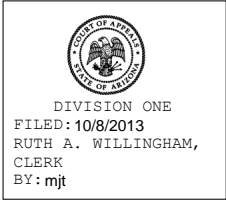


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



SHIRLEY J.,)	1 CA-JV 13-0071
)	
Appellant,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication-
ARIZONA DEPARTMENT OF ECONOMIC)	Ariz. R.P. Juv. Ct.
SECURITY, T.H., J.H., J.H.,)	88(G); ARCAP 28)
)	
Appellees.)	
)	
)	

Appeal from the Superior Court of Maricopa County

Cause No. JD20922

The Honorable Jay R. Adleman, Judge Pro Tem

AFFIRMED

Denise L. Carroll	Scottsdale
Attorney for Appellant	
Thomas C. Horne, Attorney General	Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General	
Attorneys for Appellee Arizona Department of Economic Security	
Julie M. Rhodes, Attorney for child T.H.	Phoenix
Laurieann Perla, Guardian Ad Litem for the children	Phoenix

T H O M P S O N, Judge

¶1 Shirley J. (Shirley) appeals from the juvenile court's order severing her parental rights to her adopted children,

T.H., J.H. (JH2), and J.H. (JH3)¹, who are also her grandchildren (the children). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Shirley, who lives in California, is the children's maternal grandmother; her daughter is the children's biological mother (JH1). T.H. was born in February 1998, JH2 was born in November 2001, and JH3 was born in February 2005.² In California in 2006, JH1 was convicted of four counts of felony corporal injury to a child and received an eight-year prison sentence. The victims in that case included T.H. and four of JH1's other children. JH1's parental rights to T.H., JH2 and JH3 were severed in California in 2006. The parental rights of the children's biological fathers were also severed in California.³ Thereafter, Shirley adopted the children.

¶3 JH1 served approximately four years of her eight-year sentence before being released in 2010. Upon her release from prison, Shirley allowed JH1 to move into her home where the

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

² JH1 also had two older children and two younger children, including J.S., who are not parties to this appeal. J.S. was born in 2006, shortly before JH1 was incarcerated. JH1 gave J.S. to relatives in Arizona to raise while she was in prison, but subsequently retrieved J.S. when she was released.

³ The biological fathers and JH1 are not parties to this appeal.

children resided, with full knowledge of JH1's convictions. Several months later, JH1 moved to Arizona and took T.H. with her, with Shirley's consent. Subsequently, in early 2011, Shirley drove JH2 and JH3 to Arizona and dropped them off with JH1. She returned home to California without any of the children.

¶4 The children first came to the attention of Arizona's Child Protective Services (CPS) in early 2011, after the agency received reports of abuse and neglect concerning the children. CPS contacted Shirley, but she did not come to Arizona until July 2011. In October 2011, CPS removed T.H., JH2 and JH3 from JH1's home in Arizona and placed them in foster care after she reported her younger daughter J.S. missing.

¶5 The Arizona Department of Economic Security (ADES) filed a dependency petition, and the juvenile court found that the children were dependent as to Shirley in April 2012. In October 2012, ADES filed a motion to terminate Shirley's parental rights to the children pursuant to Arizona Revised Statutes (A.R.S.) § 8-533(B)(2) (2013)⁴ (neglect or willful abuse of a child).

¶6 The juvenile court held a two-day severance trial. (ME 82). The juvenile court terminated Shirley's parental

⁴ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

rights pursuant to A.R.S. § 8-533(B)(2). The court also found that severance was in the children's best interests. Shirley timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235, 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶7 On appeal, Shirley argues that the juvenile court abused its discretion by terminating her parental rights pursuant to A.R.S. § 8-533(B)(2), and that severance was not in the children's best interests.

¶8 "We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, because "[t]he juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, 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)

(citation omitted). The juvenile court may terminate a parent-child relationship if ADES proves by clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

Abuse or Willful Neglect

¶9 Shirley argues that ADES failed to produce clear and convincing evidence that she abused or willfully neglected the children, or knew or reasonably should have known that JH1 had abused the children, as required by A.R.S. § 8-533(B)(2). She also argues that ADES failed to provide her with reasonable reunification services. The statute provides, in relevant part:

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

. . . .

2. That the parent has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.

Among other things, "[a]buse' means the infliction or allowing of physical injury." A.R.S. § 8-201(2). "Neglect" is "[t]he inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare" A.R.S. § 8-201(22)(a).

¶10 Reasonable evidence supported the juvenile court's finding that ADES had proven the ground of neglect or willful abuse. There was evidence that Shirley physically abused T.H. when she lived in California by hitting her in the head with a pole, by beating her with a vacuum cleaner cord, by throwing a vase at the back of her head, and by locking her in the garage. Shirley then allowed JH1 to regain custody of T.H., JH2 and JH3 after JH1's release from prison for child abuse, and T.H. was abused again by JH1. Further, CPS hired Dr. James Thal to evaluate Shirley in May 2012, and Dr. Thal concluded that the children could be at risk for physical abuse in Shirley's care and recommended that the children not be returned to her custody. On this record, the juvenile court properly could conclude that ADES met its burden for severance on the ground of neglect or willful abuse.

¶11 Shirley argues that ADES failed to provide her with reasonable reunification services. The juvenile court need not order ADES to provide reunification services, however, if it finds by clear and convincing evidence that the child was the victim of serious physical or emotional injury by the parent or guardian, or any other person, "if the parent or guardian knew or reasonably should have known that the person was abusing the child." A.R.S. § 8-846(B)(1)(d). Here, the juvenile court found that there was clear and convincing evidence that Shirley willfully abused a child or failed to protect a child from willful abuse by allowing the children to live with JH1, who had a history of physically abusing them. The juvenile court additionally found that ADES had made reasonable efforts to reunify the children with Shirley but that "based on the evidence, any further reunification efforts would be futile." We find no error in the juvenile court's determination that further reunification services were not required under the circumstances of this case. See also A.R.S. § 8-533(B)(2) (statute contains no express language requiring ADES to have provided reasonable reunification services when the ground for severance is abuse or neglect).

Best Interests

¶12 Finally, Shirley argues that the trial court erred in finding that severance was in the children's best interests. To establish that severance is in a child's best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the 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). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.* Here, the evidence was that the children were adoptable and that CPS had a current case plan of adoption for each of them. T.H.'s foster placement was willing to adopt her, and there were at least three potential adoptive families for JH2 and JH3. Additionally, the children's CPS case manager opined that severance would protect the children from further abuse by both Shirley and JH1, and allow them to start the healing process. Accordingly, we find no error in the juvenile court's finding that severance was in the children's best interests.

¶13 For the foregoing reasons, the juvenile court's

severance order is affirmed.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge

