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ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-22-584

MIRANDA DYE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered February 15, 2023

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72JV-21-155]

HONORABLE STACEY ZIMMERMAN,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Miranda Dye appeals the Washington County Circuit Court’s order terminating her parental rights to her three-year-old minor child (MC). Dye only challenges the circuit court’s best-interest finding and therefore waives any other argument on appeal. Because sufficient evidence supports the circuit court’s finding that termination was in the child’s best interest, we affirm.

On February 26, 2021, the Arkansas Department of Human Services (DHS) exercised emergency custody of MC due to environmental neglect and drug use by Dye and MC’s father, Lance Cooksey.¹ On March 1, DHS filed a petition for emergency custody and

¹The circuit court also terminated Cooksey’s parental rights, but he is not a party to this appeal.

dependency-neglect for MC and on the same day, the circuit court entered an order granting DHS's request for emergency custody.

On March 4, the circuit court held a probable-cause hearing wherein it found that probable cause existed for the emergency order to remain in place. Additionally, the circuit court ordered Dye and Cooksey to submit to a hair-follicle test that day. The circuit court also ordered the parents to cooperate with DHS, refrain from illegal drug use, submit to random drug screens at least two times a month, maintain stable housing and employment, demonstrate the ability to keep the juvenile safe, and follow the case plan and court orders.

On April 28, the circuit court held an adjudication and disposition hearing. At this hearing, the circuit court adjudicated MC dependent-neglected based on the grounds of neglect and parental unfitness due to environmental neglect and the parents' and MC's hair-follicle tests that were positive for amphetamines and methamphetamine. The circuit court also found that the parents' claim that they weren't using drugs not credible, and it noted that the parents had recently had their parental rights involuntarily terminated as to a full sibling of MC's for the same reasons that caused MC's removal. Additionally, the circuit court set a goal of reunification for the case and ordered the parents to follow the same orders that the court ordered at the probable-cause hearing. Further, it ordered the parents to submit to a psychological evaluation and a drug-and-alcohol assessment; attend parenting classes and counseling; and resolve all criminal charges.

On August 25, the circuit court held a review hearing. The circuit court continued the goal of reunification. Additionally, the circuit court found Dye in partial compliance.

Specifically, Dye had not maintained stable housing and employment; she had not submitted to weekly drug screens or her drug-and-alcohol assessment; and she failed to attend counseling and parenting classes. Further, the circuit court found that Dye admitted methamphetamine use in April 2021 while she was pregnant.² Finally, the circuit court ordered the parents to comply with all previously ordered services.

On February 16, 2022, the circuit court held a permanency-planning hearing in MC's case. At this hearing, the circuit court changed the goal of the case to adoption. In support of this goal change, the circuit court cited Dye's reliance on others for housing and employment and Dye's failure to consistently submit to random drug screens, which demonstrated that she had not maintained sobriety. The circuit court also ordered the parents to comply with all previously ordered services as well as submit to hair-follicle tests in February and May.

On March 16, DHS filed a petition to terminate parental rights. On May 25, the circuit court held a termination-of-parental-rights hearing wherein it terminated the parents' rights under several grounds and found that termination was in MC's best interest. Dye now appeals, arguing that termination was not in MC's best interest.

A circuit court's order terminating parental rights must be based upon findings proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2021). Clear and convincing evidence is defined as that degree of proof that will produce in the

²This child was born in October 2021; DHS opened a protective-services case and offered "Safecare" services, but the juvenile is not part of the instant case.

fact-finder a firm conviction as to the allegation sought to be established. *Posey v. Ark. Dep't of Health & Hum. Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007). On appeal, 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. *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 order 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). 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.

Because Dye 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. But we note that 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.

Arkansas Code Annotated section 9-27-341(b)(3)(A) uses the conjunction “and” rather than “or” when mandating what must be considered when making a best-interest determination. The Juvenile Code requires that the circuit court consider *both* adoptability and potential harm. *Id.* As such, just as the law requires that the circuit court consider adoptability when deciding whether termination of Dye’s parental rights was in MC’s best interest, the law equally requires that the circuit court consider the potential harm MC would face if returned to Dye. Ark. Code Ann. § 9-27-341(b)(3)(A)(ii).

