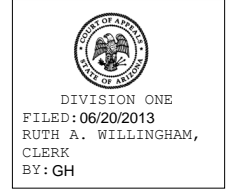


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CLAUDIA C.,) No. 1 CA-JV 13-0037
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, A.B.,¹) 103(G) Ariz.R.P. Juv. Ct.;
) Rule 28 ARCAP
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD19058

The Honorable Roland J. Steinle, Judge

AFFIRMED

Thomas A. Vierling Phoenix
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix
By Michael Valenzuela, Assistant Attorney General
Attorney for Arizona Department of Economic Security

G E M M I L L, Judge

¶1 Claudia C. ("Mother") appeals the juvenile court's

¹ We have amended the caption to safeguard the identity of the juvenile pursuant to this court's Administrative Order 2013-0001.

order terminating her parental relationship with her daughter, A.B. ("the child"). For the following reasons, we affirm.

BACKGROUND

¶12 Mother is the biological parent of the child, who was born in 2004.² The child was born with Spina Bifida, and has also been diagnosed with neurogenic bladder and vesicoureteral reflux. These conditions make the child incontinent and prone to bladder and kidney infections. The child's treatment plan includes frequent and regular catheterizations, the daily use of a bowel tube, and daily medications. Without consistent treatment, the child is in danger of renal failure, a life-threatening condition.

¶13 The Arizona Department of Economic Security ("ADES") took the child into temporary custody on April 13, 2010, after the staff at St. Joseph's Hospital notified Child Protective Services ("CPS") that the child's doctor was going to cease treatment because of Mother's failure to follow through on the child's treatment plan. At the time the report was made, Mother was living in a domestic violence shelter with the child and her two other children after leaving an allegedly abusive relationship with the child's father.

¶14 On April 19, 2010, ADES filed a dependency petition

² The biological father's parental rights to the child were terminated in 2012. Father is not a party to this appeal.

alleging the child is medically fragile and that Mother had been neglecting the child's medical needs. The court adjudicated the child dependent on June 24, 2010, and approved a case plan of family reunification. The child was placed in a foster home licensed to care for medically fragile children, where she has remained throughout the dependency. Consistent with the case plan, ADES provided Mother with several services, including domestic violence counseling, a psychological evaluation, individual counseling, supervised visits, and parent-aide services.

¶15 Mother consistently performed well during supervised visits and implemented the skills she learned during her parent-aide sessions. Mother also attended her counseling sessions regularly and eventually completed a psychological evaluation in May 2011. The psychologist who evaluated Mother at that time reported that Mother appeared "to have resolved many issues leading to her child's medical neglect" and recommended that the case continue to move toward reunification. The psychologist qualified her recommendation, however, by stating that the child's "medical needs should be paramount in determining any timeliness and physical custody changes."

¶16 In August 2011, ADES allowed Mother to have unsupervised physical custody of the child during the weekdays to determine whether Mother could adequately meet the child's

medical needs on her own. However, in October 2011, ADES again removed the child from Mother's care based on concerns that Mother had not been adequately caring for the child's medical needs.

¶17 In February 2012, the juvenile court approved an ADES motion to change the child's case plan to severance and adoption. ADES then filed a motion to terminate Mother's parental rights to the child on grounds of neglect under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2) (Supp. 2012)³ and fifteen months out-of-home placement under A.R.S. § 8-533(B)(8)(c).

¶18 In September and October of 2012, the juvenile court held a four-day contested severance hearing. At the hearing, the child's school nurse testified that while the child was in Mother's care in August 2011, the child would report that Mother was not regularly catheterizing her or administering her medications. The nurse also reported that Mother was defensive when contacted about these issues and that Mother failed to respond when the nurse would notify Mother that she was running low on the child's medical supplies. The nurse further testified that the child would often come to school dirty, wearing dirty clothes, and with urine and/or feces in her

³ Absent material revision since the date of the severance, we cite the current versions of statutes.

diaper. Mother testified that she had catheterized the child regularly and that the child had lied to the nurse about not receiving her medication.

¶19 The child's pediatric urologist testified that if the child is not catheterized and medicated consistently she would be under an unreasonable risk of harm, and that her required degree of care is "going to be more intense" going forward because of surgeries that are being proposed as a part of the child's care plan. A second clinical psychologist evaluated Mother in June 2012 and testified that, although Mother has the knowledge and ability to attend to the child's medical needs, she had shown a history of not following through. The psychologist further testified that she is concerned about Mother's ability to care for the child in light of the multiple stressors in Mother's life, such as her dysfunctional relationship with her current boyfriend and the fact that she was pregnant with a fourth child.

¶10 Further, the child's most recent CPS case worker testified that there was ongoing domestic violence in the home between Mother and her live-in boyfriend, including an incident in February 2012 which resulted in Mother being hospitalized.⁴

⁴ Mother testified that she had broken off her relationship with the boyfriend after this incident, but then admitted that she became pregnant with his child three months after the relationship had supposedly ended.

The case worker acknowledged that Mother did very well with the child at supervised visits, but reiterated her concern that Mother did not consistently care for the child when unsupervised. The case worker also stated that after ADES removed the child from Mother in October 2011, Mother became less compliant with services.

¶11 In December 2012, the court issued a minute entry severing Mother's rights to the child, and on February 8, 2013, the court entered its signed findings of fact and conclusions of law, incorporating its prior minute entry. The court found by clear and convincing evidence the State had proven the statutory grounds for severance and by a preponderance of the evidence that severance was in the best interests of the child.

¶12 Mother timely appeals, and we have jurisdiction under A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(1) (Supp. 2012).

ANALYSIS

¶13 Although the right to have custody of one's child is fundamental, it is not absolute. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence at least one statutory ground for severance, and by a preponderance of the evidence that termination is in the best interests of the child. A.R.S.

§§ 8-533(B), -537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). The juvenile court is in the best position to make credibility determinations, weigh the evidence, and make appropriate findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Accordingly, we will affirm an order terminating parental rights unless no reasonable evidence supports the court's findings and we view the evidence in the light most favorable to upholding the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶14 Mother's only argument on appeal is that the termination of her parental rights was not in the best interests of the child. Under A.R.S. § 8-533(B), a juvenile court must consider the best interests of the child when ruling on a termination petition. A "best interests inquiry focuses primarily upon the interests of the child, as distinct from those of the parent" *Kent K.*, 210 Ariz. at 287, ¶ 37, 110 P.3d at 1021.

¶15 "To establish that termination is in the child's best interests, the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d

684, 689 (App. 1998). "The best interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child, or even that the child is adoptable." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004) (internal citations omitted).

¶16 Here, the court found that termination of Mother's parental rights would benefit the child because it would allow her to be adopted and because termination would provide the child with "stability[] [and] permanency, and free her from a neglectful home." We find sufficient evidence in the record to support this finding.

¶17 During the hearing, the child's former CPS case worker testified that the foster placement where the child has been throughout the dependency was open to the possibility of adopting the child and has adopted other special needs children in the past. The case worker also testified that the child is adoptable because she is young, very loving, and does not have serious behavioral issues. Further, one of the psychologists who evaluated Mother testified that "to a reasonable degree of psychological probability," Mother would continue to neglect the child's medical needs if the child were returned to her. The child's physician testified that he agreed there would be a substantial risk to the child if she were returned to Mother's care unsupervised.

¶18 Therefore, we find there is substantial evidence in the record to support the court's finding that termination of Mother's parental rights was in the child's best interests.

CONCLUSION

¶19 For these reasons, we affirm the juvenile court's ruling terminating Mother's parental rights to the child.

/s/

JOHN C. GEMMILL, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

MICHAEL J. BROWN, Judge