the Department filed an amended petition to terminate Jessica’s and Gary’s parental rights. The Department alleged the following statutory grounds: (1) out of the custody of the parents for twelve months and failure to correct; (2) other factors subsequent to the filing of the petition that the parents manifested incapacity or indifference to remedy; and (3) aggravated circumstances with little likelihood services will result in reunification.

On March 14, the Department’s petition for a voluntary nonsuit was granted, and the petition for termination was dismissed without prejudice. After the final determinations were made that none of the children are members of any Indian tribe, the Department refiled the petition for termination on April 13, alleging the same grounds.

The termination hearing was held on May 22. Melissa Kaup, the caseworker, testified that in the three months since the last hearing, both parents tested positive for methamphetamine. She stated that on the day of the hearing, Gary tested positive for

methamphetamine, and Jessica tested negative for drug use. Neither parent had verifiable income, and for the last couple of weeks, they had been living with Jessica's sister. Before that, they had been living off and on in the same apartment that they were living in initially. Kaup stated that she had attempted to conduct home visits and drug screens, but no one answered the door. Kaup explained that sometimes the parents have access to a car, sometimes they do not. She stated that the Department had offered bus passes and had provided transportation, but sometimes the parents walked to visitation. The relative who came forward as a possible placement was disqualified due to her own history with the Department. Kaup stated that Jessica had given birth to twins since the February hearing, and both twins and Jessica tested positive for methamphetamine. Jessica completed Managing Youth Trauma Effectively (MYTE) parenting classes during her time at Gateway early in 2022, and Gary completed some parenting classes while incarcerated. Gary made appointments for drug-and-alcohol and psychological evaluations and counseling, but he did not show up for the appointments. Kaup opined that there were no services that would likely result in reunification. She testified that there was the potential for physical and psychological harm for all three children because of the parents' ongoing drug use and instability, and she stated that the children are adoptable with no major barriers to adoption.

Jessica testified that she and Gary sometimes lived with her sister, her four children, her sister's mother- and father-in-law, and their two children in a four-bedroom house. Jessica recalled that early in the case, when she lived at Gateway for two months, the children were with her there. When she was discharged from Gateway for drug use, she moved to a

transitional-living home. The children stayed with her there, too. Jessica stated that she had to leave the transitional-living home due to drug use and went to live with her sister. She worked at Sonic for a little over a year, but after three weeks of maternity leave, her manager told her that if she did not come to work, she was a “no-call, no-show.” She explained that she was training for a new job but would not be hired until she had completed the training period. Jessica stated that visitation was going very well, and she and Gary had not missed visitation, even with the kids across the state and their other children in Searcy. She stated she last used drugs about a month before the hearing, and she had a “heart to heart” with her sister and her sister’s in-laws about it. She stated that she could not take the children home that day and requested more time.

Gary testified that Jessica’s sister’s in-laws and their children would be moving out of the house they shared with Jessica’s sister and her kids in the following week. Gary stated that he was not working, they did not have a car, and he used drugs about four days before the hearing. Before that, it had been two or three weeks since he had used meth, and he used meth “more than once a month.” Gary recounted that he had been incarcerated for two months from May to July in 2022, and while he was there, he completed parenting and anger-management classes. Gary had tried to complete the drug-and-alcohol assessment the week before, but he did not have an identification card, so he was unable to do so. Gary stated that visitations had gone very well, and they spent what money they had gained from odd jobs on coming to visitations prepared with food and gifts. He requested to continue with reunification services, but he also stated he could not take custody of the children that

day, and they “should not have to wait another second.” Both parents acknowledged that this was a “Safe Babies” case with a much higher level of support.

The court ruled from the bench that parental rights would be terminated, and the termination order was entered June 2. The court found that all three statutory grounds alleged by the Department were supported by sufficient evidence and that it was in the best interest of the children to terminate parental rights, considering both the potential harm if the children were returned to their custody and the testimony and evidence that the children are adoptable. Specifically, the court found that the following facts supported termination: the case began as a Garrett’s Law protective-services case, and the parents never remedied their drug problems, despite the Department’s meaningful efforts to provide services. Throughout much of the case, Jessica was found to be partially compliant with the case plan, and

one of the central issues in this case was drug use, and the parents’ recent hair follicle indicated continued heavy methamphetamine use. Since the last hearing, the parents are unemployed, have no transportation, and have no appropriate housing, and have had two positive hair follicle tests.

The court found that since the case began, Jessica had given birth to twins born with methamphetamine in their systems who were taken into Department custody. Due to the above facts, the court found that there was little likelihood that further services would result in reunification. The court found that it was in the best interest of the children to terminate parental rights because they are adoptable, there were no major barriers to adoption, and the children would be subjected to potential harm due to parental drug use, lack of housing, and

minimal income. Jessica and Gary timely filed their notices of appeal, and this appeal followed.

II. Discussion

A. Statutory Grounds

The grounds for termination of parental rights must be proved by clear and convincing evidence. *Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *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. *Dinkins v. Ark. Dep't of Hum. Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). This court reviews termination-of-parental-rights cases de novo. *Id.* Proof of only one statutory ground is sufficient to terminate parental rights. *Contreras v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 604, 474 S.W.3d 510.

On appeal, Jessica and Gary argue that the circuit court's finding that statutory grounds support the termination decision is clearly erroneous because the Department did not make meaningful efforts to provide services throughout the case, including after the termination petition was filed. Jessica and Gary assert that even though the aggravated-circumstances-little-likelihood ground does not require that the Department offer services,

without an offer of appropriate reunification services, the Department could not prove that *additional* services were not likely to result in reunification.² Their argument is not well taken.

To prevail on the aggravated-circumstances ground that there was little likelihood that services would result in successful reunification, the Department was required to demonstrate that if appropriate reunification services were provided, there was little likelihood that the services could achieve reunification. See *Peterson v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 75, 595 S.W.3d 38; *Yarborough*, 96 Ark. App. 247, 254, 240 S.W.3d 626. We have stated, “[T]here must be more than a mere prediction or expectation on the part of the circuit court that reunification services will not result in successful reunification.” *Yarborough*, 96 Ark. App. at 254, 240 S.W.3d at 631. However, a finding of aggravated circumstances does not require evidence of the Department’s meaningful effort to provide services. *Peterson*, 2020 Ark. App. 75, 595 S.W.3d 38.

Moreover, the record supports the circuit court’s finding that further services were not likely to result in reunification. Jessica and Gary liken the instant case to *Duncan v. Arkansas Department of Human Services*, 2014 Ark. App. 489, at 9–10. In *Duncan*, this court reversed a little-likelihood finding of aggravated circumstances because the Department had delayed providing services; however, *Duncan* was actively engaged in services and making

²Jessica argues that “additional” services are at issue in this case; however, this court has held that “[c]ontrary to appellant’s argument that the circuit court had to find that *further* services would not result in reunification, the statute speaks in terms of ‘services,’ not ‘further services.’” *Louissaint v. Ark. Dep’t of Hum. Servs.*, 2020 Ark. App. 494, at 6, 611 S.W.3d 709, 713.

progress when her rights were terminated, and there was no indication that she had contributed to the delay in starting services. *Duncan* was reversed, in part, because this court held that the mother's record of improvement established that she had remedied the conditions that caused removal—environmental neglect and domestic violence. *Id.* at 8. Additionally, evidence was presented at the termination hearing that the mother had been paying her bills, providing adequate food, and progressing in therapy. *Id.* at 8–9.

The circumstances in this case are unlike those in *Duncan*. During the initial protective-services case before the children were removed from her custody, Jessica refused inpatient treatment that would have allowed the children to stay with her, and during the subsequent dependency-neglect case, Jessica was forced to leave the transitional-living program at Gateway because she tested positive for methamphetamine. From February 2022 to February 2023, Jessica made two attempts to get counseling or drug treatment, and from February 2023 to the date of the hearing, she made one attempt. Jessica never achieved stable housing, income, or transportation, and her caseworker testified that there were no further services that could be offered that would likely lead to a successful reunification. As to Gary, he testified that he attempted to go to his drug-and-alcohol assessment only two or three weeks before the termination hearing, about five or six weeks after the referral had been made. Gary could not complete the assessment because he had not obtained identification, and he stated that he continued to regularly use methamphetamine, as recently as four days before the hearing. Gary testified that he did not have stable housing or income. Jessica and Gary were offered services through the Safe Babies program, which provides additional and

expedited support to parents trying to achieve reunification. Given these circumstances, we cannot say that the circuit court erred by finding that there was little likelihood that services would result in successful reunification.

