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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



DIVISION ONE
FILED: 8/29/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

SANDRA S.,) No. 1 CA-JV 13-0058
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, T.S., C.S., D.S., M.S.,) ARCAP 28)
K.S.,)
)
Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD12189

The Honorable A. Craig Blakey, II, Judge

AFFIRMED

John L. Popilek, P.C. Scottsdale
By John L. Popilek
Attorneys for Appellant, Sandra S.

Thomas C. Horne, Arizona Attorney General Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellee, Arizona Department of Economic Security

K E S S L E R, Judge

¶1 Sandra S. ("Mother") appeals the juvenile court's
order severing her parental rights to her children, T.S., C.S.,

D.S., M.S., and K.S. (collectively referred to as "Children").¹ Mother's rights were severed on two statutory grounds: drug abuse pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (Supp. 2012),² and out-of-home placement pursuant to § 8-533(B)(8)(c). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶12 Child Protective Services ("CPS") received a report in October 2010 alleging that Mother and Father ("Parents") were using methamphetamine, were engaged in domestic violence, and were neglecting their children (the home was dirty and Children did not have sufficient food).³ A CPS case manager met with Parents regarding the report's allegations and Parents stated that they each had a history of substance abuse but were presently sober. Both parents provided urinalysis ("UA") tests, and Mother provided a hair follicle test, which tested positive for methamphetamine. Mother denied use of any substances other than marijuana.

¹ On the Court's own motion, it is hereby ordered amending the caption for this appeal to refer to the minor child by initials only and removing parties from the proceedings below who are not parties to this appeal. The above referenced caption shall be used on all documents filed in this appeal.

² We cite to the current version of the statutes when no revisions material to this decision have occurred.

³ The juvenile court also severed Father's parental rights to Children. Father is not a party to this appeal.

¶13 In November 2010, the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging that Parents were neglecting Children by abusing drugs and failing to provide them the basic necessities of life. ADES removed the Children from Parents' care. After a hearing in January 2011, the juvenile court found Children dependent and approved ADES's proposed family-reunification plan and ordered services to attempt to effectuate the plan.

¶14 In August 2012, ADES moved to terminate Mother's parental rights to Children due to chronic substance-abuse history and fifteen months' out-of-home placement grounds under A.R.S. § 8-533(B)(3) and -533(B)(8)(c). As shown during a five-day termination hearing, between November 2010 and early January 2011, Mother tested positive for opiates seven times (without providing any documentation establishing a medical need for such narcotics), positive for marijuana four times, and positive for amphetamines once. Over the next four months, Mother missed every required UA despite knowing that a missed UA is marked as a positive test. Mother missed numerous UAs, tested positive for opiates twenty-five times, tested positive for alcohol once, and tested positive for "spice" several times. Mother did not provide any prescription for opiates during this time frame.

¶15 Mother completed her initial substance abuse treatment in August 2011, but would often miss her required UAs or test positive.

¶16 Psychologist Glenn Moe became involved in November 2010 when he provided a consultation, and recommended that Mother undergo a comprehensive psychological evaluation before further visits with Children be attempted. In March 2011, Dr. James Thal conducted an evaluation of Mother and concluded: "There are reasonable grounds to believe the conditions will continue for a prolonged, indeterminate period of time. It is imperative that [Mother] demonstrate a complete commitment to a drug free lifestyle." Dr. Thal stated that Mother should be required to have consistently clean, random UAs (without any misses), that she obtain regular employment, that reunification should take place slowly so Mother can demonstrate that she is not using drugs, and that she be required to provide a suitable residence for Children, among other things. The CPS case manager recommended and set up individual counseling for Mother multiple times, but Mother resisted and cancelled the appointments. When Dr. Thal met with Mother in May 2012, he again referred Mother for individual counseling, but she again refused such services.

¶17 Dr. Moe met with Parents and Children to perform a "bonding attachment assessment" in March 2012. Dr. Moe noted

that Mother was able to interact with Children appropriately, and that Children were appropriately bonded to Mother. However, Dr. Moe testified that the critical issue was whether Mother would be able to meet Children's needs, and he concluded that she was "not in a position to safely and in a secure fashion raise these children due to concerns about how drug abuse and dependence would continue to negatively impact [her] ability to parent." Dr. Moe testified that Mother's ability to appropriately and independently raise Children needed to be addressed via individual therapy before moving onto family therapy with Children, which as noted by Dr. Thal, she refused. Dr. Moe testified that assuming Mother has continued to abuse substances, severance and adoption was the best option for Children, and continuing to have them in foster care would cause psychological harm.

¶18 Mother re-enrolled in a substance abuse treatment center in mid-July 2012, however, in August 2012, she did not provide any oral-swab drug tests. Mother's attendance in group sessions was minimal. The treatment center reported to CPS that Mother had not demonstrated a behavioral change and therefore it was unlikely that she was going to complete the program successfully.

¶19 Since Children were removed from Mother's home, she had not obtained stable employment despite CPS's attempts to

help her. She had not held a stable job since 2004, and testified that she made just enough cleaning a friend's house to support her own "bare necessities." Mother noted her lack of a GED as a barrier to gaining employment, but did not take the steps necessary to get her GED until either July or August 2012.

¶10 Following the termination hearing, the juvenile court issued a seventeen-page minute entry detailing the court's findings and terminating Parents' rights to Children on each of the statutory grounds alleged in the motion for termination of parental rights. The court concluded that clear and convincing evidence supported a finding that Mother "is unable to discharge her parental responsibilities because of a history of chronic abuse of dangerous drugs and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." See A.R.S. § 8-533(B)(3). The court also found that clear and convincing evidence supported a finding that Children "have been cared for in out-of-home placements for a cumulative total period of fifteen (15) months or longer, that Mother has been unable to remedy the circumstances which caused them to be in such placements, and that there is a substantial likelihood that she will be incapable of exercising proper and effective parental care and control in the future." See A.R.S. § 8-533(B)(8)(c).

¶11 In addition, the juvenile court found that a preponderance of the evidence supported a finding that severance was in Children's best interests because they are "adoptable and adoption will provide them with permanency and stability."

¶12 Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and - 2101(A)(1), (B) (Supp. 2012).

ISSUES ON APPEAL

¶13 Mother asserts that the juvenile court erred in finding that: (1) clear and convincing evidence supported a termination of Mother's parental rights on substance abuse grounds and out-of-home placement grounds and that Mother had failed to remedy her situation; and (2) a preponderance of the evidence proved that severance was in Children's best interests.

DISCUSSION

I. Sufficiency of the Evidence of Substance Abuse and Continuing Condition

¶14 Mother maintains that there was insufficient evidence to sever her parental rights based on any of the alleged statutory bases. If the juvenile court finds at least one statutory ground in A.R.S. § 8-533(B) proven by clear and convincing evidence, and that a preponderance of the evidence establishes that severance is in the best interests of the children, it may terminate parental rights. *Michael J. v. Ariz.*

Dep't of Econ. Sec., 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). This Court "accept[s] the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (stating juvenile court is in the "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings").

¶15 Section 8-533(B)(3) permits severance if the "parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period."

¶16 ADES established Mother's history of chronic drug abuse at trial, and proved that Mother has been unsuccessful, and will likely continue to be unsuccessful, at correcting this condition. Mother admitted that she had been unable to maintain a drug-free home environment.

¶17 Mother argues, however, that she has made the necessary behavioral changes to allow her to "safely and effectively parent her children," because she has not tested positive for methamphetamine since November 2010, only tested

positive for less "notorious substances," participated in drug counseling and parent aide services, and separated from Father who also had his rights terminated due to chronic substance abuse.

¶18 We disagree. Reasonable evidence supports the juvenile court's determination that Mother's inability to discharge parental responsibilities will continue for a prolonged indeterminate period. Mother was aware that she needed to abstain from using drugs as part of the case plan but she did not, as evidenced by her positive UA tests. Prior to the severance trial and despite being referred twice for outpatient treatment, Mother repeatedly tested positive for opiates and marijuana, and once for amphetamines and "spice," without counting the numerous missed UAs. As discussed above, the testimony of Dr. Thal and Dr. Moe showed that Mother would be unable to discharge her parental duties for a prolonged time period. The case manager also testified Mother would be unable to parent Children for an indeterminate time period because Mother had been provided with twenty-two months of services but refused or was unable to remain sober and failed to follow the recommendations for individual counseling or other services designed to help her overcome her chronic substance abuse. Mother testified that she failed to follow Dr. Thal's recommendations.

¶19 The juvenile court was in the best position to evaluate the credibility of the witnesses and determine the facts from the evidence. Accordingly, the court did not abuse its discretion in determining that ADES had proven a statutory basis for the severance by clear and convincing evidence. See *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.⁴

II. Children's Best Interests

¶20 In addition to establishing a statutory ground for severance by clear and convincing evidence, the State must also establish by a preponderance of the evidence that severance is in the best interests of the children. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). This requires the State to show that "the child would benefit from a severance or be harmed by the continuation of the relationship." *In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Mother maintains that the juvenile court erred by determining that severance was in the best interests of Children. She does not challenge the finding that Children are adoptable. However, she contends that because she is close to them and some have expressed a preference to live with her that the court's conclusion that termination is in their best interests is erroneous. We disagree.

⁴ Because we determine severance was appropriate based on A.R.S. § 8-533(B)(3), we need not discuss other grounds for severance. See *Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.

¶121 We have no doubt that Mother loves her children and that she has a bond with them as Dr. Moe found. However, the juvenile court's finding that severance and adoption would be in Children's best interests was not erroneous. Dr. Thal testified that Mother would need to demonstrate, at the "bare minimum," one year of consistent sobriety and engagement in services and treatment, among other things, before Children could confidently be placed in her care. Mother did not do this. Mother did not demonstrate that she could remain sober for a minimum of one year, and consistently participate in services and treatment to allow the children to be safely returned to her.

¶122 As Dr. Moe testified, whether it is in Children's best interests to return to Mother depends on if she is able to meet their needs, and she is unable to do so because of her continued drug abuse. Dr. Moe testified that severance and adoption would be the best option for Children, and that continued foster care would psychologically harm them. All of Children's respective foster parents are willing to adopt them. The case manager also testified that Children would benefit from having Mother's rights terminated because they would have stability in homes that meet all of their needs, and that they would be harmed if she retained her rights. Consequently, the court did not abuse its discretion by finding that severance was in Children's best interests.

CONCLUSION

¶23 For the foregoing reasons, we affirm the severance of Mother's parental rights.

_____/S/_____
DONN KESSLER, Presiding Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Judge

_____/S/_____
PETER B. SWANN, Judge