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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-17-712

	Opinion Delivered January 31, 2018
NATASHA WHITAKER AND MARTIN RAMIREZ APPELLANTS	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DIVISION [NO. 60JV-16-60]
V.	HONORABLE WILEY A. BRANTON, JR., JUDGE
ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN APPELLEES	AFFIRMED

BRANDON J. HARRISON, Judge

Natasha Whitaker and Martin Ramirez appeal the termination of their parental rights to their three children, L.R., A.R., and J.R. Whitaker also appeals the termination of her parental rights to her child C.W. Whitaker challenges the statutory grounds for termination as well as the circuit court's finding that termination of her parental rights was in the children's best interest; Ramirez challenges the statutory grounds for termination and asserts that the Arkansas Department of Human Services (DHS) failed to provide services to him in a timely manner. We affirm.

On 15 January 2016, DHS filed a petition for ex parte emergency custody of nine-year-old C.W., five-year-old J.R., three-year-old A.R., and one-year-old L.R. The accompanying affidavit explained that on January 10, the hotline had received a report that Whitaker was smoking methamphetamine around the children and keeping drug

paraphernalia under the children's beds. The report also stated that the children were often hit in the head, that Whitaker had previously lost custody of her children due to drug abuse, and that Whitaker had no milk or diapers for the baby. After locating the family, a family service worker (FSW) spoke to Whitaker on January 13, and Whitaker denied abusing or neglecting the children. Whitaker stated that she received Social Security income due to epilepsy, that she smoked marijuana off and on, and that she had recently had too much to drink and smoked methamphetamine. Whitaker also told the FSW that she was bipolar but had not taken her medication in two weeks. Whitaker submitted to a drug screen and was positive for methamphetamine, amphetamines, marijuana, benzos, and oxycodone. The FSW also spoke to Ramirez, who stated that the children were not abused but that Whitaker needed help. He was asked to submit to a drug screen but was unable to provide a urine sample, even after drinking several glasses of water.

DHS placed a hold on the children on January 13 based on concerns of inadequate supervision. The affidavit noted that Whitaker's drug use, coupled with her bipolar diagnosis and failure to take her medication, created a substantial risk of harm to the children. The affidavit also noted a lengthy history with DHS dating back to 1998, including a true finding of newborn illegal exposure in 2006 and a true finding of inadequate supervision in 2012.

The court entered an order for emergency custody on January 15, and on February 8, entered a probable-cause order that found "by stipulation of the parties that there is probable cause that the emergency conditions which necessitated removal of the juveniles from the mother continue so that it is necessary that the juveniles continue in the custody

of [DHS]." Whitaker and Ramirez were granted supervised visitation and ordered to submit to random drug-and-alcohol screens. The court also ordered that the children be drug screened as soon as possible.

On April 5, the circuit court adjudicated the children dependent-neglected by stipulation of the parties. The court also noted that the children's drug screens had revealed that three of the four children tested positive for methamphetamine and/or amphetamine based on a hair-follicle test and that recent treatment for lice may have caused the fourth child to not test positive. Whitaker claimed that the children may have been exposed to a neighbor's use of methamphetamine, but the court found that she was responsible for her children testing positive. The court also noted that Ramirez had tested positive for methamphetamine and had been left alone with the children. The court found that both C.W. and J.R. had been born with drugs in their systems (cocaine and opiates, respectively) and that Whitaker had received services both times and should have learned how not to expose her children to drugs.

The court also found that the children had been subjected to aggravated circumstances within both meanings of the term: (1) the children had been subjected to extreme risk of harm due to drug exposure, and (2) it was unlikely that services to the family would result in successful reunification within a reasonable period of time. Despite this finding and the additional finding that Whitaker had an outstanding warrant from Lonoke County, the court set the goal as reunification and ordered DHS to provide reunification services. The court noted that based on its aggravated-circumstances finding, it was not required to wait a full year before changing the goal to termination; the court found "the

parents must step up quickly and properly to correct the barriers to reunification." Both parents were ordered to submit to a psychological evaluation and follow recommendations, attend individual counseling, submit to a drug-and-alcohol assessment and follow recommendations, submit to random drug-and-alcohol screens, and resolve any outstanding legal issues.

On July 8, the court entered a permanency-planning order that continued the goal of the case as reunification. The order noted that the parents had made an effort to comply with court orders but that Whitaker had tested positive for opiates, benzos, and Oxycontin on April 18 and positive for oxycontin on June 17.

