

Cite as 2024 Ark. App. 373  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CV-24-134

SHELBY CHEVALLIER

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES AND MINOR  
CHILD

APPELLEES

Opinion Delivered June 5, 2024

APPEAL FROM THE MARION  
COUNTY CIRCUIT COURT  
[NO. 45JV-22-7]

HONORABLE DEANNA “SUZIE”  
LAYTON, JUDGE

AFFIRMED

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**BART F. VIRDEN, Judge**

Shelby Chevallier appeals the Marion County Circuit Court’s termination of her parental rights. On appeal, she does not challenge the sufficiency of the evidence supporting the statutory grounds for termination. Regarding the best-interest determination, Shelby does not challenge the court’s finding that Minor Child (MC) is adoptable, and she does not directly address the potential-harm prong of the analysis. Instead, she argues that there is a fit and willing relative available to assume guardianship of MC; thus, the circuit court erred in terminating her parental rights because a less restrictive option was available. We affirm.

*I. Relevant Facts*

On February 11, 2022, the Arkansas Department of Human Services (the Department) filed a petition for emergency custody and dependency-neglect regarding MC

(born 05/17/20). In the petition, the Department noted that the family has a history of dependency-neglect issues, including an incident in June 2019 when Shelby's newborn tested positive for methamphetamine, amphetamines, and buprenorphine. In that case, Shelby entered drug treatment immediately, but she left after less than a day. After Shelby failed to follow the case plan, the child was placed in her father's permanent custody. Shelby was incarcerated in Missouri in November 2019 and released in January 2022, shortly before the instant case began when MC was admitted to Arkansas Children's Hospital (ACH). Shelby's boyfriend, who had been watching the child, called her at work to let her know that MC was irritable, uncommunicative, and "falling down a lot." MC had ingested methamphetamine, and hospital staff noted that he had bruises on multiple areas of his body, though a skeletal survey did not show further injury. Family service worker Jeremy Fenner contacted the Arkansas State Police Crimes Against Children Division and spoke with investigator Kaitlin Wayland, who later told Fenner that Shelby initially had refused a drug test and denied having any knowledge of drug use in her home. Shelby had suggested that MC could have fallen down the stairs, or the topical cream she was using to treat MC's head lice had caused his symptoms. Shelby's home was searched, and methamphetamine, heroin, and drug paraphernalia were found inside the home, some of which was located in an area within MC's reach. Shelby was unable to provide a urine sample at first, and when she did give a sample, the temperature was unreadable. The next day, Shelby produced a urine sample that was negative for all substances. Shelby stated that she had been drug-free since before MC was born and had passed two drug tests while at the hospital with him. On February 11,

Baxter County Jail Sergeant Tabitha Maze and Jail Corporal Seth Morgavan told Wayland that when Shelby was in the county jail, the jail matron was dressing Shelby, and a bottle of urine fell from her vagina. When the matron asked why she had the bottle, Shelby told her that she was going to use it to pass a Department drug test. An emergency hold was placed on MC when he was discharged from the hospital.

The probable-cause order was entered on March 21, and the circuit court found probable cause that emergency conditions existed such that it was necessary to remove MC from Shelby's custody due to MC's positive drug test and the presence of drugs in an area of the home that was accessible to him. Rickey Williams was found to be MC's father, and the parents stipulated to probable cause.<sup>1</sup>

The adjudication order was entered May 23, and the circuit court found that returning MC to Shelby's custody was contrary to his welfare. The stated goal of the case was reunification with a concurrent goal of permanent custody, and Shelby was given supervised visitation. Shelby was ordered to receive inpatient substance-abuse treatment, and the court found that if she accepted the placement and remained in treatment, MC would be transitioned to live with her in the facility. She was ordered to attend AA/NA meetings and provide proof of attendance and undergo frequent and random drug testing. MC was placed with Shelby's sister.

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<sup>1</sup>Rickey Williams is not involved in this appeal.

Over the next fourteen months, Shelby failed to address her drug, housing, transportation, and employment issues, and the court never found that she was fully compliant with the case plan. Additionally, Shelby had incurred new criminal charges, including four new drug-related felonies, as well as misdemeanor charges for resisting arrest, DWI, traffic violations, and driving on a suspended license. Shelby was incarcerated during the case, awaiting trial for child-abuse charges related to MC's removal.

