

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CV-23-149

ANNA BROWN

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES AND MINOR CHILD

APPELLEES

Opinion Delivered September 27, 2023

APPEAL FROM THE GARLAND COUNTY  
CIRCUIT COURT  
[NO. 26JV-21-62]

HONORABLE LYNN WILLIAMS, JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Appellant Anna Brown appeals the Garland County Circuit Court’s “Post-Termination of Parental Rights Review Order” entered on January 24, 2023, denying her request as intervenor and maternal grandmother of the minor child (“MC”) for placement, guardianship, or adoption of MC. We affirm.

On March 11, 2021, the Arkansas Department of Human Services (“the Department”) received a hotline call regarding the care of MC. Upon investigation, it was discovered that three-week-old MC had fallen below her original birth weight and was in the one percentile of weight for an infant of her age. MC was then admitted to Arkansas Children’s Hospital. At the hospital, MC’s mother, Maria Cannon displayed erratic behavior and exhibited signs of drug use.<sup>1</sup> After establishing

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<sup>1</sup>During a March 16, 2021, interview, Cannon admitted using methamphetamine. Additionally, she tested positive for methamphetamine and amphetamine on the Department’s drug screen.

that MC had no underlying medical conditions, it was determined that her failure to thrive was consistent with inadequate calories provided at home. The Department exercised a seventy-two-hour hold on MC, removing her from the physical custody of Cannon and the legal custody of Cannon and Adam Love.<sup>2</sup> At the time of removal, Cannon and MC lived with Cannon's mother, appellant Anna Brown.

On March 19, the Department filed a petition for dependency-neglect alleging that MC was at substantial risk of serious harm as a result of abuse, neglect, and parental unfitness. On that same day, the circuit court entered an ex parte order for emergency custody placing MC in the custody of the Department. In the probable-cause order entered on March 29, the circuit court found that probable cause existed and continued to exist such that it was contrary to MC's welfare to return home and that it was in her best interest to remain in the Department's custody.

On May 6, Brown filed a petition to intervene and petition for temporary custody. In her petition, Brown alleged that (1) she is Cannon's mother and MC's maternal grandmother; (2) she is the guardian of MC's two older siblings; (3) MC's siblings who reside with her are healthy and doing well in school, and it has been in their best interest to reside with Brown; and (4) it is in MC's best interest to reside with Brown.

An agreed adjudication order was entered on May 25 wherein Cannon stipulated to the circuit court's adjudication of MC as dependent-neglected as a result of parental unfitness and neglect. The circuit court found, "Specifically to neglect, the juvenile was failing to thrive. As to parental

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<sup>2</sup>Cannon and Love are legally married but have lived separate and apart for several years. Cannon named Michael Lofton as MC's putative father. Lofton was incarcerated at the time of MC's birth, he did not sign the birth certificate, and he has not signed an acknowledgement of paternity.

unfitness, the mother's drug abuse made her parentally unfit." Reunification was established as the case goal.

Following the August 18 review hearing, MC was ordered to remain in the custody of the Department. The goal of the case continued to be reunification. The Department was found to have made reasonable efforts to provide family services and finalize a permanency plan for MC. Cannon was found to be in substantial compliance with the case plan. Additionally, Brown's petition to intervene and petition for temporary custody was held in abeyance until after a termination-of-parental-rights hearing, if one occurred in the case.

An agreed permanency-planning order was entered on January 3, 2022. The order noted that Cannon (1) had "not been fully cooperative with the Department and has had no communication with the Department since her arrest on October 12, 2021"; and (2) consented to change the case goal to adoption. Further, the circuit court granted Brown's petition to intervene and ordered that she be added as a party to the case.

The Department filed a petition for termination of parental rights on January 18. Following the March 16 termination hearing, an order was entered terminating Cannon's and Love's<sup>3</sup> parental rights to MC and granting the Department the power to consent to adoption.

The circuit court held posttermination-of-parental-rights review hearings on September 21 and October 26. At these hearings, the circuit court heard evidence concerning whether MC's best interest would be served by placing her with Brown. At the conclusion of each of these hearings, the

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<sup>3</sup>Neither Love, MC's legal father, nor Lofton, MC's putative father, appeared or participated in the case.

circuit court determined that additional information was needed before a final placement decision could be made. A third posttermination review hearing was held on December 28. Following the hearing, after considering the evidence presented during all of the posttermination hearings, the circuit court found it not in MC's best interest to be placed with Brown and denied Brown's request for placement, guardianship, or adoption. Brown now appeals.

