

Cite as 2024 Ark. App. 397
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-23-825

DANIE’L GARCIA HARLOW
APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD
APPELLEES

Opinion Delivered June 5, 2024

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23]V-22-116]

HONORABLE DAVID M. CLARK,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

Appellant Danie’l Harlow appeals the Faulkner County Circuit Court’s order terminating her parental rights to her son, M.C. (D.O.B. 03-15-13).¹ Appellant’s counsel has filed a motion to withdraw and accompanying brief asserting that there are no issues of arguable merit to support an appeal.² The clerk of this court sent a copy of the brief and motion to appellant, informing her of her right to file pro se points for reversal; however, she has not done so. We affirm the order terminating appellant’s parental rights, and we grant counsel’s motion to withdraw.

¹MC’s father, Joseph Harlow, signed a voluntary relinquishment of parental rights and is not a party to this appeal.

²See *Linker-Flores v. Ark. Dep’t of Hum. Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004); Ark. Sup. Ct. R. 6-9(j).

The Arkansas Department of Human Services (DHS) exercised a seventy-two-hour hold on M.C. on May 27, 2022, after receiving a call from Conway Regional Emergency Department about M.C., who had presented with a broken arm, a bruised face, and bruised ribs after Joseph hit and shoved him for accidentally urinating on the toilet seat.³ Joseph was subsequently arrested for second-degree domestic battery with physical injury. DHS filed a petition for emergency custody and dependency-neglect on May 31. An ex parte order for emergency custody was filed on June 7.

M.C. was adjudicated dependent-neglected in an order filed on July 5 based on Joseph causing physical injury (broken arm and bruises) to M.C. The case goal was reunification with a concurrent goal of adoption. Appellant was ordered to cooperate with DHS; keep DHS informed of her residence and place and status of employment; keep DHS informed of all relevant contact information; take medications as prescribed; refrain from the use of illegal drugs and alcohol; enter and complete a residential treatment facility for substance abuse and follow the discharge recommendations; complete parenting classes as required by those teaching the classes and demonstrate improved, appropriate parenting skills after the completion of each class; obtain and maintain stable housing and employment; maintain a clean and safe home for herself and M.C.; and demonstrate the ability to protect M.C. and to keep him safe.

³At the time of removal, appellant was living in Hawaii, and although she and Joseph were granted joint legal custody of M.C. in their divorce, M.C. was living in Arkansas with Joseph.

In the review order filed on October 4, the circuit court found that appellant was complying with the court orders and case plan in that she was attempting to find a drug-treatment facility to attend in Hawaii; she was visiting M.C. “by video means[,]” and she was making progress toward alleviating or mitigating the causes of M.C.’s removal from Joseph’s home. In the January 3, 2023 review order, the circuit court found that appellant had partially complied with the court orders and case plan in that she was still trying to locate housing in either Hawaii or Arkansas, and she was visiting with M.C. via Zoom. However, appellant had not started her inpatient drug treatment, and her contact with DHS was sporadic. In the March 15 review order, the circuit court found that appellant had failed to comply with the court orders and case plan in that she had not contacted DHS since January 23, and she had made no progress toward alleviating or mitigating the causes of M.C.’s removal from Joseph’s home.

A permanency-planning hearing took place on May 23, and in the order filed the same day, the circuit court found that the case goal should be changed to adoption only. According to the order, appellant had failed to comply with the court orders or case plan in that she still lived in Hawaii, she was unemployed, she lived in a tent on her parents’ property, she never provided proof of completing inpatient drug treatment, she admitted that M.C. could not be returned to her that day, she had failed to provide DHS with proof of any mental-health treatment she had received, and she had made no progress toward alleviating or mitigating the causes of M.C.’s removal from Joseph’s home.

DHS filed a petition for termination of parental rights on May 31. As it related to appellant, DHS alleged that her parental rights should be terminated based on twelve months failure to remedy, subsequent other factors, and aggravated circumstances—little likelihood that services will result in a successful reunification.

The termination hearing was set for August 15. At the onset of the hearing, Joseph stated that he wished to sign a consent to termination and was allowed to do so. The circuit court granted appellant's attorney's motion to reset the hearing due to wildfires taking place in Hawaii at the time and the fact that counsel had not heard from appellant. The termination hearing took place on August 29. Appellant did not appear at the hearing, and her attorney informed the circuit court that he still had not heard from her. Laura Rogers, the Faulkner County Division of Children & Family Services supervisor, testified that M.C. is in a relative's foster home and is doing extremely well. She stated that the foster parents have expressed an interest in adopting M.C. if parental rights were terminated. She testified that at the time of M.C.'s removal, he had not seen appellant in person for five or six years. She said that appellant had remained in Hawaii during this case and that she is homeless with no sufficient means of income. Rogers stated that appellant has mental-health issues and drug issues. She said that appellant never completed inpatient drug treatment as ordered. She testified that appellant last exercised her Zoom visitation about two months before the hearing. She also said that appellant's visitations were "spotty, and they weren't always appropriate." She stated that some visits had to be cut short because appellant would scare M.C. with her strange and kind of threatening comments. Rogers testified that

appellant had not remedied her lack of adequate housing and that she had not followed the court orders or the case plan during the life of the case. She opined that termination of appellant's parental rights was in M.C.'s best interest.