In April 2023, the Department filed a petition for termination of Shelby's parental rights alleging three statutory grounds: twelve months failure to remedy, subsequent other factors, and aggravated circumstances. The termination hearing was held on June 28. Shelby testified that in March, she began serving an eight-year sentence in the Arkansas Division of Correction stemming from charges in Fulton County, and her earliest release date was July 2024. She stated that at the last hearing, she had another criminal case pending in Marion County regarding charges from the dependency-neglect case, and she had been sentenced to five years in a Jackson County case, to be served concurrently. Shelby explained that from February 2022 through the fall, she visited MC every weekend that he was at her parents' home, but her last in-person visitation was in December 2022, and she had seen him for a video visit twice since her incarceration. Shelby stated that in September 2022, she underwent in-person drug treatment in Forest City, but she was "kicked out" after twenty days, and she did not remember anything she was taught there that helped her. During the case, she lived with her parents off and on, with her boyfriend in Flippin, or at a home in Mountain Home. For employment, she cleaned an RV park and was paid in cash, and she

provided whatever she could for MC, including diapers, clothes, and food. Shelby testified that she did not see MC after he was moved to Fayetteville in September 2022 to live with his paternal grandmother, Theresa Williams.

Marion County family service worker Martha Jackson testified that she was the primary caseworker for the family, and she described the services offered to Shelby. The Department made referrals to Ozark Guidance for drug and mental-health assessments, set up provisional foster care with Shelby's sister "to help facilitate the bond," and offered drug screening. Jackson stated that during the first three months of the case, Shelby was willing to work the case plan, "but then it kind of went down a little bit. And then since September of '22, there's been no compliance since then, but before that she was attempting." Shelby had not been drug screened since September, and Jackson had encouraged Shelby to come by the office. Instead, Shelby wanted to meet Jackson for screenings during visitation with MC, which was not random as ordered by the court. At the beginning of the case, Shelby tested positive for methamphetamine, but she seldom participated in drug testing throughout the case. Jackson testified that Shelby had her drug assessment on June 29, 2022, and entered residential drug treatment on September 12; however, on September 14, Jackson was informed that Shelby had left treatment. Jackson was never able to assess any of Shelby's residences for safety or stability. Shelby never produced a pay stub or any documentation of her income from the RV park. Shelby was never able to obtain reliable transportation. Jackson recalled that Shelby had only one unsupervised visitation with MC when Shelby's mother decided Shelby could take him to the splash pad because Shelby was

not exhibiting “drug characteristics that she had exhibited before.” Jackson explained that MC had been provisionally placed with Shelby’s sister from February to August, then to a foster home for a couple of weeks, and then in September, he moved in with Williams, who wanted to adopt him. Jackson explained that the same concerns that initiated the case in February 2022 were still a problem. Shelby had failed to participate in the services provided and did not maintain a meaningful relationship with MC “a good portion of the time.” Jackson opined that termination would give MC permanency. Williams testified that she understood the difference between guardianship and adoption and that she preferred to adopt. Williams also stated that she wanted MC to have a relationship with his other grandparents.

The circuit court entered the termination order on December 13, finding that the statutory grounds alleged against Shelby were supported by the evidence. Regarding twelve months failure to remedy, the circuit court found that Shelby waited seven months to enter treatment while her child was in foster care, and then she stayed only a few days. The court found that her testimony regarding her drug treatment lacked credibility and noted that the Department was unable to conduct regular drug screening because she did not maintain contact with the Department. Her last drug test was September 2022, and the court noted that her request to be drug tested at visitation meant the tests were not random or frequent, as ordered. Shelby had been convicted on new criminal charges and was currently incarcerated serving an eight-year sentence. She did not have safe or stable housing during the case and did not have reliable transportation. The court found that her testimony that

she had been employed seven months and was paid in cash lacked credibility, and Shelby's mother testified that she had been employed during the summer in 2022. Early in the case, Shelby supplied diapers and clothes in lieu of child support, but after her arrest, she provided nothing toward MC's support or care. The court found that "[g]iven her past lack of compliance, there is nothing indicating that future compliance would be forthcoming." Regarding the subsequent-other-factors ground, the court found that Shelby manifested her indifference to remedying her issues by failing to follow the case plan, which prevented her from regaining custody of MC. The court noted that after the petition was filed, additional drug-related charges were filed against her, and MC could not be placed with her on the date of the termination hearing. Regarding aggravated circumstances, the court found that there was little likelihood that further services would remedy the issues preventing placement of custody with her. Specifically, she failed to comply with the orders of the court, failed to participate in services, seemed unwilling to take any meaningful steps to reunify with MC, and was incarcerated again.