On December 2, the court entered a second permanency-planning order that authorized the filing of a petition for termination of parental rights after finding that no material progress had been made toward the goal of reunification. The court found that Whitaker lacked any credibility, that she had lied several times while testifying, and that she had tested positive for amphetamine and also refused two drug screens in September 2016. The court described Whitaker as "low functioning" and "not a very good liar." The court also noted that Ramirez had tested positive for amphetamine and methamphetamine on July 25 and that drug abuse was an "ongoing issue." The court ordered that both parents be drug screened before leaving court, that they submit to at least two random drug screens each month, and that they be referred to drug rehabilitation. The court also reiterated that Ramirez must submit to a psychological evaluation.

Also on December 2, DHS petitioned for termination of the parental rights of Whitaker and Ramirez. The petition alleged failure to remedy (custodial parent) as to

Whitaker and failure to remedy (noncustodial parent) as to Ramirez. The petition also alleged the subsequent-factors ground and aggravated-circumstances ground as to both parents. However, after a hearing on 17 January 2017, the circuit court dismissed the petition because a Spanish-language interpreter had not been provided for Ramirez's psychological evaluation. In its February 8 order, the court found:

> The court does not know whether there are compelling reasons not to terminate Mr. Ramirez's parental rights, but does not do so at this time due to concerns about services to Mr. Ramirez. The Agency should have provide[d] a Spanish-language interpreter for Mr. Ramirez's psychological evaluation. Although there was sufficient proof to terminate the mother's parental rights, the court did not consider doing so solely because she and Mr. Ramirez reportedly continue to be in a relationship. The mother is not credible, and she has not remedied the conditions that caused removal. The mother has chronic mental health issues.

The court reiterated its previous aggravated-circumstances finding and found that "[n]either parent is fit and appropriate at this time. The children would be at risk of harm, instability, and risk of drug exposure if returned to either parent today."

On March 7, DHS again petitioned for termination of both parents' parental rights based on the same grounds previously alleged. The circuit court convened a termination hearing on 11 April 2017. Dewight Merritt, Ramirez's counselor, testified that he had begun seeing Ramirez in January 2017, that Ramirez had not missed any of their nine appointments, and that Ramirez was currently in residential drug treatment. Merritt opined that Ramirez had made excellent progress. On cross-examination, Merritt stated that the referral for counseling had been received in August 2016 but his first meeting with Ramirez was not scheduled until January 2017. He also said that he conducted his sessions with Ramirez in English and did not feel a need for a translator.

Kaylon Turner, a DHS caseworker, testified that she had been assigned to the case approximately two weeks before the hearing because the previous caseworker, Joann Darton, was placed on medical leave. Turner explained that since the January 17 hearing, Whitaker had completed inpatient drug treatment and had been given one drug screen, which was negative. She stated that Whitaker was now living in a three-bedroom apartment and was attending counseling at New Hope. Turner also said that since the January 17 hearing, both parents had completed psychological evaluations. She explained that Ramirez had been living with his brother before he entered drug treatment and that she had not drug tested Ramirez since the January 17 hearing. She acknowledged that the children had been removed over a year ago and opined that she could not foresee any time within the next three months that the children could be returned to their parents.

On cross-examination, Turner explained that DHS would need to monitor the parents for at least three or four months after their completion of inpatient drug treatment to ensure it was safe to return the children. She agreed that the parents had psychological evaluations, drug-and-alcohol assessments, drug rehabilitation, individual therapy, parenting classes, and visitation available to them throughout the case. Turner stated that she could not recommend that the children be returned to their parents immediately, but the children could "start their transition into going home and see how that will go." Turner recommended that the children "at least stay in care and that they start weekend visitations one Saturday and that we transition it that way." Turner did not recommend termination. When questioned by the court, Turner said that she had not discussed changing her

recommendation with her supervisor or the DHS attorney. The attorney for DHS assured the court that it intended to go forward with the petition for termination.

