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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LATASHA J., ARTEMIO T., *Appellants,*

v.

DEPARTMENT OF CHILD SAFETY, J.T., G.T., L.T., S.T., A.T., J.T., J.T.,
Appellees.

No. 1 CA-JV 17-0049
FILED 6-20-2017

Appeal from the Superior Court in Maricopa County
No. JD23623
The Honorable Connie Contes, Judge

AFFIRMED

COUNSEL

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By Robert D. Rosanelli
Counsel for Appellant Mother

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant Father

Arizona Attorney General's Office, Tucson
By Laura J. Huff
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jon W. Thompson joined.

M c M U R D I E, Judge:

¶1 Latasha J. (“Mother”) and Artemio T. (“Father”) appeal from the superior court’s order terminating their parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Father are the biological parents of J.T. (born in October 2008), G.T. (born in December 2009), L.T. (born in November 2010), S.T. (born in May 2012), A.T. (born in March 2013), J.T. (born in July 2014), and J.T. (born in January 2016) (“the Children”). The Department of Child Safety (“DCS”) first took temporary custody of J.T., G.T., L.T., S.T., and A.T. in May 2013, after Mother and Father violated a safety plan that was put into place following A.T.’s positive test for cocaine at birth. DCS initiated dependency proceedings in May due to the parents’ substance abuse and incidents of domestic violence. Both parents began engaging in family reunification services, and in February 2015 the dependency case was dismissed.

¶3 DCS took temporary custody of all seven children in June 2016, after J.T. tested positive at a hospital for a near-fatal level of methamphetamine. DCS filed a dependency petition against both parents on the grounds of neglect; with additional grounds of substance abuse alleged against Mother. The superior court found the children dependent and ordered a case plan of severance and adoption.

¶4 In August 2016, DCS moved to sever Mother and Father’s parental rights to all the children on the grounds of neglect and substance abuse, and to the five oldest children on the ground of prior removal, pursuant to Arizona Revised Statutes (“A.R.S.”) sections 8-533(B)(2), (B)(3),

and (B)(11).¹ The superior court conducted a two-day severance hearing in December 2016, and found sufficient grounds to terminate both parent's parental rights on the grounds of neglect and prior removal, in addition to Mother's parental rights being severed on the ground of substance abuse. Both parents timely appealed and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution; A.R.S. § 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

A. Sufficient Evidence Supports Terminating Mother and Father's Parental Rights under A.R.S. § 8-533(B)(2).

¶5 Mother and Father both argue there was insufficient evidence to support the superior court's finding that they "neglected a child or failed to protect a child from neglect, so as to cause an unreasonable risk of harm to a child's health and/or welfare."

¶6 The right to custody of one's child is fundamental, but it is not absolute. *Michael J. v. ADES*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). To support termination of parental rights, one or more of the statutory grounds for termination must be proven by clear and convincing evidence. A.R.S. § 8-537(B); *Shawanee S. v. ADES*, 234 Ariz. 174, 176-77, ¶ 9 (App. 2014).

¶7 We view the evidence in the light most favorable to sustaining the superior court's findings. *Christina G. v. ADES*, 227 Ariz. 231, 234, ¶ 13 (App. 2011). As the trier of fact, the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). We will accept the superior court's findings of fact unless no reasonable evidence supports those findings. *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶8 To justify termination of parental rights under A.R.S. § 8-533(B)(2), DCS must prove a parent has neglected or willfully abused a child. "[A]buse 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." A.R.S. § 8-533(B)(2).

¹ We cite to the current version of applicable statutes and rules when no revision material to this case has occurred.

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¶9 In May 2016, Mother brought J.T. to Maryvale Hospital after noticing the child was “shaking” and not “acting right.” J.T. tested positive for amphetamines on an initial drug screen so he was transferred to Phoenix Children’s Hospital. At the hospital, further testing revealed J.T. had ingested near-fatal levels of methamphetamines. The next day, a medical examination was performed on the other six children. Medical personnel found G.T. had also been exposed to methamphetamines. While both parents testified they did not know how the two children were exposed to methamphetamines, both parents were in the paternal grandmother’s house at the time J.T. ingested the drug. Both parents admitted to having previously “heard” paternal grandmother used methamphetamines, but continued to allow her to supervise their children.² See *Mario G. v. ADES*, 227 Ariz. 282, 288, ¶ 25 (App. 2011) (even if another person is responsible for the abuse, parental rights can be terminated when a parent reasonably knew or should have known about the possibility of abuse).

¶10 Finally, Mother told police investigators that she lost a folded dollar bill containing her drugs the day before J.T.’s exposure. Mother neglected to look for the drugs, even after paternal grandmother told Mother that she found a folded dollar bill on the floor in her house and gave it to J.T.

¶11 “Parents who abuse or neglect their children, or 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. DCS*, 236 Ariz. 295, 299, ¶ 17 (App. 2014) (quoting *Linda V. v. ADES*, 211 Ariz. 76, 79, ¶ 14 (App. 2005)). To do so, “DCS must show a constitutional nexus between the prior abuse and the risk of future abuse to the child at issue.” *Id.*

¶12 The day after J.T. was taken to the hospital, Mother’s hair follicle test was positive for methamphetamine and cocaine. Mother has a history of drug abuse, and both J.T. and A.T. had intrauterine cocaine exposure. Mother’s struggle with drugs is compounded by her failure to recognize the risk her drug abuse poses to her children. See *Mario G.*, 227 Ariz. at 287, ¶ 22 (a failure to understand past abuse can be considered as evidence of risk of future harm). Mother testified that she relapsed in March 2016, but did not seek any services because it was “just a slip.” However, she also testified to using cocaine daily at the beginning of this case. During interviews with Phoenix Police, Mother also admitted to using cocaine for

² The paternal grandmother tested positive for “high levels” of methamphetamines two weeks after J.T. was taken to the hospital.

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three months prior to the incident because she was “stressed out.” When confronted with her positive methamphetamine test, Mother told police she believed her dealer had been selling her cocaine laced with methamphetamines. However, instead of telling police she would stop using cocaine, she told police she would need to tell her dealer to stop adding methamphetamines to the cocaine she uses. Police investigators specifically noted Mother’s inability to grasp the severity of the situation when they informed her of G.T.’s positive test for methamphetamines and Mother “laughed and did not appear to be surprised or concerned.”

¶13 Both parents also failed to recognize the risk of harm to the children from the environments they have placed their children in. Despite both Mother and Father knowing about the possibility of the paternal grandmother using and selling methamphetamines, they continued to allow her to have unsupervised time with the children at her residence. Furthermore, the police reports identified several adults spending time with the children who either used or dealt drugs. This lack of adequate supervision for the children posed a serious risk of harm to the children, evidencing neglect and abuse.

¶14 Because we accept the court’s findings of fact unless clearly erroneous, we find the court did not err by severing Mother and Father’s parental rights under § 8-533(B)(2). *See Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994). Accordingly, we need not address Mother’s or Father’s arguments on the other statutory grounds for severance found by the superior court. *See Jesus M.*, 203 Ariz. at 280, ¶ 3 (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to other grounds.”).³

³ Both parents claim DCS failed to provide appropriate reunification services under A.R.S. § 8-533(B) (11). However, because § 8-533(B)(2) does not require DCS to provide reunification services, we do not address the reunification services provided to both parents by DCS. A.R.S. § 8-533(B)(2); *see Jesus M.*, 203 Ariz. at 280, ¶ 3.

B. Best Interests Finding.

¶15 Father argues DCS failed to prove that severance was in the best interests of the children.⁴ Once the court has found a statutory ground exists for termination of the parent-child relationship, the court must then find by a preponderance of the evidence that termination is in the best interests of the children. A.R.S. § 8-533(B); *Mario G. v. ADES*, 227 Ariz. 282, 284-85, ¶ 11 (App. 2011). In so doing, the court must consider whether the child will benefit from termination of the relationship, *or* the child would be harmed by continuation of the relationship. *James S. v. ADES*, 193 Ariz. 351, 356, ¶ 18 (App. 1998) (emphasis added).

¶16 Father contends that the Children's placement in a household where there were already 12 people living is not in the Children's best interests. When reviewing a child's best interests, the court considers whether (1) an adoptive placement is immediately available; (2) the existing placement is meeting the needs of the child; and (3) the child is adoptable. *Raymond F. v. ADES*, 224 Ariz. 373, 379, ¶ 30 (App. 2010). The superior court found severance was in the best interests of the Children because it would allow a plan of adoption to go forward, providing permanency and stability. The court's finding is supported by the record, which shows the Children are already in a prospective adoptive placement. Furthermore, while Father raises concerns about the number of people living in the placement, no evidence was presented showing the existing placement was not meeting the needs of the Children. All the Children are adoptable and have no special needs. Accordingly, the superior court did not err by finding that severance was in the Children's best interests.

⁴ Mother does not challenge the superior court's finding that termination was in the best interests of the Children, therefore she has waived the issue. *See State v. Carver*, 160 Ariz. 167, 175 (1989).

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CONCLUSION

¶17

For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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