

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/24/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JENNICA H.,) 1 CA-JV 10-0003
)
Appellant,) DEPARTMENT C
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, J.W., K.W.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
Appellees.) ARCAP 28)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD507183

The Honorable David K. Udall, Judge

AFFIRMED

Robert D. Rosanelli, Attorney
Attorney for Appellant

Phoenix

Terry Goddard, Arizona Attorney General
by Amanda Holguin, Assistant Attorney General
Attorneys for Appellees

Mesa

B A R K E R, Judge

¶1 Appellant Jennica H. ("Mother") appeals the juvenile court's order terminating her parental rights to Son and Daughter. Finding no error, we affirm.

Facts and Procedural History

¶2 On March 21, 2008, Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("ADES"), received a dependency petition on behalf of Son, age two, and Daughter, age five, alleging "Mother abandons the children with their grandmother while she goes on drug binges" and does not care for the children when she is home.¹ An investigation by CPS revealed that Son and Daughter had been living in the home of their maternal grandmother since 2005. In late 2007, Mother left Son and Daughter with the maternal grandmother on an impulse while Mother went to California. According to the maternal grandmother, Mother "comes and goes sporadically, only to eat and sleep" and "does not provide [] care or protection for the children." Mother had a history of drug abuse and began using when she was seventeen years old.

¶3 The children were taken into CPS custody on March 24, 2008. The maternal grandmother did not know where Mother was

¹ The dependency petition also alleged the children were dependent as to Father. The children were found dependent as to Father, and his parental rights were subsequently severed by the juvenile court. Father's parental rights are not at issue in this appeal.

living, and CPS could not initially locate Mother. Mother, however, was served and aware of the dependency hearing. After Mother failed to appear at the dependency hearing on June 4, 2008, the juvenile court found Son and Daughter dependent as to Mother. The case plan was set as family reunification, and Mother was offered services and visitation with the children. Mother failed to comply with the services required to reunite with Son and Daughter. Mother attended three scheduled visitations with the children in July 2008 and made an unauthorized visit with the children in September 2008 but then failed to visit the children again.

¶4 On August 7, 2009, ADES filed a petition to terminate Mother's parental rights to Son and Daughter. Following a one-day trial, the juvenile court severed Mother's parental rights because she (1) abandoned Son and Daughter pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2009) and (2) failed to remedy the circumstances causing Son's and Daughter's out-of-home placement for nine months or longer pursuant to A.R.S. § 8-533(B)(8)(a) and for fifteen months or longer pursuant to A.R.S. § 8-533(B)(8)(c). The juvenile court found severance was in Son's and Daughter's best interests. Mother timely filed a notice of appeal.

¶5 We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21 (2003), and 12-2101(B) (2003).

Discussion

¶16 We view the facts and all reasonable inferences in the light most favorable to upholding the juvenile court's order. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002). Severance of parental rights is proper when (1) clear and convincing evidence proves a statutory ground for termination and (2) a preponderance of the evidence shows severance is in the best interests of the children. *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 449, ¶ 12, 153 P.3d 1074, 1078 (App. 2007). We review the juvenile court's order for an abuse of discretion and reverse when no reasonable evidence supports the court's factual findings. *Id.* at 451, ¶ 19, 153 P.3d at 1080; see also *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 3, 210 P.3d 1263, 1264 (App. 2009).

¶17 Mother does not challenge the best interests determination. Instead, Mother argues the juvenile court abused its discretion because insufficient evidence supports the court's finding that Mother abandoned Son and Daughter. In particular, Mother contends she provided care for her children by leaving them in the care of their maternal grandmother. Mother further asserts that she "dealt with" her past drug abuse and emotional problems that caused her poor relationship with Son and Daughter and that these "conditions do not prevent

[Mother] from having a normal parental relationship with her children now or in the future." We disagree and find substantial evidence supports the juvenile court's finding of abandonment.

¶18 A juvenile court can terminate the parent-child relationship when "the parent has abandoned the child." A.R.S. § 8-533(B)(1). "Abandonment" is defined as:

[T]he failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

Id. § 8-531(1) (2007). "What constitutes reasonable support, regular contact, and normal supervision varies from case to case." *Pima County Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). The juvenile court determines abandonment by reviewing the parent's conduct and not the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18, 995 P.2d 682, 685-86 (2000).

¶19 Mother left Son and Daughter with the maternal grandmother in 2007 on "an impulse" so she could go to California for four months. Due to medical and financial

issues, the maternal grandmother could no longer care for the children and placed them in the care of close friends, who subsequently filed the dependency petition on behalf of Son and Daughter. Two weeks after the children came into CPS custody in March 2008, Mother quit her job and began using methamphetamine. Mother first started using methamphetamine when she was seventeen years old and admitted to using methamphetamine throughout the CPS case until she checked herself into a drug treatment program in October 2009. At trial, Mother acknowledged that "[she] never wanted to lose [her] kids, but [she] had an addiction [she] had to feed." Despite conducting two parent locate searches, the CPS case manager could not locate Mother, and her whereabouts were unknown for the entirety of the case until Mother started the drug treatment program. Mother admitted that she lived on the streets from October 2008 until entering the drug treatment program in October 2009. Mother never provided CPS with proof of employment.

¶10 Although Mother participated in supervised visits in July 2008 and one unauthorized visit in September 2008, Mother did not visit Son and Daughter again. Mother's visitation program referral was closed after Mother failed to attend three supervised visitations scheduled in October 2008. At the time of trial, Mother had not seen or communicated with the children in fourteen months. Since September 2008, Mother made no effort

to support or communicate with Son and Daughter; Mother never sent gifts, letters, or cards to the children; and Mother never telephoned them.

¶11 Mother places emphasis on her success in the drug treatment program and indicates she can now have a normal parental relationship with Son and Daughter. At trial, Mother had been clean of drugs and alcohol for eight weeks and intended to complete the drug treatment program in August 2010. Although Mother's success is encouraging, this does not excuse her fourteen-month failure to have regular contact with Son and Daughter. In the two months Mother was clean, she made no effort to contact Son and Daughter. On this record, the juvenile court did not abuse its discretion when it severed Mother's parental rights for abandoning Son and Daughter. We need not address Mother's additional arguments that severance was inappropriate pursuant to A.R.S. § 8-533(B)(8)(a), (c) because proof of only one statutory ground for severance is needed to uphold the juvenile court's order. A.R.S. § 8-533(B) (stating termination of the parent-child relationship is proper when sufficient evidence proves "any one of the" statutory grounds for termination).

Conclusion

¶12 We do not take lightly our role in affirming the permanent separation of Mother from her children. *In re*

Maricopa County Juv. Action No. JS-501568, 177 Ariz. 571, 579-80 869 P.2d 1224, 1232-33 (App. 1994). However, we acknowledge the "destructive toll inflicted on children, families, and our society by those who abuse drugs." *Id.* at 580, 869 P.2d at 1233. Deference to the rights of parents can be superseded by the substantial interest in protecting innocent children. *Id.* Individuals who are unwilling or unable, due to drug addiction, to perform their parental responsibilities may lose their parental rights. *Id.* For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

DONN KESSLER, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge