IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MEGAN I., ROBERT C., *Appellants*,

v.

DEPARTMENT OF CHILD SAFETY, J.I., K.I., A.I., P.I., T.I., *Appellees*.

No. 1 CA-JV 16-0555
FILED 5-18-2017

Appeal from the Superior Court in Yavapai County
No. P1300JD201600016
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

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

Robert D. Rosanelli Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant Robert C.

Arizona Attorney General's Office, Phoenix
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Maurice Portley[1] joined.

N O R R I S, Judge:

¶1 Megan I. ("Mother") and Robert C. ("Father") separately appeal from the superior court's order terminating their parental rights to their minor children, arguing the superior court abused its discretion by making certain findings unsupported by the evidence. *See E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 59, ¶ 9, 344 P.3d 842, 844 (App. 2015) (reviewing termination order for abuse of discretion) (quotation and citation omitted). Because reasonable evidence supports the superior court's findings, we disagree with Mother's and Father's arguments and affirm the superior court's termination order. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 4, 210 P.3d 1263, 1264 (App. 2009) (appellate court will affirm superior court's findings of fact if supported by reasonable evidence).

DISCUSSION

I. Mother's Arguments

¶2 Mother argues termination of her parental rights was not in the children's best interests because evidence showed she had a "strong bond" with the children, could be a good parent when sober, and was demonstrating a "period of sobriety." To support an order terminating parental rights, the superior court must find at least one statutory ground by clear and convincing evidence and, additionally, must find by a preponderance of the evidence that termination is in the best interest of the child. *Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 577, ¶ 4, 390 P.3d 1222, 1223 (App. 2017) (citations omitted). To prove that termination is in a child's best interest, the Department of Child Safety ("DCS") must show the child would benefit from termination or be harmed by a continuation of the parental relationship. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288, ¶ 26, 257 P.3d 1162, 1168 (App. 2011) (quotation and citation omitted). To meet this burden, DCS may establish the child is adoptable and would

---

[1]The Honorable Maurice Portley, Judge of the Arizona Court of Appeals, Division One, *Retired*, has been authorized to sit in this matter pursuant to Article VI, Section 3, of the Arizona Constitution.

benefit from an adoptive placement or present evidence an existing placement is meeting the needs of the child. *Crystal E.*, 241 Ariz. at 578, ¶ 9, 390 P.2d at 1224 (citation omitted).

¶3 On appeal, Mother does not challenge the superior court's finding that termination was warranted because of her substance abuse and failure to provide for her children's basic needs under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2) (Supp. 2016). While a parent already found unfit maintains some interest in the child, the superior court's finding of statutory grounds for termination substantially reduces this interest and "the court must balance this diluted parental interest against the independent and often adverse interests of the child in a safe and stable home life" when considering the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35, 110 P.3d 1013, 1020 (2005). The superior court may "presume that the interests of the parent and child diverge because the court has already found . . . statutory grounds for termination by clear and convincing evidence." *Id.* (citation omitted).

¶4 DCS initially became involved when one of the children, A.I., was hospitalized with a life-threatening brain tumor. Mother, for fear of exposing her methamphetamine use, had refused to seek medical treatment and allowed the child's symptoms to progress to the point he could no longer walk or swallow. DCS's preliminary report to the juvenile court noted the other children had "rashes that were worsening over time" that had gone untreated because their caregivers' desire to "cover[] up the drug use was their priority." Both Mother and two of her children tested positive for methamphetamine. The report related Mother's home was "in total disarray and unfit to reside in" with the children's toys "mixed in with loose garbage consisting of used diapers, bags of old fast food and rotting food." Furthermore, the DCS case manager confirmed Mother, in addition to selling methamphetamine, had "sold the children's foods stamps, the family's food stamps . . . in order to have fun."

¶5 Reasonable evidence supports the superior court's finding that the best interests of the children would be served by terminating the parent-child relationship. The DCS case manager testified Mother was making promises that "gave the children false hope," causing "behavioral issues" and eventually DCS suspended Mother's visitation "due to lack of engagement." The case manager stated that, although commendable, the "five weeks of sobriety" proceeding the November 29, 2016 termination adjudication hearing on DCS's motion to terminate was insufficient to overcome DCS's substance abuse concerns. The case manager testified DCS believed Mother was still using drugs and there was no reason to believe mother "will remedy her substance abuse in the near future." The case

manager based her belief on Mother's positive test for methamphetamine at the end of May 2016 and on a report in April 2016 from the hospital indicating "drug paraphernalia was identified" on Mother's person when visiting A.I. Furthermore, while DCS referred Mother to substance abuse counselling services and for uranalysis screenings shortly after it became involved in the children's care, Mother had a pattern of skipping these services which continued through August of 2016.

¶6 The case manager testified the children were adoptable and, at the time of the termination adjudication hearing, all but one of the children had adoptive placements. The case manager also testified the children were in "stable" homes "meet[ing] their needs" and, by having "permanency and stability" in a drug-free environment, they would benefit from having Mother's parental rights terminated. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 12, 376 P.3d 699, 701 (App. 2016) (existence and effect of bonded relationship between biological parent and child not dispositive in addressing best interests). Moreover, testimony from the children's placements all demonstrated the children were thriving, their needs were being met, and they were receiving necessary medical care. Thus, notwithstanding the evidence Mother presented regarding her bond with the children, DCS presented reasonable evidence supporting the superior court's finding that termination of Mother's parental rights was in the best interests of the children.

II. Father's Arguments

¶7 Father essentially argues no reasonable evidence supports the superior court's order terminating his parent rights to A.I., P.I., and T.I.[2] under A.R.S. § 8-533(B)(2) ("neglect") because he lived in Colorado and did not know of Mother's "parenting deficiencies." Reviewing the record for reasonable evidence, we disagree. *Denise R.*, 221 Ariz. at 93-94, ¶ 4, 210 P.3d at 1264-65 (deferential standard of review applies to claim of insufficient evidence; we will affirm superior court's findings of fact so long as they are supported by reasonable evidence) (quotations and citations omitted); *Crystal E.*, 241 Ariz. at 577, ¶ 4, 390 P.3d at 1223 (superior court must find, by clear and convincing evidence, at least one statutory ground to support termination order).

¶8 The superior court may terminate a parent's rights under A.R.S. § 8-533(B)(2) when it finds clear and convincing evidence the parent

[2]The superior court also terminated Father's rights to P.I. and T.I. under A.R.S. § 8-533(B)(8)(b), finding he neglected or willfully refused to remedy the circumstances causing the children's out of home placement.

has neglected or willfully abused a child, which "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." Neglect means the "inability *or unwillingness* of a parent . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness cause unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a) (Supp. 2016) (emphasis added). Under these statutes, parents "who permit another person to abuse or neglect their children can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." *Tina T. v. Dep't of Child Safety*, 236 Ariz. 295, 299, ¶ 17, 339 P.3d 1040, 1044 (App. 2014).

¶9 The superior court found Father "had visited the children at various times prior to the dependency, but took no action to protect the children from Mother's neglect, and did not take action to provide or obtain medical aid." Although Father argues on appeal he did not know of Mother's parenting deficiencies, he presented no evidence to support this argument. In contrast, DCS presented evidence that Father was aware of Mother's substance abuse through their extensive record of involvement with the Colorado Department of Child Welfare for issues of substance abuse, including A.I. testing positive for methamphetamine. Although Father remained in Colorado after Mother moved to Arizona, the DCS case manager testified Father had visited the children in Arizona before the "dependency and didn't take any action." Indeed, the DCS case manager affirmed her ongoing concern that Father knew or should have known, particularly in A.I.'s case given such obvious signs of illness as his inability to walk, of Mother's neglect, and the children's need for medical care. Tellingly, Father presented no evidence contradicting the case manager's testimony or the other evidence DCS presented at the hearing.

¶10 Furthermore, Father's unwillingness to parent continued even after DCS became involved with the children. The superior court found Father "was order[d] to engage in fairly minimal reunification services, but he failed to engage," had failed to provide current contact information or consistently communicate with DCS, and had "shown very little interest" in his children. Reasonable evidence supports these findings. The DCS case manager testified that, although he was offered services, the full extent of Father's participation in DCS reunification services was "a paternity test and that was it." She explained Father said he had not attended parenting classes because he did not have "time for it," had not engaged in urinalysis testing, and had not provided DCS with current contact information. Father made only "a few visits" with his children

during the dependency and his lack of contact with DCS posed "complications to reunification." The DCS case manager testified that Father had not "show[n] any ability or willingness to parent his children" despite attempts by DCS to engage both parents in a case plan to reunify. In sum, contrary to Father's argument, DCS provided clear and convincing evidence to support the superior court's findings of his neglect and unwillingness to supervise his children.

CONCLUSION

¶11 For the foregoing reasons, we affirm the superior court's order terminating Mother's and Father's parental rights.

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