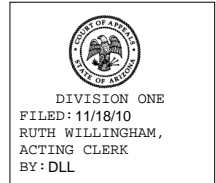


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



NICOLE P.,) 1 CA-JV 10-0032
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, ESPERANZA M., and) ARCAP 28)
ESTRELLA P.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD507082

The Honorable Raymond P. Lee, Judge

AFFIRMED

Sandra L. Massetto
Attorney for Appellant

Phoenix

Terry Goddard, Attorney General
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

N O R R I S, Judge

¶1 Nicole P. ("Mother") timely appeals the juvenile court's order terminating her parental relationship with Esperanza M. and Estrella P. (collectively, "daughters"). On appeal, Mother argues the evidence was insufficient to show,

first, Mother abandoned daughters; second, Mother was unable to remedy the situation causing daughters to be in out-of-home placement for 15 months or longer; and third, termination was in daughters' best interests. Because substantial evidence supported the court's factual findings, we affirm the court's termination order.

FACTS AND PROCEDURAL BACKGROUND

¶2 Child Protective Services ("CPS") began investigating Mother after police arrested Esperanza's father for murder in November 2004. At that time, Flor B. ("Grandmother") obtained custody of Esperanza, who was born in May 2004. In 2005, Mother gave Grandmother power of attorney over Esperanza and later consented to her guardianship of Esperanza. In May 2006, while Esperanza was living with Grandmother, Mother gave birth to Estrella.

¶3 In January 2007, the court granted Mother's motion to revoke the guardianship and placed Esperanza in Mother's custody. Several months later, however, the court granted emergency custody of daughters to Grandmother in Arizona because Mother had moved to Wisconsin with daughters to resolve a past criminal matter.¹ Mother did not appeal this order.

¹At the time of the termination hearing, Mother had failed to resolve her criminal matter -- she is on probation in Wisconsin until December 2010.

¶14 Later that year, a guardian ad litem ("GAL") for daughters petitioned the court for dependency, alleging Mother was unable or unwilling to parent daughters.² At a preliminary protective hearing, the juvenile court adjudicated daughters dependent and committed them to Arizona Department of Economic Security ("ADES") care.³ Since July 2007, daughters have lived with Grandmother in Arizona, and Mother has remained in Wisconsin, visiting daughters only three times and failing to maintain consistent contact with them.

¶15 After a trial, the juvenile court terminated Mother's parental rights, finding by clear and convincing evidence two statutory grounds for terminating parental rights -- first, abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2009) and, second, out-of-home placement for 15 months or longer under A.R.S. § 8-533(B)(8)(c). The court also found by a preponderance of the evidence that terminating Mother's parental rights was in daughters' best interests.

²Specifically, the GAL alleged Mother was unable to provide housing and basic needs for daughters, had unresolved criminal charges in Arizona and Wisconsin, and had possible mental health and drug abuse issues.

³The court also recommended Mother participate in services. Mother partially complied by submitting to a bonding assessment, psychological evaluation, urinalysis testing, and some individual and family counseling, but she failed to attend parenting classes tailored to providing for daughters' special needs, among other suggested services.

DISCUSSION

I. Abandonment Pursuant to A.R.S. § 8-533(B)(1)

¶16 Mother contends the evidence was insufficient to show Mother abandoned daughters. We disagree. We find the evidence supports the juvenile court's finding Mother abandoned daughters.⁴

¶17 The juvenile court may terminate the parent-child relationship upon finding clear and convincing evidence demonstrating a statutory ground for termination and a preponderance of the evidence demonstrating termination is in the child's best interests. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010); see A.R.S. § 8-533(B). Under A.R.S. § 8-533(B)(1), the court may terminate the parent-child relationship if the parent abandoned the child,⁵ as measured by the parent's conduct.

⁴We will not disturb the juvenile court's decision to terminate parental rights unless the court abused its discretion or its findings were clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Maricopa Cnty. Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996)).

⁵Under A.R.S. § 8-531(1) (2007), 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

Michael J. v. Ariz. Dep't of Econ. Sec., 196 Ariz. 246, 249, ¶ 18, 995 P.2d 682, 685 (2000).