The court also found that it was in MC's best interest to terminate Shelby's parental rights. Specifically, the court found that MC is adoptable, and his paternal grandmother was willing to adopt him. The court noted that Williams understood the difference between guardianship and adoption, and "has chosen adoption for permanency of the juvenile. The caseworker testified this prevents the child from having an uncertain life of reentering the court system, and he has been in the grandmother's home two months shy of a year." The court found that there was potential for harm if MC was returned to his mother's custody

because she failed to participate in services even before she was incarcerated, and there was nothing to indicate that MC would not return to the same “drug environment” as before. In summary, the court found that Shelby had not demonstrated the ability to take care of MC in any way.

Shelby timely filed her notice of appeal, and this appeal followed.

## II. Discussion

### A. Standard of Review and Applicable Law

Termination-of-parental-rights cases are reviewed de novo. *Tillman v. Ark. Dep’t of Hum. Servs.*, 2015 Ark. App. 119. The appellate inquiry is whether the circuit court’s finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous. *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. *Williams v. Ark. Dep’t of Hum. Servs.*, 2013 Ark. App. 622. In resolving the clearly erroneous question, we give due regard to the opportunity of the circuit court to judge the credibility of witnesses. *Camarillo-Cox v. Ark. Dep’t of Hum. Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

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. 2021). 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). However, 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.

Arkansas Code Annotated section 9-27-329(d) (Supp. 2021) provides that in initially considering the disposition alternatives and at any subsequent hearing, the court shall give preference to the least restrictive disposition consistent with the best interest and welfare of the juvenile. A circuit court is permitted to set termination as a goal even when a relative is available and requests custody. *King v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 126, 620 S.W.3d 529. This is because the Juvenile Code lists permanency goals in order of preference, prioritizing a plan for termination and adoption unless the juvenile is already being cared for by a relative, the relative has made a long-term commitment to the child, and termination of parental rights is not in the child's best interest. *Id.*

Because Shelby does not challenge the circuit court's findings regarding either statutory grounds or adoptability, we need not consider those issues. See *Houston v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 326, at 7, 652 S.W.3d 188, 192. However, unchallenged statutory findings can "inform" the appellate court on the best-interest issues. *Cancel v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 198, at 9; see also *Miller v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 396, at 14, 525 S.W.3d 48, 57.

## B. Guardianship

On appeal, Shelby contends that if there is a reason to believe that a positive, nurturing parent-child relationship exists, the law favors preservation and not termination. She asserts that because there is “reasonable hope” that she can safely parent MC when she is released from incarceration, and because guardianship with a relative is a less restrictive option, the termination of her parental rights should be reversed. Shelby also argues that it was not clear that MC’s grandmother was willing only to adopt and would not consider a guardianship. Her arguments are not well taken.

Even in cases in which a fit and willing relative has custody of the child, the court may terminate parental rights if it is in the child’s best interest. See *King, supra*. A parent-child bond will not serve as the basis to reverse a termination of parental rights. See *Holdcraft v. Ark. Dep’t of Hum. Servs.*, 2019 Ark. App. 151, 573 S.W.3d 555. A child’s need for permanency and stability may override a parent’s request for additional time to improve her circumstances. *Id.* This “wait-and-see” situation is the type of instability that the termination-of-parental-rights statute is designed to prevent. *Id.* Living in a state of prolonged uncertainty is not in the child’s best interest. *Id.*

Importantly, Shelby does not challenge the court’s statutory findings, which, as stated above, can inform the appellate court on the best-interest issues. Here, the statutory findings include that Shelby continued to abuse drugs and almost completely failed to address her other issues, including her lack of housing, employment, and transportation. Shelby enjoyed time with her son when she was not incarcerated, but she avoided the Department’s attempts to drug test her, she incurred serious new drug-related charges, and had begun serving an

eight-year sentence. Shelby's mother-in-law was willing to adopt MC, but the record shows that she was not interested in a guardianship, and the circuit court found that termination and adoption would give MC the stability he needs. Having reviewed this appeal de novo, we find no clear error in the circuit court's findings regarding MC's best interest.

Accordingly, we affirm.

Affirmed.

GLADWIN and HIXSON, JJ., agree.

*Dusti Standridge*, for appellant.

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

*Dana McClain*, attorney ad litem for minor child.