On appeal, this court reviews dependency-neglect proceedings de novo, but the circuit court's findings will not be reversed unless the findings are clearly erroneous.<sup>4</sup> A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, having considered the entire evidence, is left with a definite and firm conviction that a mistake has been made.<sup>5</sup> We give due deference to the circuit court's credibility determinations and the weight to be accorded witness testimony.<sup>6</sup>

Brown argues that the circuit court erroneously "ignored the preferential placement that [she], MC's maternal grandmother, was entitled to under Arkansas statutory law and denied her request for placement." Brown prefaces this argument with an acknowledgment of our supreme court's holding in *Suster v. Arkansas Department of Human Services*.<sup>7</sup> *Suster* and its progeny established that under Arkansas law, a grandparent's rights are derivative of their child's parental rights, and termination of their child's parental rights serves to terminate the grandparent's rights.

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<sup>4</sup>*Stowell v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 403, 586 S.W.3d 671.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>314 Ark. 92, 858 S.W.2d 122 (1993).

Consequently, the *Suster* court held that a grandparent lacks standing to intervene in the adoption proceedings of a grandchild once parental rights are terminated. Nonetheless, Brown contends that despite the termination of her daughter's parental rights to MC, the relative-placement preference still applies to her, and the circuit court erred in denying her placement.

Without delving into the application of the relative-placement preference posttermination, as was done in this case,<sup>8</sup> it is clear to this court that the circuit court did, in fact, consider whether MC's best interest would be served by placement with Brown, her maternal grandmother. The circuit court's ultimate decision to deny placement with Brown does not equate to a failure to apply preferential-placement consideration.

In its order, the circuit court stated:

9. This Court heard testimony and admitted documents into evidence at previous review hearings conducted on September 21, 2022 and October 26, 2022 but continued the issue of the Intervenor's request for placement of the juvenile at both hearings. Now, based on the testimony presented at this hearing and previous review hearings conducted on September 21, 2022 and October 26, 2022, and for reasons set forth herein, the Intervenor, Anna Brown's request for placement is denied.

10. At the time of the removal, the juvenile and her mother, Maria Cannon, were living in the home of the Intervenor. The juvenile was removed from Maria Cannon due to her failure to receive sufficient calories. The Intervenor was present in the home and failed to take any actions on the juvenile's behalf.

11. The Intervenor denied that after removal, Maria Cannon continued to reside in the home of the Intervenor. However, Maria Cannon's vehicle was observed at the Intervenor's home. The two would come to court appearances and visitations

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<sup>8</sup>Prior to the termination of Cannon's parental rights, Brown filed a petition to intervene and petition for temporary custody of MC. The circuit court granted intervention; however, the custody issue was held in abeyance until posttermination. Acknowledging the precedential effect of *Suster*, the circuit court indicated that it had not intended to deny Brown a meaningful opportunity to be heard. The intention was to "deal with the parents first." The court then proceeded with the case and considered Brown's placement request as though her status as MC's grandmother was still intact.

together. Due to this relationship, the Intervenor's report that Maria Cannon would not be in her home with the juvenile now or after her release from prison is not credible. Placement with the Intervenor will result in the juvenile being placed back in the same unsafe environment from which she was removed.

12. The Intervenor has failed 3 drug tests. She continues to test positive for K-2, synthetic marijuana, without credible explanation. Ms. Love lives with Intervenor and has tested positive for THC.

13. The Intervenor takes 15 different prescription medications for mental and physical issues.

14. The Intervenor has a recent gunshot wound. Whatever the cause, this is a concerning safety issue.

15. The Intervenor's then-boyfriend and now-husband was the subject of a previous DHS investigation that resulted in a true finding against him. The Intervenor defended him and did not believe her daughter. He remains in the home. No true finding was found as to the Intervenor.

16. Although the Court is aware that the Intervenor has served as the guardian of 2 half-siblings of the juvenile without incident, these other guardianships did not involve the Department as a party.

17. The juvenile is in a stable foster home and has thrived for over a year. The Department does not want to remove her from her present foster home.

18. It is not in the juvenile's best interest to allow her to be placed with the Intervenor. There are grave safety concerns to place the child with the Intervenor. Therefore, the petition for any type of placement, guardianship, or adoption with the Intervenor is denied.

In dependency-neglect cases, at all stages, a relative or fictive kin is to be given preferential consideration for placement of the juvenile if the relative or fictive kin meets all of the relevant protective standards and it is in the best interest of the juvenile to be placed with that person.<sup>9</sup> The statute addressing the placement of juveniles provides, "If there is a safety issue identified from a

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<sup>9</sup>See Ark. Code Ann. § 9-27-355(b)(1)(E)(i)–(ii) (Supp. 2023).

Child Maltreatment Central Registry check or criminal background check, the department is not required to provide further assessment or notice to the persons identified under subdivision (b)(1)(A) of this section,”<sup>10</sup> which includes relatives such as grandparents.