¶18 Mother visited daughters only three times after July 2007⁶ and failed to call consistently⁷ or send cards, gifts, or financial support regularly to daughters.⁸ Furthermore, although Mother argues her financial situation precluded her from visiting Arizona, the CPS case manager testified CPS would arrange visits for Mother if she requested, and, nevertheless, Mother could have maintained contact with daughters through other means. Moreover, Mother could have transferred her probation to Arizona thus facilitating contact with daughters, but Mother refused to consider this option because she would have to "start all over again." Mother further argues CPS told Grandmother she "was not required to allow Mother to speak to [daughters] by telephone." Although Grandmother testified CPS

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.

⁶Mother paid for one visit, and CPS paid for another visit.

⁷Mother would call every week for one month but then would fail to call for one to two months at a time.

⁸Over the three years daughters lived with Grandmother, Mother sent only two Christmas and two birthday cards to daughters, sent photographs only twice, brought small gifts during one visit, and failed to provide any financial support.

told her she did not have to "force" daughters to speak to Mother, she testified she did not prevent Mother from speaking to daughters at any time.

¶19 We view the evidence in the light most favorable to affirming the judgment, *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009), and as the trier of fact in a termination proceeding, the juvenile court "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. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). The record supports the court's finding Mother abandoned daughters because Mother consented to Grandmother's guardianship of Esperanza from 2005 to the end of 2006, did not appeal the 2007 emergency custody award to Grandmother, had only sporadic contact with daughters since July 2007, failed to maintain a normal parent-child relationship with daughters, and failed to take steps to strengthen emotional bonds with daughters. Thus, we hold the juvenile court did not abuse its discretion when it found Mother had abandoned daughters.⁹

⁹We need not address Mother's argument challenging the sufficiency of the evidence of the court's other reason for terminating Mother's parental rights -- continuous, court-ordered, out-of-home placement for at least 15 months under A.R.S. § 8-533(B)(8)(c). See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000) (only

II. Best Interests

¶10 Mother further contends the evidence was insufficient to show termination was in daughters' best interests. We disagree. In addition to finding a statutory ground for termination, the juvenile court must determine by a preponderance of the evidence that terminating the parent-child relationship is in the child's best interests. See A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). To prove termination is in the child's best interests, the petitioner must present credible evidence showing the child "would benefit from a severance or be harmed by the continuation of the relationship." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004) (quoting *Maricopa Cnty. Juv. Action No. JS-500274*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994)) (emphasis omitted). Ultimately, however, "[w]hether [termination] is in the child's best interests is a question of fact for the juvenile court to determine." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

¶11 Mother argues it is in daughters' best interests for them to be returned to her custody. In support, Mother notes the GAL reported seeing affection and a bond between Mother and

need to find one statutory basis to affirm the juvenile court's termination of parental rights).

daughters, and the GAL expressed concerns about the breakup of the parental relationship. The juvenile court rejected this argument, noting Esperanza's "somewhat angry" interaction with Mother during the bonding assessment and an overall lack of attachment between Mother and daughters because Mother had failed to maintain a normal relationship with them.¹⁰

¶12 In its best interests analysis, the court considered the availability of an appropriate adoptive placement meeting daughters' needs. See *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1292 (App. 1998). Here, daughters reside with Grandmother, with whom they have a significant relationship and healthy attachment and who is committed to adopting them.¹¹ The court found terminating Mother's parental rights would benefit daughters because Grandmother can adopt them and give them a stable home. Likewise, not terminating Mother's rights would deprive daughters of permanency and a normal life. Thus, the juvenile

¹⁰We will accept the juvenile court's factual findings unless "no reasonable evidence supports those findings." *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.

¹¹The court specifically noted each daughter had significant special needs -- Esperanza suffers from serious psychological problems and comprehensive neurological and behavioral deficits; Estrella is 25-50% delayed in perception, motor skills, cognition, and emotional development, and 50% delayed in communication -- and, accordingly, the court found placement with Grandmother "the least restrictive placement consistent with the needs of the children."

court did not abuse its discretion when it found terminating Mother's parental rights was in daughters' best interests.

CONCLUSION

¶13 For the foregoing reasons, we affirm the juvenile court's termination order.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICK IRVINE, Judge