For potential harm, the evidence must be viewed in a forward-looking manner and considered in broad terms; however, a circuit court is not required to find that actual harm will result or to affirmatively identify a potential harm. *Phillips v. Ark. Dep’t of Hum. Servs.*, 2020 Ark. App. 169, at 6, 596 S.W.3d 91, 96. Additionally, past behavior may be viewed as a predictor of potential harm. *Id.*, 596 S.W.3d at 96. Further, the same evidence cited to support statutory grounds may be used to support potential harm, and a parent’s failure to comply with the case plan and court orders and failure to maintain stable housing and employment may also demonstrate potential harm. *Id.* at 8, 596 S.W.3d at 97; *Gonzalez v. Ark. Dep’t of Hum. Servs.*, 2018 Ark. App. 425, at 12–13, 555 S.W.3d 915, 921–22.

In the case before us, Dye consistently failed to comply with the circuit court’s order to submit to random drug screens at least two times a month. Out of the forty-one attempted urine drug screens during the case, Dye successfully completed only twelve. Her ability to demonstrate sobriety was especially important here because Dye had a long history of

methamphetamine use, which resulted in the termination of her parental rights in a prior case.

At the time of the termination hearing, Dye was still living with Cooksey's mother, and the circuit court found that Dye and Cooksey—who had not complied with the case plan—remained in a relationship. DHS attempted to assist Dye in securing her own housing to no avail, and Dye's employment did not produce enough income to support her child.

Nevertheless, Dye argues that the circuit court's finding was clearly erroneous because she maintained custody of MC's sibling--the baby born in October 2021. Similar arguments have been rejected by this court. See *Brown v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 370, 584 S.W.3d 276; *Black v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 518, 565 S.W.3d 518; *Weatherspoon v. Ark. Dep't of Hum. Servs.*, 2013 Ark. App. 104, 426 S.W.3d 520; *Dominguez v. Ark. Dep't of Hum. Servs.*, 2009 Ark. App. 404. This court has held that "when making its best-interest analysis, the circuit court must make an individual determination whether termination is in each child's best interest and cannot treat the children as an amorphous group in which the best interest of one will meet the interests of all." *Brown*, 2019 Ark. App. 370, at 10, 584 S.W.3d at 282.

Dye also argues there was insufficient evidence of potential harm because the drug screens she completed were negative and because she had several hair-follicle tests that were negative. Dye acknowledges that she dyed her hair the day before her most recent hair-follicle test; however, she argues that to invalidate the test based on this fact would be speculative. Dye's arguments are without merit. Despite Dye's long history of substance abuse and the

need to demonstrate consistent sobriety to the circuit court, Dye submitted to only 29 percent of her drug screens throughout the entire case. The circuit court found that twelve negative drug screens during the almost fifteen months this case was open was wholly insufficient to demonstrate sobriety. See *Shelton v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 232, at 7, 625 S.W.3d 729, 733.

The statute does not require the circuit court to make specific findings on potential harm, and we can affirm on the basis of the evidence under our de novo review. See, e.g., *Crawford v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 474, at 2-7, 588 S.W.3d 383, 385-87. 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. *Isom v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App. 159, at 5.

Last, Dye maintains that the circuit court should not have found her housing situation to be inappropriate. However, we defer to the circuit court's superior opportunity to observe the parties and judge the credibility of witnesses. *Guerrero v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 428, at 8. Here, Dye is simply asking us to reweigh the evidence, which we will not do. *Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, at 13, 554 S.W.3d at 293. Giving due regard to the credibility assessments made by the circuit court and the weight it decided to give the evidence before it, we hold that the circuit court did not clearly err in terminating Dye's parental rights.

Affirmed.

GRUBER and BARRETT, JJ., agree.

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

Ellen K. Howard, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.