

Cite as 2024 Ark. App. 294
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-24-5

STEPHANIE KRUSEN AND JAMES
KRUSEN

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered May 1, 2024

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26JV-22-11]

HONORABLE LYNN WILLIAMS,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellants Stephanie and James Krusen separately appeal the order of the Garland County Circuit Court terminating their parental rights to their sons, M.C.1¹ and M.C.2.² They argue that the evidence was insufficient to support the termination and that termination was not in the boys' best interest. We affirm.

The Arkansas Department of Human Services (DHS) exercised a seventy-two-hour hold on M.C.1 on January 5, 2022. DHS filed a petition for dependency-neglect on January 10. According to the accompanying affidavit, James was taken to the hospital due to

¹D.O.B. 06-09-20.

²D.O.B. 03-27-22.

suspected drug use. He was incoherent and lethargic and did not know where he was or what was going on. James had two outstanding drug-possession charges at this time. Stephanie could not be still or concentrate on any conversation. She also appeared to be in an altered state of mind. She told DHS that if tested, she would be positive for methamphetamine. However, she refused testing, refused to allow DHS access to investigate the state of the home, and although she admitted to being five months pregnant, she refused to go to treatment. M.C.1 was removed due to concerns that Stephanie could not supervise or care for him. An ex parte order for emergency custody was granted the same day. The order specifically stated,

The Department was not able to investigate the state of the home because access was continuously denied by the Defendants. The family refuses access to the juvenile, the Defendant will not provide supervision necessary to protect the juvenile from potentially dangerous harm; the juvenile's physical living conditions are hazardous and immediately threatening, based on the juvenile's age and developmental status. Stephanie Krusen and James Krusen's emotional stability seriously affect[s] the current ability to supervise, protect, or care for the juvenile and their current substance use seriously affect[s] their ability to supervise, protect or care for the juvenile. The Defendants' current substance use seriously affects their ability to supervise, protect, or care for the child. The Court finds that the efforts made to prevent removal of the juvenile were reasonable based on the family and juvenile's needs.

M.C.1 was placed in DHS's custody pending further orders of the circuit court. On January 12, the circuit court held a probable-cause hearing where it found that probable cause existed for the emergency order to remain in place.

An agreed adjudication order was filed on March 4. Appellants agreed that M.C.1 was dependent-neglected and that the allegations in the petition were true and correct.

Specifically, M.C.1 was at substantial risk of serious harm from abuse, neglect, and parental unfitness. Abuse was due to appellants' giving M.C.1, or permitting him to consume or inhale, a mood-altering substance not prescribed by a physician; his hair-strand drug screen at the time of removal was positive for methamphetamine and amphetamine. Neglect was due to appellants' failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of M.C.1, including failure to provide shelter that does not pose a risk to M.C.1's health or safety. The order noted that a large tree had fallen and damaged the roof and structure of the home and that appellants failed to allow DHS access to determine M.C.1's health and safety. It also noted appellants' failure to appropriately supervise M.C.1, which resulted in his being placed in inappropriate circumstances, creating a dangerous situation. Stephanie tested positive for methamphetamine and amphetamine the day before the probable-cause hearing. The circuit court found that appellants are a threat to a vulnerable population as evidenced by the abuse and neglect of M.C.1. The circuit court set the case's goal as reunification with a concurrent goal of relative or fictive-kin placement. Appellants were ordered to complete a drug-and-alcohol assessment and follow any recommendation; submit to random drug screens immediately upon request; submit to hair-follicle screening; participate in individual therapy; submit to a psychological evaluation and follow any recommendation; participate and attend all visitation scheduled with the juvenile; complete parenting education; schedule and keep all appointments; obtain and maintain a safe, suitable, and appropriate home for self and the juvenile; maintain an environment free of illegal substances and other health or safety hazards; obtain and

maintain adequate income to support self and the juvenile; request assistance for transportation from DHS forty-eight hours in advance; cooperate with DHS; permit DHS to inspect the home; participate in any service as may be requested by DHS; maintain consistent contact with the juvenile; demonstrate stability and the ability to provide for the health, safety, and welfare of the juvenile; maintain consistent contact with DHS; and keep DHS informed of a current address.

DHS took a seventy-two-hour hold on M.C.2 on March 28. In its April 1 petition for dependency-neglect, it stated that the family home had been found to be unsafe for children. It also noted that Stephanie had tested positive for methamphetamine on February 12 and that James had refused a urine screen. The circuit court entered an ex parte order for emergency custody on April 4. The order noted that although services had been provided to the family in the other dependency-neglect case, Stephanie had not yet achieved sobriety. Appellants agreed that probable cause still existed for M.C.2 to remain in DHS's custody. The circuit court held a dual adjudication and review hearing on June 1. Appellants agreed that M.C.2 was dependent-neglected for the same reasons as M.C.1.³ The order stated that appellants continued to use methamphetamine and that James still had pending drug-related charges. The case's goal was also reunification with a concurrent goal of relative or fictive-kin placement. The circuit court found that DHS had complied with the case plan and orders of the court and had made reasonable efforts to provide family services and to finalize

³The children were placed in the same foster home.

a permanency plan for the child. As part of the review order, the circuit court noted that appellants had not complied with the case plan and orders of the court—specifically, the home remained inappropriate, with roof damage from a fallen tree visible from outside the home; appellants had continued to deny DHS access to the inside of the home, and DHS could not determine whether several rooms remained so filled with things that they could not be accessed from inside the home; Stephanie tested positive for methamphetamine on May 12; James refused drug screens; appellants had attended less than half of the scheduled visits that were offered, but the visits they did attend went well; appellants had demonstrated little to no progress toward the goal of the case; and they had not benefited from the services being offered because they had not participated in them. Appellants were ordered to do the same things as ordered in March.

In the August 31 agreed review order, the circuit court found that appellants had complied with the case plan and court orders in that they participated in visitation, parenting classes, and individual counseling; they had acquired a new residence but had not allowed DHS access to inspect it for health or safety concerns; and they had demonstrated progress toward the case's goal. DHS was found to have complied with the case plan and orders of the court and to have made reasonable efforts to provide family services and to finalize a permanency plan for the children. The case's goal remained the same.

An agreed permanency-planning order was filed on December 14 in which the circuit court found that appellants had partially complied because they had attended counseling, but they still needed to complete parenting classes. Appellants both had positive hair-follicle

tests and had been “encumbered for inpatient treatment.” They also participated in visitation with the children. The case’s goal remained the same.

A review hearing took place on March 8, 2023. In the order filed on March 14, the circuit court found that appellants were partially compliant with the case plan. They had not completed the required hours of parenting classes; Stephanie had completed inpatient treatment, and James was scheduled to enter inpatient treatment on March 30; and appellants continued to deny DHS access into their home. Appellants were ordered to allow DHS into the home on March 28 for an inspection. The case’s goal remained the same. The circuit court found that DHS had made reasonable efforts.

The permanency-planning hearing (PPH) scheduled for May 24 was continued on four separate occasions by agreement of the parties. DHS filed a petition to terminate appellants’ parental rights on July 31, alleging twelve months failure to remedy as its sole ground.⁴

The termination hearing took place on October 4. James testified that he is the father of M.C.1 and M.C.2. He admitted that he never completed inpatient treatment because he was hospitalized the day before he was to start treatment. He stated that he tested positive for THC the day before the hearing because he ate a “gummy [somebody gave him] to relieve [his] pain.” He denied knowing that the gummy had THC and said that he thought it was just CBD. He testified that they currently lived with his son, his son’s fiancée, and the

⁴Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Supp. 2023).

fiancée's sister. He stated that they have been living there for about three months. He said that it is a four-bedroom home and that there is an empty room for the children.

On cross-examination by his attorney, James stated that they informed DHS of their new address about three months ago but that DHS never came out and looked at the home. He testified that he was admitted to the hospital several months ago due to multiple abscesses on his liver, which had to be surgically removed. He was hospitalized for approximately three months. Once he was discharged, he remained out of the hospital for two weeks and had to be readmitted and undergo spinal surgery. He remained in the hospital for a month following that surgery. He stated that they had a toddler bed and a baby bed for the boys at his mother-in-law's home ready to be placed in the room at his son's house. He said that even though he is currently in a wheelchair, he can still take care of the children: he can change diapers, bathe the children, play with the children, feed the children, or do whatever needs to be done.

Shawna Wright, the family's caseworker, testified that M.C.1 was removed from appellants' custody due to environmental concerns and drug use. She said that M.C.2 was removed because M.C.1 was already in care, and Stephanie did not have any prenatal care. She said that following M.C.1's removal, both parents submitted to a hair-follicle test, and they both tested positive for methamphetamine and were referred for inpatient treatment. She stated that James entered treatment first but left because he said that he needed medication to sleep, he could not use his night light, and his diabetes required him to have special drinks there. Stephanie entered inpatient treatment and completed it in mid-

February. James was scheduled to go back to inpatient treatment, but he never did go. She said that to her knowledge, both appellants are in counseling. She also said that they had completed parenting classes. Wright stated that James tested positive for THC the day before the hearing. She testified that obtaining drug screens from appellants was a problem because there were times when they refused to give them or claimed they were not able to give them. She said that she has been unable to do random drug screens on James. Photos were admitted during Wright's testimony. The first set showed the home from which M.C.1 was removed. They were taken in March 2022. The second set showed the home appellants lived in from September 2022 to April 2023. The last set showed a home where Stephanie reported that she was going to be staying in late May. Wright stated that severe environmental concerns were present at each residence. She opined that regardless of where appellants live, there seems to be issues with cleanliness and the home being unsanitary. She acknowledged that when James was discharged from the hospital in July, he informed her they were going to be living with his son until they found an apartment of their own. She stated that Stephanie had reported that she had obtained an apartment in April and that they were going to be moving, but that never happened. She said that her concerns with the children being returned to appellants are continued environmental concerns and their inability to care for the children. She testified about two visits in which James was ill and had to be told to check his blood sugar, and he had to give himself insulin. She also said that there were multiple visits in which appellants had to leave early due to illness, several that were canceled because Stephanie was throwing up, and other missed visits because

Stephanie had to take care of James. Wright stated that Stephanie's drug screens had been negative for the past five months. She said that she believed that appellants' use of illegal substances had changed, but she did not think their living environment had changed. She testified that appellants are unable to maintain a clean and sanitary home given the condition of the homes after appellants have only lived there three to six months.

On cross-examination by the ad litem, Wright testified that Stephanie's drug screens had remained negative. She said that James just tested positive for THC and does not have a medical marijuana card. She stated that it is concerning that James has not completed his inpatient treatment, regardless of the reason, because there is always a propensity for relapse without treatment. She described the first home as having several dogs and dog hair everywhere; there was a full-sized bed in the living room with very little walking space for M.C.1; the back half of the house was not accessible because the tree had fallen through the roof. She described the second home as "disgusting." She said that the house smelled "of death." She stated that dog urine, feces, and trash were present on every floor in the home. She said that she had never experienced a home with that level of environmental concerns. She testified that she was not allowed to look at the home until about a week after the scheduled date because Stephanie said that "she just [had] a little bit more cleaning that needed to be done[.]" She admitted that she had not gone to appellants' most recent address because, even if that home was clean, it would not have any bearing on her recommendation due to the condition of the three previous homes.

On cross-examination by Stephanie's attorney, Wright reiterated that she has not been to appellants' most recent home. She said that when she visited the second and third homes, Stephanie had already completed her inpatient treatment and James was in the hospital. She admitted that she had not talked to appellants' therapist but stated that she had requested their records, which she had not received. She said that in addition to obtaining housing, Stephanie needs to be able to show up for all her scheduled visits with the children, even if James is ill. She said that appellants' names are on the list for an apartment at Timberland Apartments, but it is a three-step process, and there is no definitive date on when they would be able to move into their own apartment.

On cross-examination by James's attorney, Wright testified that housing is one of her biggest concerns. She said DHS is still concerned with drug use, too. Wright stated that although she was notified in July that appellants would be living with their son, she had visited that residence.

On redirect, Wright stated that appellants informed her that their current residence was a temporary situation until they could find permanent housing. She said that based on what she had seen throughout this case, she did not have any confidence that any home they lived in would be kept clean.

Susan Miller, the DHS adoption specialist, testified that there are 152 matches for families interested in adopting M.C.1 and M.C.2 as a sibling group. She also stated that their current placement is interested in adopting them.

Sarah Law testified that she is appellants' substance-use and mental-health therapist. She said that appellants had not missed any appointments and that any missed appointments had been made up. She stated that she had not been contacted by DHS. She said that with Stephanie, she works on coping skills and Stephanie's ability to "live life on life's terms." She said that Stephanie will be able to function through anxiety and have good, positive communication. She stated that she is working on coping skills, communication skills, and substance use with James. She said that Stephanie informed her that she had completed inpatient treatment in late January or early February. She agreed that being "strung out on meth" would affect your ability to clean the house, care for yourself, care for your children, or even care for your environment. She stated that Stephanie is trying and that James has opened up. She said that she had not had any problems with appellants being noncompliant. She opined that appellants could benefit from a little more time.

On cross-examination by James's attorney, Law stated that appellants are improving with counseling. She said that both appellants' hygiene is better. She testified that she "would hope" that with more counseling appellants will be able to parent their children. She said that she has been Stephanie's therapist since July 12 and James's therapist since July 31.

Upon questioning by the circuit court, Law stated that Stephanie needed at least eight more weeks of treatment and that James's timeline may differ because he still has not completed inpatient treatment.

On cross-examination by DHS, Law stated that James would probably benefit from inpatient treatment, but she doubted he would meet the criteria for it right now. She opined

that drug use contributed to the state of the houses as well as Stephanie's struggle with anxiety and depression. However, she stated that Stephanie is stabilized with medication. She said she is hopeful that cleanliness will no longer be an issue, but she cannot give an absolute answer that it will not be.

On cross-examination by the ad litem, Law testified that they are just now beginning the steps in her substance-abuse sessions with James and that they are currently on step one. Law stated that she has diagnosed Stephanie with bipolar, generalized anxiety, substance-use disorder, and other stimulants in early remission. She has diagnosed James with schizophrenia, substance-use disorder, and stimulant in remission in cannabis.

On recross-examination by James's attorney, Law stated that DHS has not reached out to her for a recommendation since she began treating appellants but that DHS has reached out to her office for medical records.

Stephanie testified that they live with her son, her son's fiancée, and the fiancée's sister. She said they are waiting on rental assistance for Timberland Apartments so that they can afford to pay for it. She stated that January was the last time she used methamphetamine. She said their visits with the children are going well. She stated that if given more time, she would continue to work with Law. She asked the court to give them a little more time to show stability now that she is clean and doing better. She stated that she feels like she can take care of the children. She said James has managed to stay away from drugs.

On cross-examination by James's attorney, Stephanie stated that she could take the children home with her that day. She said that she had lived with her son since July, and

that although they had provided DHS with the address, DHS had not visited the home. She said that DHS never asked her if the current home would be appropriate for them to live in permanently.

On cross-examination by the ad litem, Stephanie testified that she and James both get \$910 a month for disability. She said that if she wanted to, she could get a part-time job and work ten hours a week.

The circuit court granted DHS's petition. It orally stated,

The problem the Court has and it's a very huge problem is that these children deserve permanency. The oldest child has been in the custody of the Department of Human Services for 637 days. The youngest child has never lived outside foster care and has lived there 556 days. The therapist talks about needing more time and I appreciate the fact that she's not had a whole lot of time at this point. We're talking about another eight weeks in regard to Mrs. Krusen. We don't know what that time will be with Mr. Krusen. We do not have stable housing. We're living at someone else's home, a home that we cannot control. When I say "we," the Krusens don't control. I don't know what that house would look like if the Krusens controlled that house. Prior history is not favorable to them. And there have been attempts that they're trying to get stable housing, but, again, we're 16 months in regard to this case and we have no permanency, and I find it in the best interest of these children that they have permanency. I cannot place them back in the same situation that we removed them from. I don't find that's safe, I don't find it's sanitary, and I do not find it in their best interest. I also find that Mr. Krusen has not completed the inpatient drug rehab and still using at least THC. And given all those factors, I find the best interest of these children that I terminate the parental rights at this time.

The termination order was filed on October 11. The circuit court found that termination of appellants' parental rights was in M.C.1 and M.C.2's best interest because they are adoptable and they would be subjected to potential harm if placed back in appellants' custody. As to the ground pled, the circuit court found that the conditions that caused removal still existed in that appellants do not have stable, independent housing. They are

living in a spare room at a relative's house. But throughout the case, appellants have demonstrated their inability to maintain a clean, environmentally safe home that would be appropriate for M.C.1 and M.C.2. The order also noted that although Stephanie had completed inpatient treatment and has remained sober, she has not completed counseling and did not begin counseling until July 12, 2023. As for James, the order noted that he had not completed inpatient treatment, he tested positive for THC one day before the termination hearing, and he had not completed counseling and did not begin it until July 31. Appellants filed timely notices of appeal.

An order terminating parental rights must be based on a finding by clear and convincing evidence that (1) termination of parental rights is in the best interest of the children, considering the likelihood that the children will be adopted and the potential harm caused by returning the children to the parent's custody, and (2) at least one ground for termination exists.⁵

Cases involving the termination of parental rights are reviewed de novo on appeal.⁶ The appellate court will not reverse the circuit court's decision unless the court's finding of clear and convincing evidence is clearly erroneous.⁷ A finding is clearly erroneous when,

⁵Ark. Code Ann. § 9-27-341(b)(3)(A) & (B) (Supp. 2023).