Turner's testimony resumed, and she said that she had not spoken to Ramirez, nor did she know the referral dates for Ramirez's psychological evaluation or inpatient treatment. She also did not know where Ramirez would live once released from drug treatment or where he was employed. Turner stated that she had visited Whitaker's home with Joann Darton in 2016, but she had not visited Whitaker's current apartment since being assigned to the case. She agreed the apartment was "hypothetically" large enough for Whitaker and the children and explained that Whitaker's monthly income from Social Security was enough to pay her rent and utilities. Turner stated that Whitaker was taking her medication as prescribed and that she did not have any outstanding legal problems. However, contradicting her earlier testimony, Turner testified that she did not recommend starting visitation and was instead recommending termination of parental rights. In explanation, she said, "Before I got on the case, that was the route that the case was going in for termination. I don't see a reason to—not a reason—I don't see why we would need to change it like right then, but I don't have an issue with working with the family if they are granted more time." When questioned by the court, Turner agreed that she could not think of a compelling reason to grant the parents more time in this case.

Danyetta Pride, an adoption specialist for DHS, testified that the children are adoptable. Pride said there were fifty-nine families that had expressed interest in adopting children with characteristics matching the children in this case, including all of the children being placed together.

Whitaker testified that she had lived in her current apartment for six months but if her children were not returned to her, at least for weekend visitation, she would have to move to a one-bedroom apartment. She said her only source of income is $733 a month from Social Security and that her stepmother provides her with transportation. She agreed that she had tested positive for drugs several times in the last year, explaining, "I was in my addiction, and I didn't really understand the drug concept of the whole situation because I didn't have the skills that I do now." She said that she had entered residential drug treatment in January 2017 and completed the program in March. She acknowledged that DHS had made a referral for inpatient drug treatment in 2016 but that she did not undergo treatment because she was "caught up in [her] addiction." She also explained that she had an extensive history of drug use and had previously undergone drug treatment for cocaine in 2006. She said that she was making progress in individual therapy, that her bipolar condition was under control, and that she was taking her medications as prescribed. According to Whitaker, she was taking medications for anxiety, seizures, and back pain. She said that she and Ramirez plan to be a couple again, to live together, and to "get back into the real life living without drugs." She stated that she would like to have another chance to raise her kids but also said she had not started trying her hardest in this case until the January 17 hearing, which "woke [her] up." Turner testified that if Ramirez chose not to remain sober, she would "leave him on his own because I prefer my children." She opined that her current home was fit and appropriate for the children.

Ramirez testified that he was currently attending inpatient drug treatment and should be finished with the program within three or four days. He said that before he went to

treatment, he had been employed at a roofing company, and he could work there again after he finished treatment. Ramirez said he did not have a driver's license because he had not completed DWI classes, and he conceded that he "may have lost track of how many DWIs" he had gotten. He also said that he did not have a Social Security number because he had never applied for citizenship, explaining that he had been working in the United States for twenty-four years and remained undocumented all that time. With respect to his housing, Ramirez said he had been living with his brother before attending drug treatment but would acquire his own place after leaving the drug-treatment facility. He further said he planned to live with Whitaker, although not at her subsidized apartment because he would not be allowed to live there.

Ramirez also testified about his drug abuse, saying that he had been drinking alcohol for the past eighteen years and using methamphetamine for about a year. He stated he had last used methamphetamine about three months before the hearing. Although he asserted that he had known he needed drug treatment "when [he] started seeing [his] family falling apart . . . [e]ven before the children were removed," he acknowledged that he did not initially seek treatment on his own. On cross-examination by his own counsel, however, Ramirez agreed that it was his understanding that DHS was supposed to make a referral for him for treatment and provide counseling services for him. He said that he had his first appointment with a counselor two days before the last hearing.

Lisa Weithman, C.W.'s therapist since 2012, described how C.W. had fared emotionally since he had been in foster care. She said he had initially done better than she thought he would and had settled down from his previous erratic behavior, although he had

experienced a downward spiral since November. Weithman said that permanency, not lingering in foster care, was in C.W.'s best interest. She said that he had been diagnosed with disruptive impulse control and conduct disorder, ADHD, and child neglect. C.W. needed a significant level of daily care and intervention, and he was in a self-contained behavior class in school. Weithman explained that C.W. needed an extremely stable and secure caregiver in his life. She felt that a trial period of visitation with Whitaker would be extremely detrimental to him and that, based on Whitaker's short period of sobriety, she did not feel C.W. would be safe if he were returned to her. Therefore, Weithman opined that permanency through termination of Whitaker's parental rights was in C.W.'s best interests.

The court also heard the testimony of Karen Miller, the foster mother of J.R., L.R., and A.R. She explained their physical and emotional conditions when they came into foster care (including head lice, constipation, and a lack of boundaries) and described the progress the children had made since they had been in her care. Miller expressed concern with trial visitations with the parents, both because of their previous hygiene problems and because of the concerns about stability and permanency. Miller was also worried about the newness of both parents' sobriety and the possibility that if the children were returned to Whitaker and Ramirez, they might have to be removed again if their sobriety failed.

