

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE
LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

FRANCES M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, G.A., G.M., J.M., M.M.,
M.M., ¹ *Appellees*.

No. 1 CA-JV 14-0081

FILED 10-28-2014

Appeal from the Superior Court in Maricopa County
JD12685
The Honorable Cari A. Harrison, Judge

AFFIRMED

COUNSEL

Law Office of Anne M. Williams P.C., Tempe
By Anne M. Williams
Counsel for Appellant

¹ Pursuant to S.B. 1001, Section 157, 51st Leg., 2nd Spec. Sess., effective May 29, 2014, the Department of Child Safety is substituted for the Arizona Department of Economic Security. *See* Ariz. R. Civ. App. P. 27. The caption also has been amended to safeguard the children's identities pursuant to Administrative Order 2013-0001.

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellees

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Andrew W. Gould joined.

T H U M M A, Judge:

¶1 Appellant Frances M. challenges an order revoking her guardianship over four of her grandchildren, arguing the superior court erred in finding that revocation was in their best interests. Because the record supports the best interest finding, the order is affirmed.

FACTS² AND PROCEDURAL HISTORY

¶2 In 2005, the superior court appointed Frances M. as guardian of her grandchildren G.A. (born in 1998), G.M.A. (born in 2000), G.M. (born in 2001), J.M. (born in 2003) and M.M. (born in 2004) pursuant to Title 8 of the Arizona Revised Statutes (A.R.S.) sections 8-871 to -872 (2014).³

¶3 In May 2011, Frances M. reported to the police apparent sexual abuse perpetrated against J.M. by his oldest brother G.A. G.A. was taken into custody and charged in juvenile court with various offenses, including sexual conduct with a minor. The superior court found G.A. dependent as to Frances M. based on his behavior (and not because of any abuse or neglect on her part). According to Elizabeth Ramnath, the assigned Department of Child Safety (DCS) caseworker since late 2012, G.A. later disclosed that others sexually abused him while in Frances M.'s care, and

² This court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2, 181 P.3d 1126, 1128 (App. 2008) (involving severance of parental rights).

³ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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that he had abused his siblings numerous times over an extended period of time. Two of the victims later revealed that the abuse occurred over several years. Frances M., however, maintained that she was unaware of the abuse during those years and said there was no way she could have known what was going on.

¶4 Based on these disclosures, in February 2012, DCS removed the children from Frances M.'s care and filed a dependency petition against Frances M. and the parents of the children. The superior court found the children dependent as to their parents, and set a July 2012 evidentiary hearing for the dependency allegations against Frances M.⁴

¶5 During the dependency, DCS provided Frances M. with various services, including a May 2012 psychological evaluation by licensed psychologist Dr. Ellen Diana. After assessing Frances M. and reviewing various documents, Dr. Diana's evaluation found Frances M. kindhearted, loving of the children and willing to meet DCS expectations; but concluded that she did not have the capacity to protect the children from future abuse. Accordingly, Dr. Diana recommended that the children not be returned to Frances M.'s care. As a result, in June 2012, DCS moved to revoke the guardianship. *See* A.R.S. § 8-873(C).

¶6 In July 2012, after an evidentiary hearing on the dependency petition and the motion to revoke, the superior court found the children dependent as to Frances M. but declined to revoke the guardianship. Among other things, the court noted that Frances M. was "very bonded to the children," and was "working hard" and "had success" in the services provided by DCS. Frances M. continued to participate in services provided by DCS for many months after the July 2012 hearing.

⁴ The parents of the children are not parties to this appeal. Frances M.'s guardianship over G.A. apparently has not been revoked and, in any event, is not a subject of this appeal. Frances M. also became guardian of grandchild M.M.M. (born in 2006) pursuant to A.R.S. §§ 14-5201 to -5209. This Title 14 guardianship was later revoked after M.M.M. was found dependent as to Frances M. This appeal does not address M.M.M., who was not subject to the Title 8 guardianship. At the request of the Department of Child Safety, and without objection by Frances M., this court takes judicial notice of the superior court record in the proceedings involving M.M.M. *See* Ariz. R. Evid. 201(b); *City of Phoenix v. Superior Court*, 110 Ariz. 155, 157, 515 P.2d 1175, 1177 (1973).

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¶7 In November 2012, DCS received information of additional sexual assaults against two of the children while in Frances M.'s care. The victims of these assaults reported that Frances M. knew the abuse was going on but did not stop or prevent it. Frances M., however, maintained she was unaware of the abuse.

¶8 DCS scheduled a second psychological evaluation of Frances M., this time by licensed psychologist Dr. James Thal. After assessing Frances M. and reviewing various documents, Dr. Thal issued an August 2013 report. Dr. Thal concluded that, while Frances M. cared about the children, she was not adequately equipped to supervise and protect them from sexual abuse. Consequently, Dr. Thal recommended that the children not be returned to her care.

¶9 At an October 2013 hearing, DCS unsuccessfully asked to change the case plan for the two youngest children and made an oral motion to revoke Frances M.'s guardianship, which the superior court denied. A few months later, DCS filed a written motion to revoke the guardianship. *See* A.R.S. § 8-873(C).

¶10 In March 2014, the superior court held an evidentiary hearing on the written motion to revoke, received evidence (including testimony from Dr. Thal) and heard argument. Frances M. did not testify, although she had an opportunity to do so. Based on the evidence received, the court found there was a significant change in circumstances and that it was in the children's best interests to revoke the guardianship. Accordingly, the court granted DCS' motion.

¶11 On Frances M.'s timely appeal from the revocation order, this court has jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-2101(A)(1), 12-120.21(A)(1) and Arizona Rules of Procedure for the Juvenile Court 103-04.

DISCUSSION⁵

¶12 The superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18, 219 P.3d 296, 303 (App. 2009) (internal quotations omitted). This court will

⁵ DCS argues that Frances M. only challenges the revocation as to G.M.A., G.M. and J.M. Although excerpts from the opening brief could be read to support DCS' argument, because the opening brief elsewhere challenges the revocation as to M.M. by referencing "the children" generally, this court addresses the merits of the revocation order as it applies to all four children.

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affirm an order revoking a guardianship “unless no reasonable evidence supports [its] findings.” *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). This court reviews de novo any issues of law. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 43 ¶ 13, 178 P.3d 511, 515 (App. 2008).

¶13 A Title 8 guardianship may be revoked if: (1) the party seeking revocation demonstrates by clear and convincing evidence that there has been a change of circumstances, and (2) “the revocation is in the child’s best interest.” A.R.S. § 8-873(C). Frances M. limits her challenge on appeal to the superior court’s finding that the children’s best interests would be served by revoking her guardianship, and does not contest the change of circumstances finding. *Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960) (“Inasmuch as the trial court’s findings of fact are not themselves challenged by this appeal, we may assume their accuracy is conceded.”).

¶14 The best interest determination may be based on a finding that (1) revocation would affirmatively benefit the child, or (2) continuing the guardianship would be a detriment to the child. *Jennifer B.*, 189 Ariz. at 557, 944 P.2d at 72. Here, the superior court concentrated its ruling on the detriment to the children if the guardianship continued, finding that Frances M. was not able “to protect the children from potential future abusive situations.” Given this focus, although the evidence was conflicting, the record supports the court’s finding.

¶15 The superior court received evidence suggesting that Frances M. was aware of sexual abuse occurring in her home against the children subject to the guardianship, but that she did not take sufficient action to stop or prevent it. Although Frances M. maintains that she was not aware of the abuse prior to calling the police in May 2011, some of the children reported that she knew of the abuse prior to that time and attempted to remedy it herself, yet did not do enough to keep the abuse from happening.

¶16 Drs. Diana and Thal evaluated Frances M. approximately 15 months apart—one toward the beginning of her participation in services provided by DCS (which included training for caregivers of sexually abused children) and the other toward the end. Both psychologists recommended that the children not be returned to her care. Dr. Diana concluded that Frances M. did not possess the ability to protect the children from abuse. Dr. Thal expressed surprise that she was unaware of the extended abuse that was occurring in her home. Dr. Thal was concerned that, despite successfully completing many services, Frances M. still did not

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appreciate the challenges facing the children and only wanted to forget the incidents and move on. Dr. Thal concluded that Frances M.'s limitations would prevent her from protecting the children and providing the special care they need as victims, and that they would be at risk of future harm if left in her care.

¶17 Frances M. argues that the superior court erred in finding there would be a detriment to the children if her guardianship was revoked because G.A. no longer lives in her home. However, Dr. Thal testified that this would not solve the problem "by a longshot" because, in his opinion, Frances M. is unable to recognize the warning signs of potential problems of abused children in her care, even if the perpetrators were no longer present. Along with caseworker Ramnath, Dr. Thal expressed concern that Frances M. was devoted to G.A., and might therefore let him back into the home. Dr. Thal also was worried at the prospect of other abusive relatives that might be welcomed back as well.

¶18 Frances M. argues that she has a different home that is more accommodating to the children's needs. Although commendable, this fact alone does not eradicate the concern about her ability to protect and effectively supervise the children. Moreover, Dr. Thal testified that the new residence lacks sufficient security measures needed to adequately protect sexual abuse victims.

¶19 Acknowledging the existence of conflicting evidence, the record supports the superior court's finding that the children's best interests would be served by revoking Frances M.'s guardianship. Frances M. has not shown that the court's findings lacked support by reasonable evidence. *See Jennifer B.*, 189 Ariz. at 555, 944 P.2d at 70.

CONCLUSION

¶20 The superior court's order revoking Frances M.'s guardianship is affirmed.



Ruth A. Willingham · Clerk of the Court
FILED : gsh