

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 7/9/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

SUSAN R.,) 1 CA-JV 13-0009
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz.R.P.Juv.Ct.
SECURITY, C.M., J.R., A.R.,¹) 103(G); ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD17906

The Honorable William Wingard, Judge Pro Tem

VACATED AND REMANDED

Robert D. Rosanelli
Attorney for Appellant

Phoenix

H O W E, Judge

¶1 Susan R. ("Mother") appeals from an order denying her petition to revoke permanent guardianship for her two children J.R. and A.R. ("the children"). For the following reasons, we

¹ The caption has been amended to safeguard the juveniles' identity pursuant to Administrative Order 2013-0001.

vacate the court's order and remand the matter to the juvenile court for further proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 On April 1, 2004, Mother's relative filed a dependency petition alleging that Mother was unable to provide care for the children because she used drugs and placed the children in danger. At a hearing on the petition, the juvenile court found the children dependent and Mother unable to parent due to "substance abuse, apparent mental illness, and medical neglect." The court found that guardianship, instead of termination of parental rights, would be in the children's best interests, and the court appointed A.R.'s paternal grandmother, C.M., as guardian.

¶3 On December 30, 2011, Mother wrote to the juvenile court requesting a revocation of permanent guardianship. The court directed Mother to file a written petition, and Mother then filed a formal petition to revoke permanent guardianship. In September 2012, the parties met for a hearing on the petition, but because Mother had not properly served the alleged father of J.R.,² the court continued the hearing.

¶4 On November 15, 2012, after Mother properly served the alleged father of J.R., the court held a hearing on the

² While A.R.'s father was present for the hearing, J.R.'s father lived out-of-state and was not present.

petition. The parties stipulated that Mother had made significant changes to her circumstances so that only the best interests of the children were at issue. At the hearing, the children requested through counsel to meet with the court outside the presence of the parties, and the court did so without objection from any party. The children told the court that Mother was fairer to J.R. than she was to A.R. and that Mother used to spank A.R. a lot. When the judge asked the children who they would choose to live with between Mother and grandmother, both children chose grandmother. The children also told the court that they were both excelling at school and were a grade ahead of where they should be.

¶15 After the children left the courtroom, Mother moved to admit into evidence a Child Protective Services ("CPS") Bonding and Best Interests Assessment that recommended that the children remain in the care of their grandmother. According to the CPS report, however, the grandmother had disclosed that the children had been living with A.R.'s father ("Father") and his girlfriend for approximately one year due to the grandfather's stroke, and CPS cautioned that the grandmother should not leave the children with Father and his girlfriend. CPS was concerned because it could not assess whether the children were safe when under Father and his girlfriend's supervision since Father and the

girlfriend did not engage in drug testing and would not allow an interview.

¶6 Mother then called Father to testify. Father testified that he had taken drugs in the past and that he did not comply with a court order to take a hair follicle test. When Mother questioned Father about the court order and whether the grandmother allowed Father to take care of the children, Father's counsel objected, stating that the testimony was not relevant to whether revocation of guardianship was in the children's best interests. The court sustained the objection: "[W]hen we're talking about the best interests . . . I am considering the children as they relate to Mom and whether it's in the bests interests for the children to go back to Mom and that guardianship be revoked so that Mom can now parent these children." Father's counsel requested clarification: "I just want to make this clear for the record, it's irrelevant in this case regarding best interests if grandmother allows the children to be in an environment where they may be at risk." The court responded, "I want to hear about the best interests of the children as they relate to Mom."

¶7 During Mother's testimony, she admitted spanking A.R. with a belt in the past, but she maintained that she had not done so for years. She stated that the children had told her on numerous occasions that they wanted to live with her. However,

she admitted that she was aware that the children had told several other people that they wanted to live with their grandmother.

