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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SHARON H. ,) 1 CA-JV 12-0039
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P.Juv.
SECURITY, GRANT S. ,) Ct. Rule 28 ARCAP)
)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD504144

The Honorable David K. Udall, Judge

AFFIRMED

Thomas C. Horne, Attorney General
By Eric Devany, Assistant Attorney General
Attorneys for Appellees

Mesa

The Stavris Law Firm, PLLC
By Alison Stavris
Attorneys for Appellant

Scottsdale

O R O Z C O, Judge

¶1 Sharon H. (Grandmother) appeals the juvenile court's revocation of her permanent guardianship over her grandson (Child). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Grandmother and her husband (Step-Grandfather) became permanent guardians of Child in 2005. On April 4, 2011, Child was taken into temporary physical custody because the grandparents were unable to protect Child from his mother, Rhonda F. (Mother), who had untreated mental health issues. Also, Child was exhibiting "uncontrollable behaviors at home."

¶3 Arizona Department of Economic Security (ADES) filed a dependency petition on April 7, 2011, alleging the grandparents were unable to parent Child due to neglect caused by their failure to protect Child from Mother.¹ Although Mother was not allowed to live in the grandparents' home or have unsupervised visits with Child, ADES alleged the grandparents had allowed Mother to move into their home three years earlier.

¶4 At the time of the dependency petition, an ADES case worker reported that Mother's mental health issues had escalated to the point that she was "ranting and raving throughout the night" and that Grandmother, Step-Grandfather, and Child had been sleeping in the same room with the door locked. Grandmother told

¹ The petition also alleges that Child was dependant as to Mother, Scott S. (Child's alleged father), and "John Doe."

ADES that she was afraid of Mother, and the case worker noted a general fear that Mother would become physically aggressive, as she had in the past. The case worker also reported that Child's behavior was "out-of-control" and that he lacked structure and supervision in the grandparents' home to an extent it was a safety concern.

¶15 In February 2012, ADES filed a petition to revoke the grandparents' permanent guardianship. The petition alleged that ADES removed Child from the grandparents' care in April 2011 because they failed to protect him and were unable to control his behavior. As to Grandmother, the petition alleged that she continued to support Mother and allowed her to live in the grandparents' home and facilitated unsupervised visits between Mother and Child. The petition also alleged that Child requested his visits with Grandmother be reduced and that he wished to remain in his current placement.

¶16 Following a hearing on ADES's petition to revoke the guardianship, the juvenile court found "beyond clear and convincing evidence that there has been a substantial change of circumstances" and "that it would be in [Child's] best interest if the revocation were to occur." The court concluded that Grandmother's permanent guardianship should be revoked because Grandmother "is not capable of protecting [Child] from [M]other

and would continue contact between [M]other and [Child] if the guardianship remained in place.”²

¶17 Grandmother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 8-235.A (2007).

DISCUSSION

Significant Change of Circumstances

¶18 Grandmother argues the juvenile court erred in revoking her permanent guardianship because ADES did not prove by clear and convincing evidence that a significant change of circumstances occurred. “We will affirm a juvenile court’s order based on findings of clear and convincing evidence unless no reasonable evidence supports those findings.” *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

¶19 The juvenile court may revoke a permanent guardianship if ADES proves a significant change of circumstances by clear and convincing evidence and the revocation is in the child’s best interest. A.R.S. 8-873.C. (2007). A significant change of circumstances includes the permanent guardian’s inability to properly care for the child. A.R.S. § 8-873.A.2.

² During the hearing, Step-Grandfather’s attorney advised the court that Step-Grandfather did not want to contest the guardianship revocation. Accordingly, the court found that Step-Grandfather did not contest ADES’s petition. Step-Grandfather is not a party to this appeal.

¶10 Dr. A. testified regarding his psychological evaluation of Grandmother, and his evaluation was admitted as an exhibit. During the evaluation, Grandmother admitted she was not following ADES's case plan that prohibited unsupervised visits between Mother and Child. Dr. A. opined that Grandmother's promise to begin following the case plan was "unconvincing." At the time the evaluation was conducted, Mother was still living in Grandmother's home, and Grandmother conceded she had serious doubts that Mother would move out. Because Grandmother had been unable to manage Mother's behaviors in the past and wanted to maintain a relationship with Mother, Dr. A. believed Grandmother would "continue to expose [Child] to the possibility of abuse" and "continue failing to protect him." Dr. A. concluded that he would "not trust her with the care of [Child]."

¶11 The ADES case manager testified that he believed there had been a change of circumstance serious enough to warrant revocation of Grandmother's permanent guardianship. He opined that Grandmother had not made the necessary behavioral changes and that the grandparents were not fit to be guardians and Child would be at risk if he were returned to their care.

¶12 Nevertheless, Grandmother argues that her guardianship should not have been revoked because she "made affirmative steps to cure the circumstances" that led to Child's removal. Although Grandmother testified that Child was never left unsupervised with

Mother and that she ultimately evicted Mother, she also admitted that she still supports Mother financially and Mother visits the grandparents' home twice a week. The juvenile court is in the best position to weigh the evidence, observe the parties, and judge the credibility of witnesses. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). Thus, we reject Grandmother's argument to the extent it is a request for us to reweigh the evidence.

¶13 We conclude that reasonable evidence supports the juvenile court's finding that a significant change of circumstances occurred.

Best Interests

¶14 Grandmother also argues there was insufficient evidence to support a finding that revocation would be in Child's best interest. "A finding that the best interests of the child will be served by removal from a custodial relationship may be established by either showing an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship." *Jennifer B.*, 189 Ariz. at 557, 944 P.2d at 72. Here, ADES showed both how Child would benefit from revocation and how continuing the guardianship would be detrimental to Child's well-being.

¶15 The case manager testified that revoking the permanent guardianship and allowing Child to remain in his current

placement would be in Child's best interest. The case manager testified that since Child had been in his current placement, Child's teachers observed "a serious turnaround in [Child's] behavior and with his grades." The case manager reported that Child was thriving in his current placement and expressed concern that Child would significantly regress if he were removed from his placement.

¶16 In addition, the case manager testified that Child's therapist had reported that Child's relationship with Grandmother was "still very dysfunctional" and that Grandmother exhibited "very severe" manipulation and control over Child, which caused Child to display anger issues, increased symptoms of ADHD, anxiety, and depression. The case manager opined that it was not in Child's best interest to experience those conditions. Moreover, as previously mentioned, Dr. A. opined that Grandmother would continue to expose Child to the possibility of abuse and fail to protect him from Mother.

¶17 Reasonable evidence supports the court's finding that revocation would be in Child's best interest.

CONCLUSION

¶18 Because reasonable evidence supports the juvenile court's findings, we affirm the revocation of Grandmother's permanent guardianship.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

RANDALL M. HOWE, Judge