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ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-23-221

EMMA MANNING AND WILLIAM
COLEMAN

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered December 6, 2023

APPEAL FROM THE PIKE
COUNTY CIRCUIT COURT
[NO. 55JV-20-37]

HONORABLE BRYAN CHESHIR,
JUDGE

AFFIRMED IN PART; REVERSED AND
REMANDED IN PART

CINDY GRACE THYER, Judge

Emma Manning and William Coleman appeal a Pike County Circuit Court order terminating their parental rights to their two children, MC1 (DOB 06/26/20) and MC2 (DOB 01/05/22). Manning challenges the circuit court’s finding of statutory grounds for termination and its best-interest finding regarding both children. In his separate brief, Coleman argues that because he had never been adjudicated the “parent” of MC1, the court erred in terminating his rights as to her solely on statutory grounds that pertain only to “parents.” He does not challenge the termination as to MC2. The Arkansas Department of Human Services (Department) concedes the error as to Coleman with regard to MC1. Having reviewed the record to ensure error, we reverse the decision terminating Coleman’s

rights as to MC1 but affirm as to MC2. As to Manning, we affirm the termination decision as to both children.

I. *Facts and Procedural History*

Emma Manning is the biological mother of MC1 and MC2. William Coleman is the putative father of MC1 since he was not married to Manning at the time of MC1's birth, and his paternity as to MC1 was never established. Coleman subsequently married Manning and was married to her when MC2 was born. Thus, he is MC2's legal father.

In September 2020, the Department opened a supportive-services case as to three-month-old MC1 following unsubstantiated findings of physical abuse. At that time, Manning and Coleman agreed to participate in parenting classes to improve their parenting skills.

When the Department conducted a home visit on October 23, 2020, the home smelled strongly of marijuana, and Coleman reported self-medicating for anxiety. Manning also disclosed to the family service worker in Coleman's presence that she had been emotional and had been struggling with depression but that medication had been ineffective. Coleman claimed to have been unaware of her struggles. The family service worker educated Coleman on the red flags and behaviors generally associated with postpartum depression and suggested that Manning get in touch with her prescribing doctor as soon as possible to discuss her symptoms. She agreed to do so. The family service worker also advised Coleman of the risks of THC exposure on infants, and he appeared receptive and agreed to prevent any future exposure.

Three days later, the Department made an unannounced home visit. Coleman informed the family service worker that Manning had hit the baby in the face. Manning confessed to having done so after she had been unable to stop the child from crying. She further disclosed that she had been having visual hallucinations and suicidal thoughts, yet she denied needing mental-health intervention and refused to receive it when offered by the Department.

Manning then disclosed some disturbing behavior by Coleman. She revealed that on several occasions, Coleman had covered MC1's mouth and nose with his hands to stop her crying and that MC1 had trouble breathing when he did this. Coleman not only admitted having done this, but he also confessed to having laid her down "too hard." During this conversation, the situation between Coleman and Manning began to escalate to the point that the family service worker asked Manning to step outside because she was becoming increasingly hostile. As a result, the family service worker became concerned for MC1's safety and removed the child from their custody.

After removal, MC1 was evaluated by staff at Arkansas Children's Hospital, who discovered three semicircular recent and/or healed cuts in a linear pattern that suggested she had been gripped with such force that fingernails had lacerated her skin. She was extremely hungry, and the staff had to limit her formula intake to prevent her from becoming overly full and vomiting. The bottle that had been provided by Coleman and Manning had to be discarded because it had not been cleaned for an extended period of time and had a yellow buildup.

An ex parte order for emergency custody was entered on October 28, 2020. After a probable-cause hearing was held on November 2, an agreed order of probable cause was filed finding that the emergency conditions that necessitated MC1's removal were still present.

The adjudication hearing was held on December 7, 2020. The court determined that Coleman was MC1's putative father and that his rights as a putative parent had attached. The court found MC1 dependent-neglected due to Manning's mental instability and substance use; that she had failed to provide a safe environment for MC1; and that she had failed to provide for MC1's health and safety needs. The court identified the following concerns that prevented trial placement or return of the child to Manning: that she was unable or unwilling to provide for MC1's health and safety needs and that her current substance use seriously affected her ability to care, supervise, or protect MC1. The goal of the case was set as reunification with a concurrent goal of relative placement. Manning and Coleman were ordered to submit to psychological evaluations and drug-and-alcohol assessments; to successfully complete counseling and rehab if recommended; to submit to random drug screens and hair-strand tests; to remain drug-free; to successfully complete parenting and anger-management classes; to successfully comply with crisis intervention; to maintain regular contact with MC1; and to cooperate with the Department. Coleman was ordered to submit to DNA testing.

A review hearing was held on March 29, 2021. The court found that Manning and Coleman had not complied with the case plan and the orders of the court. The court found the home was consistently unclean and smelled of THC; that Manning did not have

employment; Coleman had not submitted to anger-management classes; and both parents continued to have positive drug screens. Coleman claimed to be attending counseling but had not provided any proof of attendance. The court also found that they had failed to complete the goals of the case plan and had not benefited in remedying the issues that prevented MC1's safe return to the home. The court continued the goal of the case as reunification but dismissed the concurrent goal of relative placement. The court ordered Manning and Coleman to maintain a safe and sanitary home; to allow the Department access to the home; and to successfully complete counseling. Coleman was ordered to maintain employment and successfully complete anger-management classes. Manning was required to obtain employment, maintain regular and appropriate behavior during visits with MC1; to cooperate with the Department; and to take her medications as prescribed.

A second review hearing was held on June 28, 2021. The court noted that the visitation with MC1 had been going well, although Coleman had been seen sleeping through some of the visits. The court further noted that the parents had begun to comply with the case plan and orders of the court, although they continued to have positive drug screens for THC. The court stated that the parents had been working on making needed repairs to the home; that Coleman had maintained employment; and they both had indicated they had been attending counseling sessions. The goal of the case remained reunification.

A permanency-planning hearing was held on September 20, 2021. The court continued reunification as the goal of the case. The court noted that unsupervised visits with the children had been going well and that both Coleman and Manning had been complying

with the case plan. The court found that they had maintained housing; had allowed the Department access to the home; had successfully completed outpatient drug treatment; had submitted to random drug screens and remained drug-free; and had been attending Celebrate Recovery, albeit inconsistently. The court further found that Manning had attended counseling and had been taking her medications as prescribed and that Coleman had maintained employment and had successfully completed inpatient and outpatient drug treatment. The court noted that the home was still in need of cleaning, but Manning was working on maintaining a safe and sanitary home. Manning was also pregnant and was attending her prenatal appointments.

Another review hearing was held on December 6, 2021. The goal of the case remained reunification. Again, the court found that Manning and Coleman were beginning to comply with the case plan. The court noted that they were working on making the needed repairs to the home; had submitted to random drug screens; and had remained drug-free. The court again found that Coleman had maintained employment and successfully completed inpatient drug treatment while Manning had attended outpatient rehab, counseling, and medication management.

Approximately one month later, Manning gave birth to MC2. After MC2's birth, Manning and Coleman's compliance with the case plan began to deteriorate, and they began to cancel their weekly visits with MC1. On January 13, 2022, the Department contacted the parents to see if they needed any additional assistance from the agency. Coleman responded via text indicating that things were not going well. He indicated that Manning was

overwhelmed, and he believed they needed more frequent oversight by the Department. He admitted that both he and Manning had recently suffered from hallucinations but claimed they were able to differentiate between their hallucinations and reality.

As a result of these revelations, the Department put a protection plan in place as to MC2. The maternal grandmother agreed to spend the night to provide support and to enable Manning to rest while Coleman was at work. The Department agreed to conduct in-person visits three times a week and have daily check-ins via phone. The parents agreed to comply with mental-health treatment, take medications as prescribed, seek emergency intervention, and reach out to the maternal grandmother or the agency if they felt overwhelmed.

The parents' compliance with the protection plan lasted less than a week. On January 17, they failed to respond to the caseworker for their daily monitoring. When the caseworker contacted Coleman's therapist's office, she discovered that Coleman had not informed his therapist of any auditory or visual hallucinations. He had also reported to his therapist that he had discontinued his medication and had experienced no symptoms or concerns since stopping the medication. This is in stark contrast to what he had shared with the Department. During a subsequent visit to the home by the family service worker, Manning exhibited a detached behavior and appeared to lack an emotional bond to MC2, telling Coleman to "let them take [MC2]." Coleman admitted he had discontinued his medication against medical advice because he disliked feeling medicated. Neither of them explained their failure to respond to the caseworker's attempt to contact them. As a result of these

interactions, the Department removed the child and subsequently filed a petition for dependency-neglect as to MC2.

In March 2022, the court held another review hearing as to MC1. The court entered an agreed order finding that the parents were again complying with the case plan and reiterated the findings entered after the December 2021 review hearing. The goal of the case remained reunification. That same day, the court entered an agreed adjudication order as to MC2, adjudicating him dependent-neglected as a result of neglect and parental unfitness. The goal of MC2's case was set as reunification.

A review hearing was held on June 10, 2022, as to both MC1 and MC2. The court held that the goal of the case was reunification with a concurrent goal of relative placement. The court indicated that supervised visitation was going well; however, Manning had missed a recent visit, despite having confirmed she would attend prior to the visit. The court indicated again that the parents were beginning to comply with the case plan.

On September 23, 2022, a final review hearing was held as to both MC1 and MC2, and the goal of the case was changed to adoption with concurrent planning as relative placement. The court noted that visits with the children had been going well and had been occurring in the home, but due to environmental issues, the visitation location had to be changed to a local church. The court then found that the parents had stopped complying with the case plan by failing to make themselves available for home visits; testing positive for THC; and failing to attend Celebrate Recovery regularly. The court noted that, while Coleman had maintained employment and had submitted to counseling and addressed his

medication management, he had been discharged from outpatient drug treatment. The court noted that Manning was not attending counseling or complying with medication management and had not obtained employment. Thus, the court concluded that they had only partially complied with the case plan and had received only a partial benefit from the services necessary to remedy the issues that prevented the safe return of the children.

Ultimately, on October 20, 2022, the Department filed a petition to terminate Manning's and Coleman's parental rights, alleging twelve-month failure to remedy (custodial and noncustodial); subsequent other factors; and aggravated circumstances—little likelihood of successful reunification—as the grounds for termination.

At the termination hearing on December 2, 2022, the Department presented the testimony of caseworker Leah Thomas. Thomas testified about the reasons the children were removed from the parents and about her ongoing concerns for the mental health of both parents.

Thomas further testified that both Manning and Coleman were noncompliant with their mental-health-treatment plan and continued to have hallucinations.¹ She noted that both parents would tell her that they were attending their mental-health therapy, but records reflected that they were not forthcoming about their treatment. She remarked that both Coleman and Manning had switched mental-health providers several times and that there had not been any long-term compliance with any one provider. She testified that Coleman

¹Coleman had been diagnosed as bipolar and schizophrenic. Manning had been diagnosed with major depressive disorder and anxiety. She also was suicidal at times.

had expressed his concern to her that Manning was overwhelmed but would not allow him to help. As a result, a protection plan had been implemented with Manning's mother acting as a support person, but they failed to comply with the protection plan. She stated that Manning and Coleman had exhibited a pattern of progression and regression throughout the case, and the longest period of progression was approximately three months. She claimed that she stopped seeing any progression at all after MC2 had been removed from the home.

As for visits, she testified that the visits went very well in the beginning and that Manning and Coleman had even progressed to having unsupervised visits. However, the parents' engagement in visitation had recently changed. They began arriving late or canceling visits with no notice, and when they did attend, they just were not as engaged as they had been previously.

As for the home, Thomas testified that Manning and Coleman were allowed to have home visits so long as there was at least one room appropriate and safe for the visit to occur. She noted that, while the home had improved some, the home was never appropriate for children of their age and developmental level. Unfortunately, these visits never progressed beyond these one-room home visits.

As to Manning, Thomas testified that, while Manning maintained the same housing, she had not been employed for the duration of the case and had not completed anger-management classes. And while she had completed outpatient substance-abuse counseling, she still had positive drug screens for THC had admitted ingesting THC gummies.

Thomas expressed concern that there had not been an observable change in the parents' overall behavior since the case was initiated. Her primary concern was the risk of harm associated with the untreated mental illness that had resulted in violence, aggression, hallucinations, and overall neglect. She concluded that she did not believe there were any services that would lead to a successful and safe reunification with the children in a timely manner. She stated that she based her opinion, in part, on the parents' pattern of inconsistent compliance with mental-health treatment over a two-year period.

Next, Manning testified. She testified that she married Coleman on December 20, 2021. She stated that she had been in counseling for a long time—prior to giving birth to MC1—and that she had seen three counselors since MC1 was removed. She stated that she was on Zoloft for depression and anxiety. She indicated that she sees a psychiatrist at Ouachita Behavioral Health and Wellness for her medication, but she was hoping to transfer to a different counselor, and she was unsure if the new counselor could prescribe her medication. She stated that she was not currently taking her medication because she had been unable to get a refill the previous week. However, she claimed to have consistently taken her medication otherwise. She stated that she stopped going to her previous counselors because she did not believe they were listening to her about her past trauma. She stated that she believed they were trying to tell her to push through her issues instead of providing her with coping mechanisms or other ways to deal with her emotions.

As for her positive drug tests, she admitted that she had tested positive for THC and that she is an addict. She stated that she had stopped using THC but had given up because

there just did not seem any point in trying. She stated that outpatient treatment had not helped, but she thought if she were able to go to inpatient rehab, she might be able to deal with her cravings and things that led her to smoke.

She also testified that she had been previously committed for inpatient mental-health treatment after she had become suicidal and violent toward Coleman while they lived in Tuscaloosa. She stated that the inpatient treatment helped her become stable. She had been placed on medication other than Zoloft, but she was switched to Zoloft when she became pregnant with MC1. She was told by her doctors that they did not want to switch her back to her prior medication while she was postpartum.

The last witness was Coleman, who testified regarding his compliance with the case plan. He stated that he believed Manning had been depressed after MC2 was born and that he did not think her therapists were helping her. He, however, would make sure she knew he was there for her and that he did not think she was out to hurt herself. He stated that she was now getting out of bed when he went to work and would clean the house and was functional.

After the hearing, the trial court entered an order terminating Manning's and Coleman's parental rights to MC1 and MC2. The court found that Manning is a parent for purposes of the Juvenile Code and that it had previously found that Coleman's rights as a putative father to MC1 had attached. It further identified Coleman as the "father" of MC2.

As to both Manning and Coleman, the court found that the Department had proved the following statutory grounds for termination: (1) twelve-month failure to remedy; (2)

subsequent other factors; and (3) aggravated circumstances—little likelihood for successful reunification. The court further found that termination was in the best interest of the children, taking into account their adoptability and potential harm. From this order, both Manning and Coleman appeal.

II. Analysis

On appeal, Coleman claims that he was never found to be MC1's parent; thus, the court erred in terminating his parental rights to her solely on grounds that pertain only to "parents." The Department has conceded error on this point. After reviewing the record to ensure error, we reverse the termination of Coleman's parental rights as to MC1. Coleman, however, does not challenge the termination of his parental rights as to MC2; thus, we affirm the termination of his parental rights as to MC2.

Manning, however, challenges the circuit court's statutory grounds and best-interest findings as to both MC1 and MC2. We affirm both terminations.

A circuit court's order terminating parental rights must be based on findings proved by clear and convincing evidence. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2023). 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. *Long v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 372, 675 S.W.3d 158. 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 determining whether a finding is clearly erroneous, an appellate court gives due deference to the opportunity of the circuit court to judge the credibility of witnesses. *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 juvenile, taking into consideration (1) the likelihood that the juvenile 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).

The court in this case terminated Manning's parental rights on three grounds: twelve-month failure to remedy; subsequent other factors; and aggravated circumstances—little likelihood of successful reunification. Proof of just one statutory ground is enough to terminate parental rights. *Gossett v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 240, 374 S.W.3d 205. We conclude that the aggravated-circumstances ground applies to support termination as to both children.

With regard to aggravated circumstances, Arkansas Code Annotated section 9-27-341(b)(3)(B)(ix)(a)(3)(A), (B)(i), requires the Department to prove that

[t]he parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to: . . .

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) “Aggravated circumstances” means:

(i) . . . a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification.

A caseworker’s testimony that there are no further services that the Department can provide to reunify a parent with his or her child supports a finding of aggravated circumstances in a termination-of-parental-rights proceeding. *Myers v. Ark. Dep’t of Hum. Servs.*, 2023 Ark. App. 46, 660 S.W.3d 357.