¶8 The court denied Mother's petition to revoke permanent guardianship. The court found that a best interest determination required that Mother show the children would either suffer a detriment from remaining in the custody relationship or affirmatively benefit from a revocation of the guardianship. The court considered the children's wishes, the competing testimony from the children and Mother regarding Mother's discipline methods, the Best Interests Assessment, and the children's testimony that they were happy, healthy and safe in their placement, and that the grandmother was meeting their needs. Based on this evidence, the court concluded that maintaining the guardianship was in the children's best interests.

¶9 Mother timely appeals. This Court has jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 8-235 and 12-120.21(A)(1) (West 2013).³

DISCUSSION

¶10 Under A.R.S. § 8-873(C), a "court may revoke the order granting permanent guardianship if the party petitioning for revocation proves a change of circumstances by clear and

³ We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

convincing evidence and the revocation is in the child[ren]'s best interest." The parties stipulated that Mother had proven a change of circumstances. Thus, the only issue before the court was whether revocation was in the children's best interest.

¶11 Mother raises two issues on appeal regarding the best interests determination. She argues that the court erred in precluding Father's testimony about his alleged drug abuse because it was relevant to whether revoking the guardianship was in the children's best interests. She also argues that the court abused its discretion in finding revocation of guardianship was not in the children's best interest.

¶12 The court erred in precluding Father's testimony because this evidence was relevant to whether revoking the guardianship was in the children's best interests. We review a court's ruling on exclusion of evidence for an abuse of discretion or legal error and prejudice. *Taeger v. Catholic Family and Comty. Servs.*, 196 Ariz. 285, 295-96, ¶ 35, 995 P.2d 721, 731-32 (App. 1999). Revoking a permanent guardianship is in the children's best interests if the children affirmatively benefit from revocation or if maintaining the guardianship would be detrimental to them. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 72 (App. 1997). The juvenile court erred in limiting the scope of the evidence to only best interests of the children as it relates to Mother. In

the Bonding and Best Interest Assessment, CPS expressed concern that grandmother was allowing Father to care for the children for extended periods of time. Moreover, CPS concluded that the children would be safe in the grandmother's care only if she did not allow people that are abusing substances to care for the children. Evidence of Father's substance abuse and the frequency with which grandmother allowed Father to care for the children was relevant to the best interests of the children because it was relevant to those concerns CPS highlighted.

¶13 This case is similar to *Jennifer B.*, where we affirmed the juvenile court's consideration of the detriment to the children in the best interest analysis. *Id.* ADES and the Mother had offered evidence that keeping the child in guardian's care would be detrimental to the child because the aunt was "incapable of showing affection for the child, would continue to use corporal punishment, and still caused the child fear." *Id.* The court found that revoking the guardianship was in the child's best interests because of the detriment. *Id.* at 555, 944 P.2d at 70. Similarly, in this case, Mother attempted to offer evidence that was relevant to the detriment of the children, but the court precluded this testimony. Thus, the court erred by precluding the evidence.

¶14 Additionally, although Father did not answer the question of Mother's counsel because the court sustained the

objection, Mother's counsel made a sufficient offer of proof at trial to preserve this issue for review. "When an objection to the introduction of evidence has been sustained, an offer of proof showing the evidence's relevance and admissibility is ordinarily required to assert error on appeal." *State v. Towery*, 186 Ariz. 168, 179, 920 P.2d 290, 301 (1996). An offer of proof is sufficient if counsel gives a detailed description of the proposed evidence. *State v. Bay*, 150 Ariz. 112, 115, 722 P.2d 280, 283 (1986). Mother's counsel made this offer when he told the court that Father and other witnesses would testify about the "drug usage in the home of the Father." Mother thus demonstrated the relevance of this testimony, and the trial court erred in precluding it.

¶15 Because the trial court erred in precluding evidence relevant to the best interests determination, we vacate the court's ruling maintaining the guardianship and remand for the trial court to properly consider this evidence as it relates to whether the permanent guardianship is detrimental to the children's best interests. This decision renders moot Mother's additional argument that the trial court abused its discretion in maintaining the guardianship.

CONCLUSION

¶16 For the reasons stated above, we vacate and remand.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
PETER B. SWANN, Presiding Judge

_____/s/_____
DIANE M. JOHNSEN, Judge