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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JENNIFER R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, R.R., D.W., *Appellees*.

No. 1 CA-JV 16-0161
FILED 6-13-2017

Appeal from the Superior Court in Mohave County
No. S8015JD201400021
The Honorable Douglas Camacho, Judge *Pro Tempore*

AFFIRMED

COUNSEL

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda L. Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 Jennifer R. (“Mother”) appeals from the superior court’s order terminating her parental rights as to R.R. and D.W. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother has a long history of mental health interventions and of involvement with state child protective services. Mother was a victim of physical and sexual abuse as a child, and she was diagnosed with various mental illnesses before reaching the age of majority, including bipolar disorder, factitious disorder, impulse control disorder, dysthymic disorder, PTSD, and borderline/dependent features. This led to multiple rounds of both inpatient and outpatient psychiatric treatment throughout her childhood.

¶3 Mother’s first child was removed from her care in 2002 due to medical neglect, and she later relinquished her parental rights and consented to an open adoption. During this removal, Mother was diagnosed with borderline intellectual functioning and a personality disorder with histrionic, immature, and dependent features, and she entered individual counseling. Mother’s second child was removed in 2004 due to reports of abuse and neglect, and the child’s paternal grandmother was appointed as the child’s guardian.

¶4 In 2010, the Department of Child Safety (“DCS”) removed Mother’s next two children after reports that she had failed to provide essential medical care. DCS took Mother’s fifth child into care later that year, upon release from the neonatal ICU following his significantly premature birth. Mother was diagnosed with a personality disorder, borderline intellectual functioning, PTSD, and impulse control disorder in a DCS-requested psychological evaluation, and DCS offered Mother individual counseling as well as parenting classes.

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¶5 In 2011, Mother participated in another psychological evaluation at DCS's request, and Dr. Daniel Overbeck diagnosed her with borderline intellectual functioning and a personality disorder with narcissistic, dependent, and histrionic features. Dr. Overbeck concluded that Mother's mental health issues were likely not remediable for purposes of safely parenting her children, but that with "regular, frequent individual psychotherapy" to address her cognitive distortions and repair her attachment system, "it might be possible" for her to become "better equipped in the future to function adequately in a maternal role with future children." Thereafter, Mother's parental rights to her third child and fifth child were severed, and the fourth child was placed with his father, who has sole custody.

¶6 R.R., Mother's sixth child, was born in January 2013. Three months later, DCS received a report that Mother was neglecting R.R., and DCS provided her in-home therapy and parenting classes.

¶7 Then, in March 2014, DCS received a report that R.R. was being physically abused by a man living with Mother. Although an investigation showed no evidence of the reported abuse, DCS took R.R. into care based on Mother's continued erratic behavior and pattern of neglect, in conjunction with Dr. Overbeck's 2011 report indicating she was unable to safely parent her children. DCS took Mother's seventh child, D.W., into care immediately following her April 2014 birth, and the superior court later adjudicated both R.R. and D.W. dependent as to Mother.

¶8 DCS provided Mother reunification services including ongoing visitation supervised by a parent aide. Mother independently enrolled in counseling with a mental health provider near her home, and DCS referred her for three additional mental health evaluations to determine what additional services would be appropriate to address the mental illness component of her parenting issues.

¶9 After a psychiatric evaluation in May 2014, Dr. Joel Parker diagnosed Mother with a personality disorder that would "interfere with her ability to be a minimally adequate parent," leaving a child in Mother's care "at greatest risk for neglect." Noting that personality disorders are "notoriously recalcitrant to treatment" and that Mother's functioning had failed to improve despite substantial treatment as a child, Dr. Parker further opined that Mother's condition was "unlikely to improve regardless of treatment" and thus did not recommend any psychiatric services.

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¶10 Dr. Overbeck performed another psychological evaluation in July 2014. He again diagnosed her with borderline intellectual functioning and a personality disorder with narcissistic and obsessive-compulsive features. Dr. Overbeck noted that Mother “not only has not made significant emotional and functional progress” since her 2011 evaluation, but her comparable performance in 2014 suggested that she possibly had become “fixed in her orientation, beliefs and attitude.” He reaffirmed his 2011 conclusion that Mother’s serious attachment impairment “severely impair[s] her ability to safely, consistently and effectively nurture and protect her children,” and that the children’s special needs “only appear to enhance [Mother’s] opportunities to use her children’s issues to advance her own dysfunctional needs.” Dr. Overbeck further opined that Mother was no better equipped to be a safe and effective parent than she had been in 2011 and that, due to her “treatment-resistant personality disorder” and other factors, “she is not likely to substantially change her internalized working model of the world—or her behaviors that are a consequence of that model.”