Here, Thomas testified that there had not been any observable change in Manning’s behavior since the case was initiated. Thomas’s primary concern was the risk of harm associated with Manning’s untreated mental illness that had resulted in violence, aggression, hallucinations, and overall neglect. There was evidence presented that Manning was not consistent with her therapy or her medication-management plan. Thomas further stated that there was an observable pattern in which she could discern when Manning was not abiding by her treatment plan because the interior of their home became an environmental hazard. At one point, they were unable to have visitation at the home because they were unable to keep even one room safe and appropriate for visitation. Manning admitted that her home was not appropriate for the children and admitted that she had refused the Department’s offer of help. In light of the foregoing and Manning’s lack of consistent compliance with mental-health treatment over a period of two years, Thomas did not believe that there were any additional services that would lead to a successful and safe reunification with the

children in a timely manner. This is sufficient evidence to support the circuit court's finding of aggravated circumstances.

Manning also claimed that she should have been provided inpatient drug treatment or services to deal with postpartum depression. First, only outpatient drug treatment was recommended after her drug-and-alcohol assessment. Second, there was no evidence presented that she ever requested any additional treatment, and her engagement in Celebrate Recovery classes was inconsistent. Third, as for help with postpartum depression, she was already being seen by a counselor and a therapist for her mental-health issues, and she admitted that she was not forthcoming with them about the problems she was having. Thus, she failed to demonstrate that any additional counseling would have been effective. Finally, proof of services is not required under the aggravated-circumstances ground. *Peterson v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 75, 595 S.W.3d 38.

Manning next claims that the circuit court erred in its best-interest finding. The circuit court may determine whether it is in a juvenile's best interest to terminate parental rights by considering the juvenile's adoptability and the potential harm caused by returning the juvenile to the parent. *E.g., Norton v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 43, at 5, 481 S.W.3d 780, 783. Neither of these two factors is an essential element of proof in a termination case; thus, neither factor be established by clear and convincing evidence. *E.g., Bentley v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 374, at 13–14, 554 S.W.3d 285, 294.

Manning fails to challenge the adoptability factor of the circuit court's best-interest finding; thus, this court is not required to address this issue on appeal. *See, e.g., Easter v. Ark.*

Dep't of Hum. Servs., 2019 Ark. App. 441, at 8, 587 S.W.3d 604, 608. She does, however, challenge the potential-harm factor. For potential harm, a circuit court is not required to identify actual harm, and potential harm must be viewed in a forward-looking manner. *E.g.*, *Rivera v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 405, at 15–16, 558 S.W.3d 876, 885. Additionally, “[a] parent’s past behavior is often a good indicator of future behavior.” *E.g.*, *Perry v. Ark. Dep't of Hum. Servs.*, 2021 Ark. App. 193, at 10, 625 S.W.3d 374, 381.

Here, Manning argues that she had completed services, had ceased her drug use (except for a minor relapse with marijuana), and she was in a stable relationship with Coleman. She fails to recognize, however, that MC1 had been out of the home for almost two years, yet she still had failed to address her unresolved mental-health issues or the unsafe and inappropriate condition of her home. Throughout the case, Manning was ordered to maintain a safe and sanitary home, to remain drug-free, to successfully complete counseling, and to be medication compliant. However, she was unable to sustain any consistent compliance in these areas. A parent’s failure to comply with court orders itself is sufficient evidence of potential harm. *Gonzalez v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 425, 555 S.W.3d 915. Further, the same evidence that supports grounds for termination can also demonstrate potential harm. *Black v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 518, at 8, 565 S.W.3d 518, 524. Thus, the evidence of drug use, environmental neglect, and mental-health issues that indicate there is little likelihood of successful reunification also support a potential-harm finding. Simply put, Manning is not currently in a position to safely and

appropriately parent the children, and return of the children to her would likely subject them to potential harm.

Affirmed in part; reversed and remanded in part.

GLADWIN and MURPHY, JJ., agree.

Dusti Standridge, for separate appellant Emma Manning.

Leah Lanford, Arkansas Commission for Parent Counsel, for separate appellant William Coleman.

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

Dana McClain, attorney ad litem for minor children.