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ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-23-502

SAVANAH MILHOLLAND

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered December 6, 2023

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. 24OJV-22-20]

HONORABLE KEN D. COKER, JR.,
JUDGE

AFFIRMED

WENDY SCHOLTENS WOOD, Judge

Savanah Milholland appeals the Franklin County Circuit Court's order terminating her parental rights to Minor Child (MC), born on March 17, 2022.¹ On appeal, Milholland contends that the evidence was insufficient to support the court's finding that termination was in MC's best interest because Milholland had not been given a full year to reunify with MC and because there was a less restrictive alternative to termination. We affirm the circuit court's order.

¹The court also terminated the parental rights of Clint Wayne Green, who was married to Milholland at the time of MC's birth, but he did not attend any of the proceedings in the case and is not a party to this appeal. Thus, although the court's orders address him, we will not include the circuit court's specific findings regarding Green.

MC tested positive for methamphetamine, amphetamines, opiates, and marijuana at his birth, which prompted the Arkansas Department of Human Services (DHS) to open a protective-services case involving MC and his parents in March 2022. At the time of MC's birth, Milholland was in a relationship with Michael Attebery, who was listed as MC's father on his birth certificate. Although referrals for Safe Care and a drug assessment were offered, neither Milholland nor Attebery took advantage of these services, and Milholland evaded attempted calls and visits from family-service workers.

On August 15, 2022, DHS was notified that Milholland had been arrested. When the family-service worker screened her at the detention center, she tested positive for methamphetamine and K2. Milholland did not know where MC was at the time but, when contacted later in the day, told DHS that MC was with her family in Johnson County. DHS eventually located MC with his maternal grandmother, exercised emergency custody over him, and on August 17 filed a petition for ex parte emergency custody and dependency-neglect. In the affidavit attached to the petition, DHS outlined an extensive prior history with the family, which included the termination on December 7, 2021, of Milholland's parental rights to MC's two siblings, who were one and three years old at the time.

The court granted the petition, finding that probable cause existed, and entered a probable-cause order on September 6. MC was adjudicated dependent-neglected in an order entered November 11 due to parental unfitness on the basis of the parents' stipulation and proof that Milholland's "substance misuse and instability create a risk of harm to the

juvenile.” The court also found that Attebery² was a noncustodial legal parent of MC, did not contribute to the dependency-neglect of MC because he was incarcerated at the time of removal, and was not a fit parent for purposes of custody. The court set a goal of reunification and awarded supervised visitation to the parents. The court ordered the parents to comply with the case plan and court orders; cooperate with DHS and service providers; obtain and maintain stable and appropriate housing, transportation, employment, and income; visit MC regularly and appropriately; remain clean and sober; and notify DHS of any significant changes in their lives, employment, health, sobriety, housing, and transportation.

At a review hearing on January 11, 2023, the court found that the parents remained unfit. The court specifically found that Milholland had minimally complied with the case plan; had not made herself available for random drug screens, had kicked DHS workers out of her home, and had missed three hair-follicle drug screens; was discharged from therapy; did not have stable or appropriate housing; and had not provided proof of employment. The court found that Attebery had complied with the case plan. The court stated that the case plan was not moving toward an appropriate permanency plan for MC but continued the goal of reunification, noting that DHS had announced its intention to file a petition for termination.

On January 19, DHS and the attorney ad litem filed a joint petition to terminate Milholland’s, Green’s, and Attebery’s rights to MC, and the court held a termination hearing

²Although Attebery was listed on MC’s birth certificate and he executed an acknowledgement of paternity regarding MC, he is not MC’s biological parent.

on April 12. Milholland acknowledged at the termination hearing that she had been incarcerated since January 14 for felony possession of methamphetamine and misdemeanor possession of drug paraphernalia but said she had not used drugs for several weeks before her arrest. She said that MC had been removed from her custody in August 2022 because she was arrested for simultaneous possession of drugs and firearms, third-degree escape, possession of methamphetamine, and possession of drug paraphernalia. She testified that she had accepted a sentence of six months in a regional correctional facility for her recent charges and wanted the opportunity to be a part of MC's life after she completed the program.

Attebery testified that he had a home, was employed as a handyman, owned a car, was working on getting a valid driver's license, and had participated in parenting classes. He admitted that he had several prior drug-related convictions but stated that he has a bond with MC, attended regular visitations, and did not want his rights terminated.

The DHS caseworker, Leslie Case, testified that Milholland had both positive and negative drug screens throughout the case. Case did not believe Milholland could "beat the drugs" and did not believe it was fair for MC to wait six months for Milholland to complete her sentence. Case said that Milholland was discharged from counseling for noncompliance. Case testified that Attebery had engaged in some services, though his attendance at counseling had been sporadic, and that he had tested positive and negative on drug screens throughout the case. She said he had attended visitations with MC, but she did not believe it was safe for MC to live with Attebery because he still struggled with substance abuse and

was not sufficiently stable. She said that MC is adoptable and is with foster parents who are interested in adopting him.

On April 28, 2023, the court entered an order terminating Milholland's parental rights on three grounds: (1) parental rights involuntarily terminated to another child; (2) other subsequent factors; and (3) aggravated circumstances, little likelihood of reunification. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii), (ix)(a)(3), (ix)(a)(4) (Supp. 2023). The court also found that termination was in MC's best interest, specifically finding that MC is adoptable and with foster parents who were willing to adopt him and that returning MC to Milholland would result in potential harm because she had not resolved her addiction to methamphetamine, had been arrested and was currently incarcerated, and was about to engage in a six-month program in a regional correctional facility.

The court did not terminate Attebery's parental rights, finding that DHS had not proved by clear and convincing evidence that MC's welfare was best served by termination. Specifically, the court noted that Attebery had regularly visited MC, and there appeared to be a connection between them; he had used methamphetamine in March but had never been offered substance-abuse services, despite the goal of the case being reunification; and while his attendance at counseling had been sporadic, there was no evidence that he had a mental-health diagnosis or issue. The court ordered Attebery to enter and successfully complete residential drug treatment. In conclusion, the circuit court found it was in MC's best interest to remain in DHS custody and set a permanency-planning hearing for July. Milholland brings this appeal from the court's order.

We review termination-of-parental-rights cases de novo. *Cheney v. Ark. Dep't of Hum. Servs.*, 2012 Ark. App. 209, at 6, 396 S.W.3d 272, 276. We will not reverse the circuit court's decision unless its findings are clearly erroneous. *Perry v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 323, at 10, 669 S.W.3d 865, 872. An order terminating parental rights must be based on a finding by clear and convincing evidence that one of the grounds stated in the termination statute is satisfied and that the sought-after termination is in the children's best interest. Ark. Code Ann. § 9-27-341. 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 harm to the child if custody is returned to a parent. *Brown v. Ark. Dep't of Hum. Servs.*, 2015 Ark. App. 725, at 4, 478 S.W.3d 272, 275. Credibility determinations are left to the finder of fact. *Kerr v. Ark. Dep't of Hum. Servs.*, 2016 Ark. App. 271, at 6, 493 S.W.3d 342, 346.

The intent behind the termination-of-parental-rights statute is to provide permanency in a child's life when it is not possible to return the child to the family home because it is contrary to the child's health, safety, or welfare, and a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Even full compliance with the case plan is not determinative; the issue is whether the parent has become a stable, safe parent able to care for his or her child. *Schaible v. Ark. Dep't of Hum. Servs.*, 2014 Ark. App. 541, at 8, 444 S.W.3d 366, 371. Moreover, a child's need for permanency and stability may override a parent's request for

additional time to improve the parent's circumstances. *Id.*, 444 S.W.3d at 371. Finally, a parent's past behavior is often a good indicator of future behavior. *Id.*, 444 S.W.3d at 371.

Milholland is not challenging the circuit court's findings of grounds for terminating her parental rights. Her sole point on appeal is that there was insufficient evidence to support the court's finding that termination is in MC's best interest. Specifically, she argues that the evidence is not clear and convincing that she poses a risk of potential harm to MC when she was not provided a full year to reunify, which she contends is "statutorily permitted," and when there was a less restrictive alternative to termination through reunification with Attebery. She adds that adoption was not an available permanency option at the time of termination, so termination was simply unnecessary.

In determining whether termination is in the best interest of a child, the circuit court must consider the entire history of the case and all relevant factors in the case, including the likelihood that the child will be adopted and the potential harm that would be caused by returning the child to the custody of the parent. *Jurls v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 443, at 16, 676 S.W.3d 316, 327. The court is not required to find that actual harm would result or affirmatively identify a potential harm. *Kloss v. Ark. Dep't of Hum. Servs.*, 2019 Ark. App. 389, at 7, 585 S.W.3d 725, 730. The polestar is that termination, after consideration of all relevant circumstances, must be shown to be in the child's best interest. *Grant v. Ark. Dep't of Hum. Servs.*, 2010 Ark. App. 636, at 13, 378 S.W.3d 227, 233.

Milholland cites no authority to support her "statutorily allowed time" argument. Although the Juvenile Code provides that permanency planning must occur *no later than*

twelve months after a child enters an out-of-home placement, the code specifically authorizes DHS or an attorney ad litem to file a petition for termination *at any time*. Ark. Code Ann. § 9-27-338(a)(1)(A), (b)(1)(A) (Supp. 2023). Moreover, while there is a statutory ground that requires proof that the child has been out of the parent’s custody for twelve months, Milholland’s rights were not terminated on that ground, and in any case, she does not challenge the statutory grounds for her termination. Finally, one of the grounds on which the court did terminate her parental rights—involuntary termination of rights to two children in December 2021—demonstrates that she has a history with DHS predating this dependency-neglect case and that she struggled with the same drug issues involved here. MC was born with drugs in his system over a year before the termination, and Milholland continued to use drugs until she was arrested in January and incarcerated, where she has remained. A parent’s continued illegal drug use and instability are sufficient to demonstrate a risk of potential harm to the children. *Jurks*, 2023 Ark. App. 443, at 20, 676 S.W.3d at 329. The lack of time to complete appropriate services is irrelevant to the circuit court’s determination of best interest. *Lloyd v. Ark. Dep’t of Hum. Servs.*, 2022 Ark. App. 461, at 12, 655 S.W.3d 534, 542.

Milholland also argues that termination was not necessary because there was a less restrictive alternative to termination in reunification with Attebery. Although Milholland acknowledges that the circuit court may terminate the rights of one parent and not the other

parent if it finds it is in the best interest of the child,³ she argues that the likelihood of adoption is a relevant consideration and cites our decision in *Lively v. Arkansas Department of Human Services*, 2015 Ark. App. 131, 456 S.W.3d 383 (reversing a single-parent termination where adoption was not the permanency plan). She contends that there was no reason to terminate her parental rights when placement with Attebery would have permitted MC to achieve permanency.

This case is not governed by *Lively*. In *Lively*, this court reversed the termination of a father's parental rights because the circuit court found the children were adoptable when there was absolutely no evidence in the record to support the finding. *Id.* at 7, 456 S.W.3d at 387-88. The court also held that the adoptability determination was erroneous because the children were in a stable, permanent home with their mother and "there was no expectation that they would ever be put up for adoption." *Id.* at 7-8, 456 S.W.3d at 388. There was no question of permanency in *Lively* because the children were in the custody of their mother, and the children's relationship with their paternal grandparents was one of the most stable influences in their lives. *Id.* at 7-8, 456 S.W.3d at 388.

Here, MC was not in the permanent, stable custody of a parent; rather, he was in DHS custody, living with foster parents. And potential reunification with Attebery was not a stable, permanent option for MC at the time of termination and might never be. The court

³Ark. Code Ann. § 9-27-341(c)(2)(B).

recognized that Attebery had substance-abuse issues but determined that he had never been offered substance-abuse services despite the goal of the case being reunification. The circuit court ordered Attebery to enter and successfully complete residential drug treatment. Notably, the court specifically found that it was in MC's best interest to remain in DHS custody. In addition, the court specifically found that MC is adoptable and living with foster parents who wanted to adopt him. Moreover, there was no evidence in this case that MC had a significant relationship with any maternal or paternal relatives. The facts dictating reversal in *Lively* are simply not present here.

The facts in this case are more similar to those in *Jurls*, a one-parent termination case in which the father was awarded permanent custody. *Jurls*, 2023 Ark. App. 443, at 7, 676 S.W.3d at 322. In *Jurls*, we held that the record supported the circuit court's best-interest determination regarding termination of the mother's parental rights because of her continued drug use and instability. *Id.* at 19-20, 676 S.W.3d at 329. Milholland's failure to participate in services to address her substance abuse and her continued instability support the circuit court's finding that MC needed an irrevocable break from her. *See Ford v. Ark. Dep't of Hum. Servs.*, 2022 Ark. App 367, 653 S.W.3d 515.

Having reviewed the evidence presented and considering MC's need for permanency, we hold that there is no clear error in the circuit court's best-interest finding. Accordingly, we affirm the order terminating Milholland's parental rights.

Affirmed.

ABRAMSON and HIXSON, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Kaylee Wedgeworth, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.