C.W.'s foster father, Cory McBain, testified that C.W. had been agitated and had been having issues at home as of late. More than anything, McBain said, C.W. needed stability and needed to be in a place that was supportive of his needs and where he would experience consistency.

The circuit court subsequently entered an order granting the petition to terminate Whitaker's parental rights as to all four children and Ramirez's parental rights as to J.R., A.R., and L.R. The court found that DHS had proved the grounds of failure to remedy, subsequent factors, and aggravated circumstances. The court acknowledged that the caseworker's recommendation regarding termination was initially different than that of DHS and noted that the disagreement presented "an added degree of difficulty." That said, however, the court noted that the caseworker had been on the case for only two weeks prior to the hearing, and the court, the foster parents, and the other providers knew the case better than the caseworker.

The court went on to find that Ramirez was "ambivalent to the need of inpatient treatment until these last months" and that although Whitaker was making efforts to improve, those efforts were "eleventh hour efforts." The court further stated that Whitaker did not have the capacity to stay clean or the capacity to care for her children, specifically citing her three relapses over the course of the case and her only recent release from drug rehabilitation. The court felt it would "only be a matter of a short period of time before the mother relapsed. Her lack of insight and lack of credibility remain a significant concern to the Court." Regarding Ramirez, the court found that he lacked credibility and was also highly likely to relapse. The court stated:

> In order for the court to allow the parents more time, the court must find compelling reasons to do so. There are none. The children are starting to deteriorate in foster care, and they are in need of permanency. In spite of what the caseworker said on the subject, the Court specifically finds that it is in the children's best interests to terminate parental rights. The only way the court could see working with the parents would be taking another six to nine months for the parents to remain clean and sober, and stable. That would be over two years of foster care. The children would be lingering in foster care

> and the prospects for adoption would be getting more and more remote. The court finds that the parents cannot meet the children's needs. The parents are both unfit to parent these children.

Therefore, considering both the likelihood of adoption and the risk of potential harm to the children, the court granted the petition and terminated both Whitaker's and Ramirez's parental rights. Both Ramirez and Whitaker filed timely notices of appeal.

Parental rights may be terminated if clear and convincing evidence shows (1) that it is in the child's best interest and (2) that statutory grounds have been proved. *Hune v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 543. Clear and convincing evidence is proof that will produce in the fact-finder a firm conviction on the allegation sought to be established. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). On appeal, we will not reverse the circuit court's ruling unless its findings are 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. *Id.* 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. *Id.*

I. *Whitaker's Appeal*

Whitaker challenges the statutory grounds for termination as well as the circuit court's finding that termination of her parental rights was in the children's best interest.

A. Best Interest

In her first point on appeal, Whitaker argues that the circuit court erred in finding that termination of her parental rights was in the best interest of her children. In making a

"best interest" determination, the circuit court is required to consider two factors: (1) the likelihood that the child will be adopted and (2) the potential of harm to the child if custody is returned to a parent. *Ford v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 226, at 2, 434 S.W.3d 378, 380; *Tucker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 430, 389 S.W.3d 1. Whitaker challenges the circuit court's findings with respect to both adoptability and potential harm.

1. *Adoptability*

A best-interest finding under the Arkansas Juvenile Code must be based on the consideration of two factors, the first of which is the child's likelihood of adoption. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) (Supp. 2017). Adoptability is not a required finding, and likelihood of adoption does not have to be proved by clear and convincing evidence. *Duckery v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 358. We have previously explained that the Juvenile Code does not require "any 'magic words' or a specific quantum of evidence" to support a finding as to likelihood of adoption. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, at 8, 502 S.W.3d 569, 576. The law simply requires that the court consider adoptability and that if there is an adoptability finding, there must be evidence to support it. *See Haynes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 28 (reversing a best-interest determination because no evidence of adoptability was introduced and the court failed to consider adoptability).

Whitaker argues that the circuit court erred in finding that the children were adoptable because the evidence relied on to make that finding was "speculative, at best." She contends that the plain wording of Arkansas Code Annotated section 9-27-341 makes

consideration of the likelihood that the children will be adopted "mandatory" and that there must be some quantum of evidence to support a circuit court's finding on adoptability. She complains that the adoption specialist, Danyetta Pride, did not testify as to any specific characteristics of the children that made them adoptable and that her testimony that the children were adoptable "as a sibling group" did not indicate if all four children would be adoptable together, when C.W. had significant behavioral issues.

This court recently discussed the quantum of proof necessary to sustain a circuit court's findings regarding adoptability in *McNeer v. Arkansas Department of Human Services*, 2017 Ark. App. 512, 529 S.W.3d 269:

> McNeer asserts that no evidence was introduced at the termination hearing to establish the adoptability of the children. Here, McNeer argues that "the plain language" of section 9-27-341(b)(3)(A)(i) makes consideration of the likelihood that the children will be adopted "mandatory." It is true that our court has interpreted the statute as having that meaning. *See Lively v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 131, at 5, 456 S.W.3d 383, 387 (citing *Haynes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 28). The statute does mandate that the circuit court "consider" the likelihood of adoptability. The statute does not, however, mandate that the circuit court make a specific finding that the children are adoptable, nor must the court find the children are "likely" to be adoptable. The statute only mandates the "consideration" of the likelihood of adoptability.
>
> We have held that adoptability is "but one factor that is considered when making a best-interest determination." *Renfro v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 419, at 6, 385 S.W.3d 285, 288 (emphasis in original) (citing *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005)). To that end, we have held that adoptability "is not an essential element in a termination case." *Tucker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 430, at 7, 389 S.W.3d 1, 4; *see also Smith v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 368, at 8, 523 S.W.3d 920, 926 (stating that termination requires that the circuit court consider the likelihood of adoption but that the factor does not require that adoptability be proved by clear and convincing evidence); *Singleton v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 455, at 6, 468 S.W.3d 809, 813 (noting that adoptability is not an essential element of proof). Rather, it is the "best interest" finding that must be

> supported by clear and convincing evidence. *Salazar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 218, at 14, 518 S.W.3d 713, 722.

McNeer, 2017 Ark. App. 512, at 5–6, 529 S.W.3d at 272–73.

In light of the standard set out in *McNeer*, we hold that there was sufficient evidence on which the circuit court could base its findings regarding the adoptability of the children. As set out above, DHS adoption specialist Danyetta Pride specifically testified that the children are adoptable, are adoptable as a sibling group, and there are fifty-nine families on a data-matching list that had expressed interest in adopting children with the same characteristics of these children. Our appellate courts have repeatedly held that the testimony of an adoption specialist is sufficient to support a circuit court's adoptability findings. *See, e.g.*, *Martin v. Ark. Dep't of Human Servs.*, 2017 Ark. 115, 515 S.W.3d 599; *Brumley v. Ark. Dep't of Human Servs.*, 2015 Ark. 356; *Hughes v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 554, 530 S.W.3d 968; *Thompson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 124.

2. *Potential harm*

In conducting the best-interest analysis, the court must consider the potential harm in returning the child to the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(ii). This potential-harm inquiry is but one of the many factors that a court may consider, and the focus is on the potential harm to the health and safety of a child that might result from continued contact with the parent. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 841, 372 S.W.3d 403. The court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Id.* Furthermore, the potential-harm analysis should be conducted in broad terms. *Id.*

In her second subpoint, Whitaker argues that the court erred in finding that returning the children to her presented a risk of potential harm. She contends that the circuit court erred in focusing almost exclusively on her past struggles with drug addiction; in relying on a psychological evaluation administered in March 2016, shortly after this case was opened; and in failing to consider any evidence of the improvements she had made since the beginning of the case. She further cites to the testimony of the caseworker, who stated that she did not believe that termination was in the children's best interests.

However, the court did not rely solely on Whitaker's psychological evaluation, and it did not fail to note that she had made "efforts." The court found, however, that those efforts were "eleventh hour efforts" that did not compensate for her "significant pattern of polysubstance abuse . . . going back at least ten years," her persistent relapses into drug abuse, her lack of insight, her mental-health issues, her very recent release from rehabilitation, and her failure to cooperate throughout the case. In *Sharks v. Arkansas Department of Human Services*, 2016 Ark. App. 435, 502 S.W.3d 569, this court upheld the circuit court's potential-harm findings based on similar evidence:

> Although Sharks tried to rehabilitate himself in the eleventh hour, these improvements need not be necessarily credited by the circuit court and do not necessarily outweigh evidence of prior noncompliance. By the time Sharks had been released from jail and had begun serious rehabilitation efforts, D.S. had been in DHS custody for nearly a year. Over the course of the case, Sharks tested positive for alcohol, was arrested at least twice for public intoxication, and was inconsistent in visiting D.S. While Sharks's purposeful efforts to complete most of the significant aspects of the case plan in the six weeks before the termination hearing are admirable, they do not warrant reversal. Had Sharks put forth those efforts earlier in the case, a termination may have been prevented, but Sharks's efforts to get his life together were still a work in progress at the time of the termination hearing. Given Sharks's history of mixing prescription medications and alcohol, his arrests for public intoxication, and his odd behavior during previous hearings, the court was

> not clearly wrong to find a likelihood of potential harm if D.S. was to return to his custody. Past actions of a parent over a meaningful period of time are good indicators of what the future may hold. Sharks's behaviors over the course of the entire case do not show enough stability and sobriety to render the court's finding that Sharks posed a risk of potential harm to D.S. clearly erroneous.

Sharks, 2016 Ark. App. 435, at 11, 502 S.W.3d at 577 (internal citations omitted).

Similarly, here, the circuit court's observation of Whitaker's past actions over the course of the case factored into its conclusions that her eleventh-hour improvements were not enough. We cannot say that the court's potential-harm finding was clearly erroneous.

B. Statutory Grounds

In her second point on appeal, Whitaker argues that the circuit court erred in terminating her parental rights because there was insufficient evidence offered to support the statutory grounds for termination. She challenges each of the three statutory grounds that the circuit court relied on to terminate; however, only one ground is necessary to terminate parental rights. *See, e.g.*, *Lowery v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 478. We hold that the circuit court can be affirmed based solely on its findings regarding aggravated circumstances. "Aggravated circumstances" means, among other things, that a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)*(a)(3)(B)(i)*.

Whitaker argues that the circuit court's aggravated-circumstances finding in the termination order was not supported by sufficient evidence because (1) there was a lack of proof as to the provision of timely services and (2) the conclusion that continued services would not result in reunification was mere speculation. However, the circuit court first

made its aggravated-circumstances finding in the adjudication order, and the case law is clear that in termination cases, a challenge to a finding of abuse or aggravated circumstances must be made, if at all, in an appeal from the adjudication hearing. S*ee Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722. Because there was no such appeal from the adjudication order, we are now precluded from addressing Whitaker's argument. *See Denen v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 473, 527 S.W.3d 772 (explaining that when a party fails to appeal from an adjudication order and challenge the findings therein, he or she is precluded from asserting error on appeal with respect to those findings from an order terminating parental rights). We therefore affirm the termination of Whitaker's parental rights.

II. *Ramirez's Appeal*

Ramirez's points on appeal are somewhat muddled, but he generally challenges the statutory grounds for termination and asserts that DHS failed to provide services to him in a timely manner.

A. Statutory Grounds

Ramirez argues that he was actively seeking to rehabilitate himself and the conditions that caused removal, that he was remedying all subsequent issues, and that the evidence did not support the circuit court's aggravated-circumstances conclusion that there was "little likelihood that services to the family will result in successful reunification." As with Whitaker, we hold that the circuit court can be affirmed based solely on its findings regarding aggravated circumstances. Again, the circuit court first made its aggravated-circumstances finding in the adjudication order, and the case law is clear that in termination

cases, a challenge to a finding of abuse or aggravated circumstances must be made, if at all, in an appeal from the adjudication hearing. *See Dowdy*, *supra*. Because there was no such appeal from the adjudication order, we are now precluded from addressing Ramirez's argument and affirm on this point. *See Denen*, *supra*.

B. Timely Services

In his second argument on appeal, Ramirez argues that there was "conflicting evidence as to whether there is a compelling reason not to terminate" his parental rights. He argues that while DHS did provide him services, it "failed to provide such services *timely*." (Emphasis in original.) As DHS points out in response, however, Ramirez did not raise an argument about the "timely" provision of services below and thus cannot raise it for the first time on appeal. *See Willis v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 559, 13-14; *Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005). We therefore affirm the termination of Ramirez's parental rights.

Affirmed.

WHITEAKER and HIXSON, JJ., agree.

Tina Bowers Lee, Arkansas Public Defender Commission, for appellant Natasha Whitaker.

Huffman Butler, PLLC, by: *Brian A. Butler*, for appellant Martin Ramirez.

Mary Goff, Office of Chief Counsel, for appellee.

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