The circuit court granted DHS's petition, finding that it had proved all the grounds alleged for the termination of appellant's parental rights. The circuit court found that there was a likelihood of harm if M.C. was returned to appellant because "she had completely gone AWOL, has not had any contact, and there's still issues, ongoing issues with housing as well as drug use. It would not be a safe environment for the child to be returned to." The circuit court further found that M.C. is adoptable. The termination order was filed on September 20. Appellant filed a timely notice of appeal on October 10.

The appellate court reviews termination-of-parental-rights cases de novo but will not reverse the circuit court's ruling unless its findings are clearly erroneous.⁴ 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.⁵ In determining whether a finding is clearly erroneous, an appellate court gives due deference to the opportunity of the circuit court to assess the witnesses' credibility.⁶

⁴*Trogstad v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 443, 609 S.W.3d 661.

⁵*Id.*

⁶*Lee v. Ark. Dep't of Hum. Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

In order to terminate parental rights, a circuit court must find clear and convincing evidence as to one or more of the grounds for termination listed in Arkansas Code Annotated section 9-27-341(b)(3)(B).⁷ Clear and convincing evidence is defined as that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established.⁸ Only one ground is necessary to terminate parental rights.⁹

Counsel explains that any challenge to the statutory grounds for termination of appellant's parental rights would have no arguable merit. However, counsel chose to discuss the aggravated-circumstances ground as the basis to support termination. Aggravated circumstances exist when a determination has been made by a court that there is little likelihood that additional services to the family will result in successful reunification.¹⁰ This court has held that a parent's failure to fully comply with the case plan supports termination based on the aggravated-circumstances ground.¹¹ Additionally, an appellant's lack of progress regarding drug use, stable housing, or employment supports termination for

⁷(Supp. 2023).

⁸*Posey v. Ark. Dep't of Health & Hum. Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007).

⁹*Id.*

¹⁰*Beavers v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 508, 679 S.W.3d 437.

¹¹*Weathers v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271.

aggravated circumstances.¹² A finding of aggravated circumstances does not require that DHS prove that meaningful services toward reunification were provided.¹³

The circuit court found that appellant had not seen M.C. in person in several years and that her current circumstances (homelessness, mental-health issues, and drug use) made it unlikely that continued services would likely result in successful reunification with M.C. based on her lack of progress over the last fifteen months. Even though she had been ordered to seek help with her mental-health and drug issues and to remedy her homelessness, she failed to do so. To make matters worse, she had no contact with DHS or M.C. for the two months preceding the termination hearing. The evidence supports the circuit court's finding of aggravated circumstances.

The circuit court must also find by clear and convincing evidence that termination is in the best interest of the child, taking into consideration (1) the likelihood that the child will be adopted if the termination petition is granted; and (2) the potential harm, specifically addressing the adverse effect on the health and safety of the child, caused by returning the child to the custody of the parent.¹⁴

Here the circuit court found that M.C. is adoptable based on the testimony that his foster parents wish to adopt him if parental rights were terminated. As to potential harm,

¹²See *Thomas v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 457, 610 S.W.3d 688.

¹³*Lloyd v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 461, 655 S.W.3d 534.

¹⁴Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii).

the circuit court found that appellant's continued issues with substance abuse and her lack of housing would put M.C. at risk of potential harm. This court has held that a parent's continued drug use demonstrates potential harm to children.¹⁵ We have also held that a parent's lack of stable housing or employment as well as a parent's failure to comply with court orders can demonstrate potential harm.¹⁶ Thus, the circuit court's best-interest finding is supported by the record.

Counsel correctly states that, other than the termination decision, the circuit court made no other adverse rulings against appellant. Accordingly, having examined the record and counsel's brief, we agree that the appeal is wholly without merit. We therefore affirm the termination of appellant's parental rights and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

BARRETT and THYER, JJ., agree.

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

One brief only.

¹⁵*Jackson v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 440, 503 S.W.3d 112.

¹⁶*See Gonzalez v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 425, 555 S.W.3d 915.