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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: 09/23/2010
RUTH WILLINGHAM,
ACTING CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LISA W.,) No. 1 CA-JV 10-0094
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, LANDON W.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. V1300JD820080018

The Honorable Robert M. Brutinel, Judge

AFFIRMED

DeRienzo & Williams, P.L.L.C.
By Craig Williams
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Valley

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By Jane A. Butler, Assistant Attorney General
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Economic Security

Tucson

D O W N I E, Judge

¶1 Lisa W. ("Mother") appeals from the juvenile court's order terminating her parental rights. For the following reasons, we affirm.¹

FACTS AND PROCEDURAL HISTORY²

¶2 Landon was born in June 2005. Between his birth and August 21, 2008, when he was taken into care, five separate sources called Child Protective Services ("CPS") to report concerns about the child's safety and well-being. The case manager estimated there were ten referrals to CPS, plus a court ordered investigation. The concerns focused on the parents' substance abuse and child neglect, but also involved conditions in the home and lack of food. Landon was seen eating cigarette butts off the floor while his parents sat dazed on the couch. The parents were reportedly abusing alcohol and drugs and engaging in domestic violence.

¶3 After a domestic violence incident led to Mother's hospitalization, Landon was placed with P.F. and A.F. in March

¹ The court also terminated the rights of the biological father, who is not a party to this appeal.

² We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, and we defer to the fact-finder's resolution of any conflicts in the evidence. See *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007).

2008. They are Landon's half brother and his wife. The parents gave P.F. and A.F. a power of attorney in April 2008.

¶14 Arizona Department of Economic Security ("ADES") filed a dependency petition and became Landon's legal custodian. Mother had already been offered various services, which we discuss *infra*. The juvenile court found Landon dependent and ordered ADES to provide reunification services.

¶15 In July 2009, ADES moved to terminate Mother's rights based on out-of-home placement for nine months or longer under Arizona Revised Statutes ("A.R.S.") Section 8-533(B)(8)(a). ADES later amended its motion, adding the ground of out-of-home placement for fifteen months or longer under A.R.S. § 8-533(B)(8)(c).

¶16 In January 2010, the juvenile court held a severance hearing. Psychiatrist James Thal testified that he evaluated Mother to assess her psychological status and ability to parent. Despite improvement in the months preceding the hearing, Dr. Thal recommended severance and adoption because Landon had been in care for such a lengthy period of time and because Mother was just starting to rebuild her life. In his opinion, she could not realistically parent in the near future. Dr. Thal testified that Mother had shown commitment to treatment programs in the past, but had relapsed.

¶17 The ADES case manager testified that Mother's history of relapse and substance abuse,³ plus the need for sustained sobriety and stability outside a "structured 24/7 supervised environment" were barriers to reunification. Mother had twenty-six dirty UAs, twenty-five missed UAs, and seven diluted UAs while the case was pending. She did not have a job at the time of hearing and had no income other than social security, but did have stable housing.⁴

¶18 The case manager testified that adoption was in Landon's best interests. He had been in care for over sixteen months, and his current placement was the only safe and stable home he had ever known. All of Landon's psychological, social, financial, and emotional needs were being met. P.F. and A.F. have bonded with Landon, and they wish to adopt him. Landon requires a very structured environment, with set rules and stability because he suffers from fetal alcohol syndrome.

¶19 During the termination hearing, ADES moved to amend its severance motion to conform to the evidence by alleging neglect as a basis for termination under § 8-533(B)(2). Mother objected. In its under advisement ruling, the juvenile court

³ Mother admitted being an alcoholic for the past twenty-six years and having a substance abuse addiction for twenty years.

⁴ Mother lived in a two bedroom apartment with her brother.

granted ADES's motion to amend and terminated Mother's rights based on neglect.

¶10 A signed order was filed on April 21, 2010. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (A) (2007) and 12-120.21 (A) (2003).

DISCUSSION

¶11 To justify termination of parental rights, the juvenile court must find, by clear and convincing evidence, at least one of the statutory grounds set forth in A.R.S. § 8-533. A.R.S. § 8-537(B) (2007); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also consider the best interests of the children. A.R.S. § 8-533(B) (Supp. 2009); *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685. "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 make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). "[W]e will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Id.*

¶12 Under A.R.S. § 8-533(B)(2), if there is clear and convincing evidence that Mother neglected Landon, the statutory

basis for severance is satisfied.⁵ "Neglect" is defined as "[t]he inability or unwillingness of a parent . . . to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(22)(a) (Supp. 2009).

¶13 There was clear and convincing evidence of neglect. When Landon was placed with P.F. and A.F., he was underweight, uncoordinated, and lacked proper vocal skills. He required extensive dental surgery, including eight root canals and ten crowns, due to severe medical neglect. Landon was left with only five of his real teeth and will have continuous and long-term dental damage from the lack of proper hygiene. Mother admitted knowing of Landon's dental problems and failing to take adequate steps to address them. Additionally, Landon was frequently dirty, hungry, and unsupervised while in Mother's care.

¶14 Mother contends that ADES failed to make diligent efforts to preserve the relationship due to her past and its skepticism about the sincerity of her sobriety, citing *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999) to support her claim. Even

⁵ Mother has not challenged the ruling granting ADES's motion to amend to allege neglect as a basis for severance.

assuming *arguendo* that reunification services were required to sever Mother's rights based on neglect, the record establishes compliance by the agency.

¶15 In *Mary Ellen C.*, ADES offered "no significant reunification services for almost a year" after removing the child and waited more than a year before referring a mother with serious mental illness for evaluation. 193 Ariz. at 192, ¶ 35, 971 P.2d at 1053. The agency delayed another three months after an evaluation suggested the mother required intensive mental health services and "never followed up sufficiently" to secure progress records before pursuing a severance. *Id.*

¶16 In this case, ADES offered Mother extensive services even before filing a dependency petition, including urinalysis testing, substance abuse counseling/treatment, domestic violence classes, parenting classes, and therapy. During the next year, ADES provided Mother with a psychological evaluation, individual therapy, a parent aide, parenting and nutrition classes, transportation, and supervised visits. She also received inpatient treatment for twenty-eight days and was discharged to a residential treatment center, which she left against medical advice after thirteen days. Mother was not compliant with the case plan, canceled visits with Landon, arrived intoxicated, was unable to complete programs, and continued to relapse. Although Mother demonstrated sincere efforts at maintaining sobriety just

prior to the termination hearing, those efforts do not prevent a severance based on neglect or justify prolonging Landon's dependency status. See, e.g., *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576-77, 869 P.2d 1224, 1229-30 (App. 1994) (termination proper despite parent's belated progress before severance hearing).

¶17 Before terminating parental rights, the juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interests. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). To support such a finding, the petitioner must prove that the child will affirmatively benefit from the termination. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990). This means that "a determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Id.* at 5, 804 P.2d at 734 (emphasis omitted). The best interests requirement may be met if the petitioner proves that a current adoptive plan exists for the child. *Id.* at 6, 804 P.2d at 735.

¶18 Reasonable evidence supports the finding that termination was in Landon's best interests. ADES established that P.F. and A.F. were providing a stable home for Landon, were meeting all of his needs, and wished to adopt him. See *Ariz.*