⁶*Dinkins v. Ark. Dep't of Hum. Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

⁷*Yarborough v. Ark. Dep't of Hum. Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

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.⁸

In determining whether termination is in the best interest of the juvenile, the circuit court must consider the entire history of the case and all relevant factors in the case, including the likelihood that the juvenile will be adopted and the potential harm that would be caused by returning the juvenile to the custody of the parent.⁹ Adoptability and potential harm, however, are merely two factors to be considered and need not be established by clear and convincing evidence.¹⁰ The evidence presented on potential harm must also 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.¹¹

Appellants challenge the circuit court's failure-to-remedy finding as the ground for termination. Under the failure-to-remedy ground, the circuit court may terminate parental rights when it determines that a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve months, and despite a meaningful effort by the department to rehabilitate the parent and correct the

⁸*Gregg v. Ark. Dep't of Hum. Servs.*, 58 Ark. App. 337, 953 S.W.2d 183 (1997).

⁹*Chaffin v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 522, 471 S.W.3d 251.

¹⁰*Id.*

¹¹*Id.*

conditions that caused removal, those conditions have not been remedied by the parent.¹² Further, under the failure-to-remedy ground, the fact that a parent begins to make improvements as termination becomes more imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the reason for the initial removal from the parent's home.¹³

Here M.C.1 was removed from appellants' legal custody on January 5, 2022, and adjudicated dependent-neglected on the basis of abuse, neglect, and parental unfitness due to environmental concerns and drug issues. Likewise, M.C.2 was removed on March 28 and adjudicated dependent-neglected for the same reason M.C.1 was adjudicated dependent-neglected. Stephanie argues that the conditions that caused removal (the condition of the home and her drug usage) had both been remedied at the time of the termination hearing, and the circuit court erred in finding otherwise. The evidence shows that Stephanie had been drug-free since the beginning of the year. However, she still lacked a safe, suitable, and appropriate home for herself and the boys. Although she was currently living with her son, this was temporary and not a permanent placement. The evidence shows that every home Stephanie lived in since the opening of the case was in bad condition environmentally. Even after she successfully completed inpatient drug treatment, she was still unable to keep a clean and appropriate house. Although she had almost twenty-two months, Stephanie was still

¹²Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

¹³*Yancey v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 211.

unable to remedy her housing issue. It is true that she was on a waiting list for an apartment, but there was no timeline given for when she would be able to move into the apartment. However, this is a last-minute effort and will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place.¹⁴ Additionally, even after an appropriate house was found, Stephanie would need more time to prove that she can maintain a clean and environmentally safe home for the boys. A child's need for permanency and stability may override a parent's request for more time to improve the parent's circumstances.¹⁵ Thus, sufficient evidence supports the failure-to-remedy ground as a basis for termination Stephanie's parental rights.

Likewise, James argues that the conditions that caused removal have been remedied. He maintains that it was his sickness, Stephanie's drug use, and the tree on the roof that led to removal of the boys. However, he is reading the statute too narrowly. Despite what he says, his drug usage was also a concern from the beginning of the case. The issue with the home was not just the fact that a tree had fallen through the roof—the home was filthy and altogether inappropriate for a young child. James tested positive for methamphetamine at the beginning of the case, and he tested positive for THC the day before the termination hearing. He also failed to complete inpatient treatment as ordered. At the time of the termination hearing, appellants still did not have a safe, stable, and appropriate home for

¹⁴See *Garlington v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 124, 542 S.W.3d 917.

¹⁵*Kloss v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 389, 585 S.W.3d 725.

the boys, which was a continuing issue throughout the case. Thus, sufficient evidence supports the termination.

Appellants also argue that termination of their parental rights was not in the boys' best interest. They do not challenge the adoptability finding; however, they do challenge the circuit court's finding that the boys will be subjected to potential harm if returned to appellants' custody. A parent's continued drug use and failure to provide a stable home both support the potential-harm finding made by the court.¹⁶ Moreover, a court may consider past behavior as a predictor of likely potential harm should the child be returned to the parent's care and custody.¹⁷ Here, appellants' past behavior shows that they are unable to keep a clean and environmentally suitable home for their children. Additionally, James has been unable to maintain sobriety. Thus, we affirm that court's potential-harm finding.

To the extent that appellants' arguments can be construed as a request for this court to reweigh the evidence in their favor, we will not do so. We will not reweigh evidence on appeal, and the credibility determinations are left to the circuit court.¹⁸

Affirmed.

¹⁶See *Tillman v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 119 (continued drug use demonstrates potential harm sufficient to support a best-interest finding in a termination-of-parental-rights case); *Carroll v. Ark. Dep't of Hum. Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004) (the failure to secure safe and appropriate housing is contrary to the child's well-being and best interest).

¹⁷*McVay v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 328, 634 S.W.3d 800.

¹⁸*Miller v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 280, 626 S.W.3d 136.

WOOD and HIXSON, JJ., agree.

Jennifer Oyler Olson, Arkansas Commission for Parent Counsel, for separate appellant
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