Because we affirm the court's finding on the aggravated-circumstances-little-likelihood statutory ground, and proof of only one statutory ground is sufficient to terminate parental rights, we need not address Jessica and Gary's arguments regarding the other statutory grounds. See *Hamman v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 295, 435 S.W.3d 495.

B. Best Interest

Jessica and Gary assert that the circuit court's finding that potential harm would result if the children were returned to them is not supported by the evidence. We disagree.

In addition to finding the existence of at least one statutory ground to terminate parental rights, a court must also find that termination of parental rights is in the child's best interest, taking into consideration two statutory factors: (1) the likelihood of adoption if parental rights are terminated, and (2) the potential harm caused by continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i), (ii) (Supp. 2023). The court is not required to identify a specific potential harm. *Pine v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 781, 379 S.W.3d 703. The potential-harm analysis is to be conducted in broad terms. *Id.* It is the "best interest" finding that must be supported by clear and convincing evidence. *Id.* On appeal, Jessica and Gary do not challenge the adoptability finding of the court; thus, this court must affirm the ruling regarding adoptability. *Smith v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 368, 523 S.W.3d 920.

Gary admits that he could not provide a safe and stable home, and he had not obtained a stable income; however, he contends that completion of drug treatment would improve his circumstances and allow him to safely parent his children. His argument fails. The goal of section 9-27-341 is to provide permanency in a child's life in circumstances where returning the child to the family home is contrary to the child's health, safety, or welfare, and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. *Meriweather v. Ark. Dep't of Hum. Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007). A child's need for permanency and stability may override a parent's request for more time to improve the parent's circumstances. *Dozier v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 17, 372 S.W.3d 849. Accordingly, Gary's request for more time is not a basis for reversal.

Jessica asserts that the circuit court's determination that she posed potential harm to her children is erroneous because she was never a danger to her children, and she had made significant and measurable progress toward reunification. She argues that this case is similar to cornerstone cases in which this court reversed the circuit court's termination of parental rights because there was insufficient evidence of potential harm. See *Rhine v. Ark. Dep't of Hum. Servs.*, 2011 Ark. App. 649, at 10-11 (law does not require "flawless compliance" with court orders or "perfect parent[ing]," and finding no evidence of harm or "real risk" of potential harm); *Cranford v. Ark. Dep't of Hum. Servs.*, 2011 Ark. App. 211, 378 S.W.3d 851 (best-interest finding clearly erroneous where no evidence that parent had ever physically abused or harmed child or were a threat to do so in the future); *Kight v. Ark. Dep't of Hum.*

Servs., 87 Ark. App. 230, 189 S.W.3d 498 (2004) (reversing termination order where mother had remained sober for six months prior to termination despite few lapses in judgment, such as fraternizing with drug-abusing/criminal father of children and relapse during case while pregnant). These cases are distinguishable from the instant case because Jessica could not remedy her drug use, and her relapse was not minor. Neither parent progressed to unsupervised visitation allowing them to demonstrate the ability to safely parent their children, and neither parent attained stable housing and employment. This court has consistently noted that continuing drug use demonstrates potential harm to children. See *Jackson v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 440, at 7; *Davis v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 815, 370 S.W.3d 283; *Carroll v. Ark. Dep't of Hum. Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). Jessica's and Gary's continued use of illegal drugs alone is contrary to the children's best interest and supports the circuit court's finding of potential harm. See *Jones v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 615, 508 S.W.3d 897. After twenty months, the court chose the children's need for stability over the parents' request for more time and services, and we affirm the decision.

Affirmed.

GLADWIN and WOOD, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for separate appellant Jessica Edwards.

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