IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KELLE W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, E.W. N.W., *Appellees*.

No. 1 CA-JV 16-0439
FILED 6-8-2017

Appeal from the Superior Court in Yavapai County
No. P1300JD201400061
The Honorable Don C. Stevens, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, Anthem
By Florence M. Bruemmer
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

T H U M M A, Judge:

¶1 Kelle W. (Mother) appeals the superior court's order terminating her parental rights to two children. Because she has shown no error, the order is affirmed.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Mother is the biological mother of E.W., born in February 2013, and N.W., born in February 2015. In May 2014, the Department of Child Safety (DCS) took temporary custody of E.W. after Mother was evicted from the shelter where she had been living with E.W. At that time, Mother signed a voluntary foster care agreement while she searched for stable housing. In September 2014, DCS filed a dependency petition alleging Mother was still homeless, suffering from depression and post-traumatic stress syndrome due to prior abuse, and had contemplated self-harm. The petition also alleged neglect by leaving E.W. in unsafe situations so that she could be with the father (a registered sex offender who has victimized young children), and by allowing the father access to the child.

¶3 Just after N.W.'s birth in February 2015, DCS took N.W. into care and filed a supplemental dependency petition making allegations similar to those in the original petition. By late February 2015, both children were found dependent as to Mother and the court adopted a case plan of family reunification and a concurrent case plan of severance and adoption and ordered DCS to provide reunification services.[2]

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[1] 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 (App. 2008).

[2] The court made similar findings as to father, who is not a party to this appeal.

¶4 In March 2016, over Mother's objection, the court granted DCS' request to change the case plan to severance and adoption. As amended, DCS' motion to terminate alleged, as to Mother, neglect, mental illness and six, nine and 15-months time-in-care. *See* Ariz. Rev. Stat. (A.R.S.) §§ 8-533(B)(2), (B)(3), (B)(8)(a), (b) & (c) (2017).[3] During a pretrial conference held in August 2016, the parties agreed that the motion would be "resolved by a paper trial," apparently consisting of written submissions. The court admitted 52 exhibits and accepted position statements from Mother, DCS, and the guardian ad litem. The court also heard sworn testimony from the DCS caseworker.

¶5 In a September 2016 ruling, later amended in March 2017, the superior court terminated Mother's parental rights to both children on the statutory grounds of neglect, mental illness, and 15-months time-in-care. The court also found that severance was in the best interests of the children. This court has jurisdiction over Mother's timely appeal pursuant to Article 6, Section, 9, of the Arizona Constitution, A.R.S. § 8-235(A), 12-2101(A) and 12-120.21(A) and Ariz. R.P. Juv. Ct. 103-104.

DISCUSSION

¶6 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000). 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," this court will affirm an order terminating parental rights as long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶7 Mother argues, among other things, that there is insufficient evidence in the record to support the court's ruling terminating her parental rights based on mental illness. Termination of parental rights on that ground requires clear and convincing evidence that "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

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

prolonged indeterminate period." A.R.S. § 8-533(B)(3). DCS also must show it has made "a reasonable effort to provide [the parent] with rehabilitative services or that such an effort would be futile." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191, 193 ¶ 42 (App. 1999).

¶8 At the outset of the dependency, Mother received a psychiatric evaluation and was diagnosed with several behavioral health disorders. DCS provided Mother with individual counseling and case management services, medication monitoring, couples counseling, parent-aide services, family counseling and parenting classes. In mid-2015, Dr. James Thal performed a psychological evaluation and reported Mother continued to have "a significant personality disorder with difficulties in forming attachments," which makes it difficult for her to "adequately protect her children." Dr. Thal stated Mother's children "could be at risk for neglect or exposure to dangerous situations" if returned to her care. He further opined that Mother's prognosis for being able "to demonstrate minimally adequate parenting skills in the foreseeable future [is] very guarded."

¶9 Mother continued to participate in counseling and other services and, in February 2016, Dr. Thal wrote that the services DCS had provided to Mother were appropriate. He further opined, however, that Mother had made "inadequate progress in addressing [her] substantial parenting and personal issues" and that "her inadequate attachment to her children [was] especially worrisome." DCS's March 2016 progress report stated Mother had still been unable to show that she could "implement safe parenting techniques in the care of her children." In a September 2016 report, DCS described concerns about Mother's behavioral health, adding she said she had stopped taking her psychiatric medications. The report further stated that, as reported by professionals working with her, Mother's "overall stability [was] declining."

¶10 This record supports the superior court's findings that DCS provided Mother with "regular and ongoing services" and that Mother "participated in such services to the extent of her ability," but she was still unable to discharge her parental responsibilities. Given the length of the dependency and the variety and duration of services Mother received, there is also evidence that Mother's condition was likely to continue for an indefinite period. Accordingly, the superior court did not abuse its

discretion in finding DCS had proven, by clear and convincing evidence, the statutory ground of mental illness. *See* A.R.S. § 8-533(B)(3).[4]

¶11 Mother also argues the court erred in finding termination was in the children's best interests. Among other evidence received by the court, the DCS caseworker testified that the children were adoptable and that termination of Mother's parental rights would afford them "permanency and stability" because it would allow them to be adopted by their current placement. *See See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50 ¶ 19 (App. 2004) (stating best interests may be shown by credible evidence that an adoptive placement exists or that the child is adoptable). Given this evidence, Mother has not shown that the superior court erred in finding termination is in the children's best interests.

CONCLUSION

¶12 The superior court's order terminating Mother's parental rights to E.W. and N.W. is affirmed.

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

[4] Given this conclusion, this court need not address Mother's arguments regarding the other statutory grounds found by the superior court. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251 ¶ 27 (2000).