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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHRISTOPHER R., MONICA K., *Appellants,*

v.

DEPARTMENT OF CHILD SAFETY, M.R., *Appellees.*

No. 1 CA-JV 16-0200
FILED 1-24-2017

Appeal from the Superior Court in Maricopa County
No. JD528448
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

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

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant Monica K.

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Michael J. Brown joined.

C A T T A N I, Judge:

¶1 Christopher R. (“Father”) and Monica K. (“Mother”) appeal the superior court’s order terminating their parental rights as to their child M.R. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 M.R. was born in June 2012. In January 2015, the Mesa Police Department found the family at a gas station. Father smelled of alcohol, and officers suspected that Mother and Father were homeless and under the influence of drugs. The Arizona Department of Child Safety (“DCS”) took custody of M.R. and placed her with her paternal aunt. M.R. was found dependent as to both Mother and Father in August 2015. M.R. is an Indian child as defined by the Indian Child Welfare Act (“ICWA”). *See* 25 U.S.C. § 1903(4). Accordingly, ICWA applies to this case.

¶3 DCS offered Mother and Father several reunification services, including drug testing, substance abuse treatment, parenting classes, psychological consultation, parent aide services, and visitation. DCS also provided bus passes to Mother and Father to help them attend these services.

¶4 Both parents have a history of using methamphetamine and marijuana, and Father also has a history of heavy alcohol use. Shortly after M.R. was removed from their care, hair follicle samples from both Mother and Father tested positive for amphetamines. Father also tested positive for THC. Following these positive tests, Mother attended a drug abuse assessment, but she denied any drug use in the previous 30 days. Father missed his first two drug abuse assessments, and in the first nine months after M.R. was removed from their care, both parents missed multiple drug tests. Each parent’s engagement with drug treatment programs was sporadic, and at one point Mother’s drug treatment services were closed out for lack of participation.

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¶5 In November 2015, Father brought Mother to the emergency room with a fractured jaw, fractured ribs, lacerations on her liver and spleen, bite marks, and a concussion. M.R.'s maternal grandmother claimed that Father had assaulted Mother, but Mother claimed that the injuries had occurred when she was attacked by two unknown women. DCS referred both parents for domestic violence counseling, but neither engaged consistently in that service.

¶6 Shortly after this incident, DCS moved to terminate Mother and Father's parental rights to M.R., citing the statutory termination grounds of chronic substance abuse and nine-months' out-of-home placement. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (8)(a).¹ In the month after the motion for termination was filed, Mother and Father each missed three drug tests. The following February, Mother twice tested positive for opiates, and Father tested positive for alcohol.

¶7 After an evidentiary hearing, during which M.R.'s case manager and the ICWA coordinator for the Hopi Tribe social services program testified, the superior court terminated Mother and Father's parental rights as to M.R. The court found that both the substance abuse ground and nine-months' out-of-home placement ground had been proven as to both parents. Pursuant to ICWA, the court also found that DCS had made active efforts to reunify the family and that returning M.R. to her parents was likely to result in serious emotional or physical damage or harm to her. Finally, the court found that termination was in M.R.'s best interests. Mother and Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶8 Mother and Father argue that the superior court improperly terminated their parental rights. "Parents possess a fundamental liberty interest in the care, custody, and management of their children." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24 (2005) (citation omitted). Nevertheless, a court may sever a parent's rights if it finds clear and convincing evidence that a statutory ground for severance exists. A.R.S. § 8-537(B). The court must also find by a preponderance of the evidence that severance is in the best interests of the child. A.R.S. § 8-533(B); *Kent K.*, 210 Ariz. at 288, ¶ 41.

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

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¶9 We will affirm the superior court's order terminating parental rights unless the court's factual findings are not supported by reasonable evidence. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 283, 288, ¶ 16 (App. 2016). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," we view the evidence in the light most favorable to upholding the court's decision. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation omitted).

¶10 Mother and Father challenge the finding that they are unable to discharge their parental responsibilities due to chronic substance abuse. To terminate a parent's rights on the basis of chronic substance abuse, the court must find, by clear and convincing evidence, that the parent's "history of chronic abuse of dangerous drugs, controlled substances or alcohol" makes the parent "unable to discharge parental responsibilities" and that "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3).² For drug use to be "chronic" it must have persisted for a long period of time, but need not be constant. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 16 (App. 2010). A parent's temporary abstinence does not necessarily outweigh his or her historic inability to refrain from drugs and alcohol during the pendency of the case. *Id.* at 379, ¶ 29. The child's interest in a permanent home "must prevail over [a parent's] uncertain battle with drugs." *Id.* (citation omitted).

