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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CONNIE S.,) No. 1 CA-JV 09-0120
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) Not for Publication - Ariz.
SECURITY, JESSICA S. CODY, W,) R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD15381

The Honorable J. Richard Gama, Judge

AFFIRMED

Janell A. McEachern
Attorney for Appellant-Mother

Chandler

Terry Goddard, Attorney General
By David M. Osterfeld, Assistant Attorney General
Attorney for Arizona Department of Economic Security

Phoenix

G E M M I L L, Judge

¶1 Connie S. appeals the juvenile court's order terminating her parental rights to thirteen-year-old J.S. and six-year-old C.W. Finding no error, we affirm.

Facts and Procedural History

¶2 We view the evidence in the light most favorable to upholding the juvenile court's ruling. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000).

¶3 In December 2006, J.S. reported to her school nurse that her mother had hit her repeatedly with a baseball bat. There were bruises on J.S.'s forearms, outer-thighs, and hips. Child Protective Services ("CPS") was notified, and J.S. was examined by a doctor who noted she had "parallel linear areas of bruising" that are "characteristic of injury inflicted with a linear implement." He concluded "[t]he constellation of cutaneous injuries is highly suggestive of abuse" and "[t]he appearance of these bruises is consistent with blunt force trauma from an object, possibly a bat as has been alleged."

¶4 CPS removed J.S. and C.W. from Connie's care, and the Arizona Department of Economic Security ("ADES") filed a petition alleging the children were dependent under Arizona Revised Statutes ("A.R.S.") section 8-201(13) (Supp. 2009). Specifically, the petition alleged Connie had physically abused J.S., neglected her medical needs, and neglected C.W.'s dental

needs.¹ On December 22, 2006, the juvenile court found both J.S. and C.W. were dependent as to Connie.

¶15 The initial plan for the case was to reunify the children with Connie. The State provided Connie with several services to help fulfill this plan, including parent aide services, individual therapy, psychological exams, parenting classes, visits with J.S. and C.W., and transportation if necessary. She also participated in urinalysis testing, which was discontinued after she consistently tested negative. Connie successfully completed the parenting classes and individual therapy, but she did not successfully complete the parent aide services.

¶16 The parent aide services began in January 2007. Connie's first parent aide, Lori Williams, assigned her educational modules on effective parenting, but she failed to complete the assigned lessons. Her contact with the children during supervised visits was sometimes inappropriate. For example, Connie once told J.S. that she was "coming home," and on several occasions Connie failed to bring games or activities for the children. During one visit with C.W., Connie kissed a blister on his tongue and then "ran her tongue up and down [his] face." The children told Williams they wanted to leave the

¹ Connie admitted she had stopped giving J.S. her prescribed medication, and the record indicates C.W.'s front teeth were rotted and needed extensive dental work.

visits early and were concerned about being physically abused. C.W. exhibited anxiety and became physically ill around visitation time.

¶7 In February 2008, the juvenile court assigned Connie a second parent aide, Linda Apostolakos. Apostolakos became the parent aide for C.W., while Williams remained the parent aide for J.S. Connie performed significantly better under Apostolakos. She completed the educational modules that Apostolakos assigned, reached her objectives, and earned a certificate of completion. Her interactions with C.W. were appropriate, and C.W. had a "good time" during the visits and, apart from the first few visits, showed no signs of anxiety. Apostolakos recommended that Connie have increased visitation time with C.W., but CPS denied the request because C.W. was "stressed out at the visits," an assessment Apostolakos did not agree with.

¶8 In May 2008, the juvenile court granted the State's request to change the case plan to severance and adoption. ADES then filed a petition to terminate Connie's parental rights to the children on the following grounds: 1) Connie had willfully abused a child; 2) she was unable to discharge her parental responsibilities due to mental illness, and 3) the children had been in an out-of-home placement for fifteen months or longer and it was likely Connie would not be able to exercise proper

parental care in the near future.

¶19 The juvenile court conducted a nine-day severance hearing, receiving testimony from Connie, Williams, Apostolakos, Connie's two therapists, a psychologist who evaluated J.S. and C.W., Connie's sister, Connie's twenty-one-year-old daughter, and the CPS case manager. At the conclusion of the hearing, the court found that the State had proven all three grounds for termination by clear and convincing evidence and that termination was in the children's best interest.