During the September 21, posttermination review hearing, Brock Baker, a supervisor for the Department, testified that MC has been in the home of her current foster-home placement since March 2022; however, at the outset of the case, Brown was the first family member considered by the Department. Baker stated that the Department was unable “to place with her because there are two true findings that exist.” Baker also noted there were additional concerns including environmental factors, Cannon’s continued residence in the home, and drug usage. As to the true findings, Baker testified that there were two separate incidents “in which sexual abuse occurred at Brown’s home in which she allowed men to move into the home and back into the home that sexually offended on Ms. Maria Cannon.” Baker explained that the Department performed a child-maltreatment background check and central-registry check and determined that due to those revealing true findings, the Department was unable to move forward with placement with Brown as a foster parent. Baker further testified that Brown was not a viable adoptive parent as a result of the true findings, among other concerns.

During the October 26 posttermination review hearing regarding MC’s initial foster-care placement, Baker provided:

We did not go with Mrs. Brown at that time and with a different family member because she was present in the home at the time when her daughter was living with her and [MC] had failure to thrive. Mrs. Brown stated that her daughter did - - no longer lived in the home, but her van was located outside. Mrs. Brown and Ms. Cannon always show up to court together. The visitation is together. Mrs. Brown was also - - had also been shot in the past

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<sup>10</sup>Ark. Code Ann. § 9-27-355(b)(1)(B)(i).

two months, so that led to more concerns. She had two prior investigations by the agency. In those investigations she had a boyfriend that molested her daughter and she had defended the boyfriend. Did not believe her child. So at that time, because of four different investigations, the sexual abuse claim, her medical condition, the fact that she was shot, the Department went with a different family member.

Brown seemingly challenges two aspects of the “true findings” testimony provided by the Department: (1) there was insufficient proof of true findings; and (2) the alleged true findings were not against her but, instead, were against her then boyfriend, now husband, and MC’s maternal grandfather.

On multiple occasions, the circuit court heard testimony from the Department that there were true findings against Brown’s husband for the sexual abuse of Cannon, MC’s biological mother. Brown acted as though she knew nothing of the sexual-abuse incidents. Although she completely denied the existence of true findings against her husband, the circuit court was free to credit the Department’s testimony and reject Brown’s utter denial. As noted, we give due deference to the circuit court’s credibility determinations and the weight to be accorded witness testimony.<sup>11</sup>

Additionally, the true findings as to Brown’s husband, who resides in the home with Brown, is a safety issue identified by the Department via a child-maltreatment and central-registry check. Although the findings were not against Brown herself, that does not diminish the safety concerns, as her husband resides in the home with her and would presumably have daily and continued access to MC if she were placed with Brown. Pursuant to Arkansas Code Annotated section 9-27-355(b)(1)(B)(i), the circuit court was statutorily barred from placing MC with Brown. This is sufficient to affirm the circuit court’s order.

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<sup>11</sup>*Id.*

Brown also makes several arguments challenging other factual findings of the circuit court. For instance, she asserts the circuit court erred in denying her request for placement of MC due to findings that (1) MC and Cannon were living in Brown's home when MC was removed from Cannon's custody, yet Brown failed to take action on behalf of MC; (2) placing MC with Brown would put her in the same environment she was removed from; and (3) Cannon was likely to reside with Brown upon her release from prison. In support of her contention, Brown argues she spent time in the hospital prior to MC's removal; consequently, there was insufficient proof that she was in the home yet failed to take action to aid MC; Brown testified that Cannon was not permitted to live with her upon her prison release; and if the Department would not permit Cannon to be around MC, Brown would ensure that it did not happen. We do not second-guess the circuit court's credibility determinations.<sup>12</sup> Brown's arguments amount to a request to reweigh the evidence on appeal. The circuit court's weighing the evidence differently than Brown wanted it to be weighed is not reversible error.<sup>13</sup>

We need not address each of the remaining arguments Brown urges on appeal because they all amount to a request to reweigh the evidence. That is not the role of the appellate court. Moreover, the circuit court was statutorily barred from placing MC with Brown. And despite Brown's extensive argument to the contrary, the circuit court thoroughly considered the facts and circumstances concerning placement of MC with her, as evidenced by the three posttermination-of-parental-rights review hearings held in this case. We affirm the circuit court's posttermination-of-

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<sup>12</sup>*McCord v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 244, 599 S.W.3d 374.

<sup>13</sup>*See id.*

parental-rights review order denying Brown's request as intervenor for an award of placement of MC.

Affirmed.

HARRISON, C.J., and KLAPPENBACH, J., agree.

*Brian L. Johnson*; and *The Applegate Firm, PLLC*, by: *Ryan J. Applegate*, 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.