¶11 Reasonable evidence supported the superior court's finding that both Mother and Father were unable to discharge their parental responsibilities due to chronic substance abuse. Both parents tested positive for amphetamines shortly after DCS took custody of M.R. Neither parent demonstrated a consistent ability to stay sober throughout the case, as both parents tested positive for drugs multiple times and missed multiple drug tests even after DCS had moved to terminate their rights. And M.R.'s case manager testified that Mother and Father were not able to discharge their parental responsibilities at the time of the severance hearing. Although the court acknowledged that Mother and Father had engaged more consistently in drug treatment services in recent months,

² This ground for termination also requires a finding that DCS "made reasonable efforts to reunify the family or that such efforts would have been futile," *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453 & n.3, ¶ 12 (App. 2005), but we need not address this factor because neither parent challenges the adequacy of services in this context.

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reasonable evidence supported a finding that the parents' inability to abstain from drug use throughout the previous year outweighed this short-lived improvement.³

¶12 Mother also argues that the termination of her parental rights was not in M.R.'s best interests; Father does not challenge the court's best interests determination. Before terminating a parent's rights, the superior court must find by a preponderance of the evidence that severance will serve the child's best interests. A.R.S. § 8-533(B); *Kent K.*, 210 Ariz. at 288, ¶ 41. Termination is in the child's best interests if it will benefit the child, or if a continued relationship with the parent would harm the child. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179, ¶ 20 (App. 2014). One such benefit exists if a child is "more stable in an existing placement" than she would be with her parents. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 8 (App. 2016).

¶13 Reasonable evidence supports the court's best interests finding. M.R.'s current placement, her paternal aunt, meets her needs. M.R. is progressing normally and is bonded to her aunt, and her aunt has expressed a willingness to adopt her. M.R.'s case manager expressed his opinion during the evidentiary hearing that M.R. is likely adoptable, even if her aunt is ultimately unable to adopt her. Mother asserts that severance will deprive her of the ability to nurture and develop a relationship with M.R., and that severance is thus not in M.R.'s best interests. But we will not reweigh the evidence the superior court considered. Because the superior court had ample evidence from which it could reasonably conclude that M.R. would benefit from termination, we uphold that finding.

¶14 Mother and Father challenge the superior court's "active efforts" finding. Under ICWA, the court must find, based on clear and convincing evidence, "that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 U.S.C. § 1912(d); *Yvonne L. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 415, 421, ¶ 26 (App. 2011). To satisfy the active efforts requirement, DCS must "provide parents with the necessary 'time and opportunity to participate in programs designed to help [them] become' effective parents." *Yvonne L.*, 227 Ariz. at 423, ¶ 34 (citation omitted and alteration in original).

³ Because we affirm based on the substance abuse ground, we need not address the alternative ground of nine-months' time in care. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002).

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However, DCS need not “provide every imaginable service or program designed to prevent the breakup of the Indian family.” *Id.*

¶15 Here, substantial evidence supported the active efforts finding. DCS offered several services to Mother and Father throughout the case, including drug testing, drug treatment, parent aide services, parenting classes, domestic violence counseling, a psychological consultation, and visitation. DCS also provided bus passes to both Mother and Father to help them attend all services. And an ICWA social services expert testified that, although further psychological evaluation might have been helpful, DCS made adequate active efforts to prevent the breakup of the family.

¶16 Finally, Father (but not Mother) argues that the court erred in finding beyond a reasonable doubt that returning M.R. to him would likely “result in serious emotional or physical damage to the child.” 25 U.S.C. § 1912(f). This finding must be supported by testimony from a qualified expert addressing the risk of future harm to the child. *Id.*; see also *Steven H. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 566, 571, ¶ 19 (2008).

¶17 The court had ample evidence, including expert testimony, to conclude that returning M.R. to Father would likely result in future harm. The ICWA social services expert testified that Father “would not be able to provide the care and nurturing necessary for [M.R.] to grow,” and that Father’s recent progress in his drug treatment program did not definitively prove that he could maintain sobriety in the future. This testimony, combined with the other evidence of Father’s substance abuse and resistance to rehabilitative services, provided a sufficient basis to find that M.R. would be harmed by reunification.

CONCLUSION

¶18 For the foregoing reasons, we affirm the superior court’s order terminating Mother and Father’s parental rights as to M.R.



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