¶10 Connie timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007) and 12-2101(B) (2003).

Analysis

¶11 A parent's right to care, custody, and control of her children is fundamental, *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 78, ¶ 6, 117 P.3d 795, 797 (App. 2005), but it is not absolute. *Michael J.*, 196 Ariz. at 248, ¶ 12, 995 P.2d at 684. In Arizona, termination of parental rights is governed by A.R.S. § 8-533 (Supp. 2009). *Id.* at 249, ¶ 12, 995 P.2d at 685. "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Id.*

¶12 The juvenile court found three statutory grounds for

severing Connie's parental rights. "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 the other grounds." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). Connie does not challenge the court's finding that severance was in the children's best interest, and we do not address that finding.

¶13 The juvenile court first found that severance was warranted under § 8-533(B)(2). Under that subsection, parental rights can be terminated when "the parent has neglected or willfully abused a child." A.R.S. § 8-533(B)(2). "Abuse" is defined in Title 8, in pertinent part, as "the infliction or allowing of physical injury, impairment of bodily function or disfigurement." A.R.S. § 8-201(2) (Supp. 2009).

¶14 The record in this case contains sufficient evidence of abuse. The juvenile court heard testimony that J.S. told her school nurse that Connie had hit her repeatedly with a baseball bat. CPS reports following the incident described bruising on Jessica's body, and the doctor who examined her concluded the bruises were "highly suggestive of abuse" and "consistent with blunt force trauma from an object, possibly a bat."

¶15 A psychologist who examined J.S. diagnosed her as a victim of physical abuse. During the examination, J.S. told him

that her mother had hit her, and he found J.S. exhibited "hyper vigilance," which he testified can be indicative of past physical abuse. In addition, J.S. told parent aide Williams that her mother had "hit [her] with a stick," and on one occasion she told Williams to not tell Connie she had "been bad" because "she was afraid for her mom to know because her mom would hit her."

¶16 Connie implicitly argues in her opening brief that the court erred in finding clear and convincing evidence of abuse in light of testimony from Connie's sister and Connie's eldest daughter that J.S. did not have a reputation for truthfulness. And Connie points out that she has consistently denied abusing J.S. and that, following the report of abuse, the police searched her home for a baseball bat and found none.²

¶17 Although there was evidence to the contrary, we find there was sufficient evidence to support the juvenile court's finding of abuse. We do not reweigh the evidence. See *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 81, ¶ 13, 107 P.3d 923, 927 (App. 2005). The juvenile court, as the trier of fact in a termination proceeding, "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ.*

² The CPS case worker testified, however, that Connie had reported she did indeed possess a "small collector's bat."

Sec. v. Oscar O., 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not review the record on appeal to determine if we would have reached different conclusions if we were the triers of fact. Instead, we review to see if sufficient evidence supports the findings of the juvenile court. Because there is such evidence here, we conclude that the juvenile court did not err in finding clear and convincing evidence of abuse.

¶18 A parent who abuses one child can have their parental rights to their other child terminated even though there is no evidence the other child was abused. *Linda V.*, 211 Ariz. at 79, ¶ 14, 117 P.3d at 798. Because there was sufficient evidence that Connie abused J.S., the trial court did not err by also severing Connie's parental rights to C.W.³ See *id.*

¶19 Having concluded that the evidence supports the juvenile court's finding of abuse, we need not address the other two statutory bases for severance. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205. And Connie does not challenge the best interests finding.

¶20 After reviewing this record and the arguments of the parties, we acknowledge there was much evidence showing Connie had made significant progress toward her reunification goals. Her parent aide Apostolakos and her individual therapists all

³ We note that a psychologist who evaluated C.W. found "possible physical abuse" against C.W. And C.W., like J.S., reported to Williams that he had been "hit with a stick."

testified Connie had learned the necessary parenting skills and that reunification should be the case plan. Moreover, Connie had achieved full-time employment and seemingly had established safe and stable housing for her children. There is other evidence supporting the court's decision, however, as summarized in ¶¶ 3, 6, 14, and 15 *supra*. On this record, we must affirm.

Conclusion

¶21 For the foregoing reasons, we affirm the juvenile court's order terminating Connie's parental rights to J.S. and C.W.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge