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Ariz. R. Crim. P. 31.24



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

LAURA Q.,) No. 1 CA-JV 09-0214
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, S.W., S.Q., L.Q.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD14432

The Honorable Roger E. Brodman, Judge

AFFIRMED

Rachel Winship, Attorney at Law
By Rachel Winship
Attorney for Appellant

Chandler

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings, Assistant Attorney General
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Tucson

B R O W N, Judge

¶1 Laura Q. ("Mother") appeals the juvenile court's termination of her parental rights to three of her children. For the following reasons, we affirm.

BACKGROUND

¶2 Mother is the biological mother of S.W., born in 1997; S.Q., born in 1999; and L.Q., born in 2001 (collectively, the "children").¹ John W. is S.W.'s father and Steven Q. is the father of S.Q. and L.Q.²

¶3 In 2004, Child Protective Services ("CPS") became involved with Mother and the children when then seven-year-old S.Q. alleged that her father had sexually molested her. Relying on financial assistance from CPS, Mother moved from Phoenix to Casa Grande. She also agreed to refuse Steven Q. contact with the children.

¶4 Despite her agreement, Mother allowed Steven Q. to continue to have contact with the children, and by late October 2005, new allegations of sexual abuse of S.W. by Steven Q. were reported. CPS responded to the report and it was agreed that John W. would keep the children temporarily because Mother was being evicted at that time. A few days later, in early November

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal as reflected in this decision. The above referenced caption shall be used on all documents filed in this appeal.

² The juvenile court also terminated the parental rights of John W. and Steve Q.; neither of them is a party to this appeal.

2005, Mother and John W. were arrested for a domestic violence incident that occurred in the presence of the children. The children were then placed in the custody of ADES.

¶15 ADES initiated dependency proceedings in November 2005 alleging that Mother was unable to parent due to her (1) failure to protect the children, (2) her inability to provide stable housing and meet the children's basic needs, and (3) placing the children in danger by participating in domestic violence. In January 2006, the juvenile court adjudicated the children dependent as to Mother, affirmed a family reunification plan, and ordered reunification services. ADES provided parent-aide services, substance-abuse assessment, substance-abuse group education, urinalysis testing, psychological evaluation, individual and family therapy, and parenting classes. Over the next several months, Mother completed the psychological assessment with Dr. Buwalda and a substance-abuse assessment with Terros; she also participated in the other services provided. In addition, Mother participated in a psychiatric evaluation with Dr. Rosengard in October 2006. He diagnosed Mother with major depressive disorder and stated that further testing would be required to rule out post-traumatic stress disorder. He also noted "potential traits of dependent personality disorder."

¶16 Approximately one year after the children were placed in ADES' care, Mother had progressed sufficiently in the reunification plan to begin unsupervised visits with the children. By March 2007, Mother began overnight visits with the children. In May, however, Mother admitted to a disciplinary incident with one of the children in which she hit the child with a belt. Mother also admitted she had allowed her boyfriend to have contact with the children during unsupervised visits, in violation of ADES' instructions. Several days later the family therapist raised this issue with Mother and informed her that the children reported it was the boyfriend who had hit the child with the belt. Mother became "extremely irate, cursing, screaming, [and] yelling in front of the children" and accused the children of "telling" on her. As a result of these incidents, the Multidisciplinary Consultant Team ("MCT"), consisting of sixteen professionals and family members involved in the children's care, recommended the case plan be changed to severance and adoption. The MCT was particularly concerned about Mother's focus on secrecy, in light of the prior family history of sexual abuse.

¶17 The juvenile court held a contested permanency hearing, after which it denied ADES' request to change the case plan to severance and adoption. The court noted that despite the incidents that led to the proposed change in the case plan,

Mother had made "positive progress in her parenting skills" and the court did not believe ADES could show by a preponderance of the evidence that Mother would not be able to remedy the circumstances that caused the children to be in out-of-home placement. The court also cautioned that this was a "close call, and [M]other's failure to make additional progress in the future will dictate an entirely different result."

¶8 Mother continued with reunification services and completed a second psychological evaluation in December 2007 with Dr. Bluth. He diagnosed Mother with major depressive disorder and dependent personality traits. He also opined that there was an ongoing "concern about the overall functioning of the family, specifically the sexual abuse. [Mother] was a victim of sexual abuse herself and does not appear to have addressed these issues in her own therapy, as evidenced by the secrecy within the family." He suggested Mother learn coping, problem solving, stress management, and anger management skills. He also recommended that Mother continue with individual therapy and address issues related to her own sexual victimization.

¶9 In January 2008, Mother continued scheduled visitation with the children but continued to make inappropriate comments to them. Also, during a scheduled supervised visitation with the children in February, Mother refused to follow ADES' instructions regarding the visitation. Specifically, Mother was

asked to wait in the lobby of the crisis center while the children were brought to the visitation area, but instead dismissed the directive and followed the parent aide to the children. Mother then became "extremely belligerent" and threatened the parent aide, stating "you better watch it when you leave tonight" and "you better hope someone comes to get you." Based on Mother's behavior the parent aide terminated the visit, after which Mother waited in the parking area for an hour. The police were called and the service provider cancelled all further services. Nonetheless, over the next several months, Mother started individual therapy with a new therapist, made progress in family therapy, participated in visits with the children under the supervision of a new case aide, and again started unsupervised visits with the children. By July 2008, the juvenile court found that Mother was compliant with her case plan for family reunification.

¶10 Mother progressed to unsupervised overnight and weekend visits with the children. As a condition of these visits, Mother was specifically instructed that no one over the age of eighteen was to spend the night or spend significant time with Mother or the children while the children were in Mother's care without approval of ADES. Two of the children were scheduled to be reunified with Mother in October 2008.

¶11 Just prior to the scheduled reunification, however, ADES again halted the plan when the children began to report that Mother had male visitors during her weekend visits with the children. The MCT reconvened to review Mother's progress and expressed concern that Mother was unable to understand the ramifications of her allowing strangers around her children, continued to choose her own needs over those of her children, and continued her pattern of inappropriately expressing her thoughts and feelings to the children. The MCT again recommended severance and adoption.

¶12 In January 2009, the juvenile court granted ADES' motion to change the case plan to severance and adoption. ADES then filed a motion to terminate Mother's parental rights to the children on the grounds that the children had been in out-of-home placement for fifteen months or longer pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2009).³ Between June and October 2009, the juvenile court held a six-day contested severance hearing.⁴ After considering the written closing arguments submitted by Mother, ADES, and the guardian ad litem, the juvenile court issued a detailed order terminating Mother's parental rights. In the order, the court recognized

³ We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

⁴ The hearing extended into October due to the birth of Mother's fourth child in July 2009.

that the "single biggest issue has always been Mother's ability or inability to protect the [children] from abusive men." The court then explained the evidence it considered to be persuasive on this issue, summarizing in part as follows:

Mother has not demonstrated a behavioral change necessary to take care of these children. She has not demonstrated the capability of protecting [the children] from abusive men. She has not shown her ability to successfully complete counseling or programs designed to assist her parenting skills. She has not demonstrated emotional stability. She has not been truthful with CPS or the Court.

The court further found that termination of Mother's parental rights was in the children's best interests. Mother timely appealed.

DISCUSSION

¶13 An order terminating parental rights must be supported by (1) clear and convincing evidence showing at least one statutory ground for severance and (2) a preponderance of the evidence indicating that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We consider the facts in the light most favorable to accepting the juvenile court's findings. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). In addition, we "will not disturb the juvenile court's order severing parental

rights unless [the court's] factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted).

¶14 To justify terminating a parent-child relationship under A.R.S. § 8-533(B)(8), ADES must show that it has "made a diligent effort to provide appropriate reunification services[.]" The juvenile court may then properly sever a parent's rights if (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood existed that the parent would not be able to properly care for the child in the near future. A.R.S. § 8-533(B)(8)(c).

A. Diligent Efforts at Reunification

¶15 Mother first argues that ADES did not make a diligent effort to provide appropriate reunification services. Specifically, she argues that although ADES acknowledged that her own childhood sexual abuse was underlying many of her current behaviors ADES did not offer her any services to address this issue until after the case plan had been changed to severance and adoption. The record reflects otherwise.

¶16 ADES is required to make a diligent effort to provide appropriate reunification services to parents. A.R.S. § 8-533(B)(8). In so doing, it must provide the parent "with the time and opportunity to participate in programs designed to help her become an effective parent[.]" *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994) (citation omitted). ADES is not required, however, to provide a parent with every conceivable service or to undertake futile rehabilitative measures. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053 (App. 1999).

¶17 Mother participated in a psychological evaluation with Dr. Buwalda in March 2006; nothing about Mother's own childhood sexual abuse was revealed during that evaluation. Mother then participated in a psychiatric evaluation with Dr. Rosengard in October 2006. At that time, Mother "denied being physically or sexually abused" despite information he had learned from Mother to the contrary. Dr. Rosengard noted Mother's past sexual abuse and recommended that Mother attend therapy with a therapist who has "familiarity in dealing with those who have themselves been abused and have been in abusive relationships" wherein Mother's "past personal history of emotional and sexual abuse" could be discussed. Mother attended individual counseling with a therapist who worked with her on her "anger with past issues of

abuse and neglect from her parents" and how "her history of abuse affects her relationships[.]" Mother also received parent-aide services in which she was taught "the affects of sexual and child abuse on children."

¶18 Mother then participated in a supplemental psychological evaluation with Dr. Bluth in December 2007. He noted that Mother "continue[d] to lack the insight into the issue of sexual abuse"; an area in which Mother's therapist acknowledged the progress was "steady but slow." He recommended that Mother "[c]ontinue with individual psychotherapy" and "address issues related to her own past sexual victimization" in order to confront the continued "secrecy within the family." He further recommended dialectical behavioral therapy ("DBT") to assist Mother in handling her intense emotions as she worked through her issues. Mother subsequently participated in DBT on a weekly basis as recommended. Despite several months of regular therapy sessions, Mother continued to engage in behaviors that the family reunification team believed "sabotage[d] the reunification" by "totally disregarding the rules to keep her [children] safe." To address the ongoing concerns, ADES initiated Eye Movement Desensitization Reprocessing ("EMDR") therapy for Mother with the hope of providing a "rapid, safe and effective" treatment to help Mother address her ongoing emotional issues. ADES provided this

additional service in order to "provide [Mother] with as many services as possible to give her one last chance" in an attempt to "preserve this case and continue with family reunification." Mother initially attended her EMDR sessions and appeared to benefiting from the treatment, but then unilaterally stopped participating in this treatment because she stated she was "under [] so much stress." She also claimed there was no reason to "even try to get [her] kids back" since the case plan was going to be changed from reunification to severance. We agree with the juvenile court's finding that Mother's explanation for terminating the treatment offered to her by ADES was inadequate.

¶19 Despite these services directed at helping Mother with her emotions and the affects of her own sexual abuse in her relationships, Mother was not able to remedy the circumstances that caused the children to be in ADES' care. Mother does not dispute that these services were provided or that she participated in them. Although Mother suggests that she did not have the opportunity to address her own past sexual abuse directly until late in the case plan, the record reflects that services were provided but Mother "lack[ed] insight into the issue of sexual abuse," making the additional therapy options, including DBT and EMDR, necessary.

¶20 The juvenile court found that ADES made "reasonable and diligent efforts to provide appropriate reunification

services with respect to delivery of services to Mother.” We find reasonable evidence in the record supporting the court’s finding.

B. Fifteen Months’ Out-of-Home Placement

¶121 Mother does not contest that the children have been in out-of-home placement for longer than fifteen months. Rather, she contests the court’s findings that she has been unable to remedy the circumstances causing the children’s out-of-home placement and that she will not be able to properly care for them in the near future.

¶122 We consider “those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children.” *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotes and citation omitted). To avoid severance, the parent must make more than trivial or de minimus efforts at remediation. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994).

¶123 The children were removed from Mother’s care because of domestic violence and because Mother was unable to protect the children from sexual and physical abuse. Although Mother made some progress over the course of the case plan, four years

after the children were removed these concerns had not been resolved.

¶124 At the time ADES moved for termination of Mother's parental rights, Mother had a new boyfriend. Although she had agreed she would not involve men in family settings until there had been therapeutic work done to introduce the children to Mother's male friends, Mother appeared unannounced with her boyfriend at a visit with the children. Mother defended her action by asserting that the boyfriend would not harm the children, but she was unable to understand the need her children had to gradually become acquainted with him.

¶125 Mother also admitted that she had previously allowed male friends to visit her house in disregard of an agreed upon safety rule that prohibited male guests to be in Mother's house while the children were visiting. This was especially inappropriate in light of the fact that "[h]aving a safe home without the threat of a man has been something very important for [one of her children]" who had been sexually abused in the past.

¶126 Moreover, during the pendency of the termination proceedings, Mother was involved in several instances of domestic violence. Three months pregnant at the time, Mother reported to police that her boyfriend had punched her in the stomach. She later claimed that her report was fabricated.

Mother was later taken to the emergency room for reportedly taking too much medication to help her sleep. At that time, she reported to the crisis worker that her boyfriend was abusive to her. She later denied making any such allegations. Just days later, Mother again called the police to report that following an argument with her boyfriend, he had thrown a screwdriver at her and had broken her cell phone. Mother again recanted the next day. Finally, in September, Mother reported to police that her boyfriend had "tried to put a knife on her neck." Despite these incidents, Mother continued to express her desire to remain in a relationship with her boyfriend while maintaining that she would be able to protect her children from any harm.

¶127 After considering the evidence presented by the parties, the juvenile court determined in part as follows:

Mother is not capable of exercising proper and effective parental control over her children because she cannot protect those children, and Mother has not been able to do so for at least [fifteen] months. The Court would not reunify Mother with her children given Mother's current living arrangement. The Court finds by clear and convincing evidence that she has not been able to remedy her long term history of failure to protect her children from potential abuse, and the Court concludes that this condition will continue for the foreseeable future.

The record supports the juvenile court's decision to terminate Mother's parental rights under § 8-533(B)(8)(c) (fifteen months' out-of-home placement).

C. Best Interests

¶128 To establish that severance of a parent's rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998) (citation omitted). In making the determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶129 Here, the same MCT members believed Mother capable of providing "minimally adequate" parenting; others did not agree. In the end, the team considered Mother's current behavioral patterns, Mother's pattern of placing her own needs above those of her children, engaging in emotional and angry expression of her thoughts and feelings, and inability to meet the children's behavioral needs on a full time basis. The team also noted that two of Mother's "children [were] diagnosed with bipolar disorder and [] they need maximum parenting ability, not minimally adequate parenting." Finally, the team determined that "[a]fter careful consideration . . . of all of the factors in this case as well as the multiple opinions shared by various parties, it

[is] the team's conclusion that the children's best interest[s] would be met by a case plan of severance and adoption."

¶30 The juvenile court also gave careful consideration to the children's best interests. The court found that all three of the children were "emotionally fragile" and acknowledged that the question of whether severance of Mother's rights would be in the children's best interests was a "difficult question." The court recognized that the children "adamantly oppose[d] severance" but was persuaded that the "children need a 'clean break from their [M]other' to form new attachments." The court concluded that it did "not believe Mother [could] provide safety, security or appropriate boundaries for the [children]" and believed the children "would suffer a detriment by the continuation of the relationship with Mother," thus finding that "severance of Mother's parental rights would be in the [children's] best interests."

¶31 Based on the record before us, we conclude that the juvenile court did not err by finding that severance and adoption was "unfortunately, a better option than keeping the [children] on the emotional roller coaster created by their mother's ongoing inability to demonstrate a behavioral change necessary to protect and parent [them]" and thus would be in their best interests.

CONCLUSION

¶132 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights to the children.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

SHELDON H. WEISBERG, Judge