¶11 Mother underwent a neuropsychological evaluation with Dr. Frances Robbins in July 2015. Dr. Robbins diagnosed a mild neurocognitive disorder, PTSD, and (rule out) psychotic disorder, and noted Mother’s cognitive impairment and emotional liabilities that contribute to her “difficulty parenting independently and consistently.” Although as a general matter Dr. Robbins recommended occupational therapy and long-term psychotherapy, she concluded that such interventions were not likely to be effective to change Mother’s lifelong patterns. Any treatment was likely “insufficient to re-compensate [Mother] for the combination of her cognitive, emotional and personal liabilities to a point where her ability to parent is going to improve to a level that would allow her to independently care for her children in a consistent way that would serve their well-being.”

¶12 Mother did participate fully in the services DCS provided. She consistently participated in supervised visitations, although the parent aide had some concern that, despite prior instruction, Mother made D.W. sick by feeding her the wrong formula and that certain visitations had to be cut short after Mother became overly frustrated. But based on the evaluators’ conclusions, DCS did not offer Mother any further mental health interventions.

¶13 DCS moved to terminate Mother’s parental rights to R.R. and D.W. based on mental illness and 15 months’ time in care. *See Ariz. Rev.*

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Stat. (“A.R.S.”) § 8-533(B)(3), (8)(c).¹ After an evidentiary hearing, the superior court found severance was warranted on both grounds and that severance was in the best interests of the children. Mother appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶14 The superior court is authorized to terminate a parent–child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court’s credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶15 Severance may be warranted if “the parent is unable to discharge parental responsibilities because of mental illness . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” A.R.S. § 8-533(B)(3). Before seeking severance on this ground, DCS must make reasonable efforts to preserve the family by providing the parent rehabilitative services with a “reasonable prospect of success”; it need not, however, offer rehabilitative measures that would be futile. *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, 187, 192, ¶¶ 1, 33–34 (App. 1999); *see also Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994).

¶16 Mother does not contest the superior court’s findings that she suffers from mental illness rendering her presently unable to discharge her parental responsibilities, or that severance would be in the children’s best interests. Instead, she asserts that DCS failed to provide adequate rehabilitative services because it did not offer her therapy as recommended in Dr. Overbeck’s 2011 evaluation. She further contends that, because she was not provided adequate services to address her mental illness, the court erred by finding that her condition would continue for a prolonged indeterminate period.

¶17 The record, however, supports the court’s conclusion that additional mental health services would not have been successful. Even in

¹ Absent material revisions after the relevant date, we cite a statute’s current version.

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2011, Dr. Overbeck's overall conclusion was that no treatment was likely to be effective in remediating Mother's condition to the point that she could safely and effectively parent her children. Although he suggested a possibility that long-term, intensive psychotherapy could help Mother become better equipped to parent future children, by 2014 Dr. Overbeck opined that Mother had not in fact made such progress over the intervening years and had likely become "fixed" in her attitudes and behaviors. Although Mother asserts that DCS "neglect[ed] to offer the very services that its consulting expert recommend[ed]," see *Mary Ellen C.*, 193 Ariz. at 192, ¶ 37, Dr. Overbeck's 2014 evaluation – the relevant time period for the dependency involving R.R. and D.W. – did not recommend any additional treatment or services.

¶18 Moreover, Dr. Parker's 2014 psychiatric evaluation and Dr. Robbins's 2015 neuropsychological evaluation provided further support for the court's findings that additional services would be futile and that Mother's condition was likely to persist for a prolonged period. Dr. Parker noted that Mother's condition was a type "notoriously recalcitrant to treatment," and declined to recommend any psychiatric services because her condition was "unlikely to improve regardless of treatment." Dr. Parker additionally highlighted that Mother's functioning had not improved despite substantial mental health intervention as a child. And during adulthood, DCS had also provided Mother individual counseling and in-home therapy during two previous dependencies. Dr. Robbins characterized Mother's condition as part of a "life long pattern[]" that persisted despite attempted mental health treatment, and she opined that, given this "lengthy history," no treatment was likely to be sufficient to allow Mother to safely care for her children.

¶19 Accordingly, the record supports the superior court's finding that severance was warranted based on the statutory mental-illness ground. Because we affirm on this basis, we need not address the alternative ground of 15 months' time in care. *Jesus M.*, 203 Ariz. at 280, ¶ 3.

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CONCLUSION

¶20

The severance order is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: JT