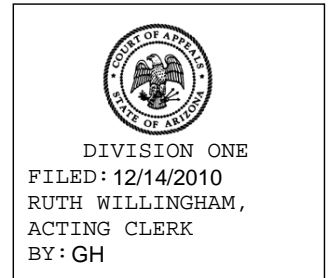


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



FELICIA B., EZEKIEL B., SOLOMON)
B., APRIL B.) No. 1 CA-JV 10-0167
)
Appellants,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, JUANITA B.,) 103(G) Ariz.R.P. Juv. Ct.;
) Rule 28 ARCAP)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD17019

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Robert D. Rosanelli Phoenix
Attorney for Appellants

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

Gates Law Firm, L.L.C. Phoenix
By S. Marie Gates
Attorneys for Juanita B.

G E M M I L L, Judge

¶1 Felicia B., Ezekiel B., Solomon B., and April B. (collectively "the children") appeal the termination of their mother's parental rights. For the following reasons, we affirm.

BACKGROUND

¶2 Felicia, born in 1997, Ezekiel, born in 1998, Solomon, born in 1999, and April, born in 2000, are the biological children of Juanita B. ("Mother") and Steven B. ("Father").^{1,2}

¶3 On July 24, 2008, the Arizona Department of Economic Services ("ADES") filed a dependency petition, alleging that Mother was unable to parent due to physical abuse. The petition alleged that Rebekah reported receiving "whoopins" with a spoon from Mother. There had been twelve Child Protective Services ("CPS") referrals, three of which were substantiated for abuse and neglect. The petition also alleged that Mother was unable to parent due to domestic violence and that she left her children in the care of her roommate or a fourteen-year-old because she worked twelve-hour days. On July 25, the court ordered that all seven of the children be made temporary wards of the court. The court further ordered that Ezekiel, Solomon,

¹ Mother and Father are also the biological parents of three additional children, Rebekah B., Shaun B., and Benjamin B. These children, however, are not parties to this appeal.

² Father's rights to all children were terminated by order of the trial court on March 5, 2010. This court recently upheld the trial court's termination of Father's parental rights. See *Steven B. v. Ariz. Dep't. of Econ. Sec.*, 1 CA-JV 10-0066 (Ariz. App. Oct. 14, 2010) (mem. decision).

and Rebekah be placed in the physical custody of ADES and ordered Felicia, April, Shaun, and Benjamin be placed in the physical custody of Mother. Mother was offered parent aide services, parenting classes, counseling, and a psychological evaluation. On July 31, the court held a temporary custody hearing and ordered that all seven children continue to be temporary wards of the court, committed to the care, custody, and control of ADES.

¶4 In August 2008, ADES filed a motion for change of physical custody of Felicia, April, Shaun, and Benjamin. Benjamin and Shaun, aged three-years-old at the time, had been found in the middle of the street, having been left in the care of their eleven-year-old sister, Felicia. After a neighbor called the police, the police found Felicia asleep inside the family residence. The court ordered that Felicia, April, Benjamin, and Shaun be placed in the physical custody of ADES.

¶5 In August 2009, Benjamin and Shaun were returned to Mother's physical custody. In September 2009, Felicia, April, and Rebekah also were returned to Mother's physical custody.

¶6 In February 2010, CPS received a hotline report that Mother had physically abused Rebekah. Upon investigation, Rebekah reported that Mother had also physically abused two of her other children with a belt. Mother was arrested and charged with three counts of child abuse, class two felonies. The court

again ordered Felicia, Rebekah, Benjamin, and Shaun be placed in the physical custody of ADES.

¶17 At the initial severance hearing in March 2010, Mother notified the court that she no longer wished to contest the severance. The court found that Mother had made a knowing, voluntary, and intelligent waiver of her right to contest the termination of her parental rights.

¶18 During the severance hearing, Sandi Geer, a social worker with CPS, testified that she had visited Mother while Mother was incarcerated. During the visit, Mother "made it very clear to [Geer] that she was done parenting these children, and she said that repeatedly." Geer further testified that one of the children informed her that while they were in Mother's custody, the older children would place the younger children in front of the television and serve them "whatever was in the cupboard," because Mother "would be sleeping because [she] worked all day[] and was in school." She opined that the older children had been "parentified," which had caused "significant problems" because they were unable to "just be children."

¶19 Following the four-day severance hearing held in April, June, and July 2010, the trial court concluded that DES had made a diligent effort to provide reunification services, and the court noted that both Mother and the children stipulated as such. The court found that ADES had proven, by clear and

convincing evidence, each of the elements required under A.R.S. § 8-533(B)(8)(c) for severance. The court also found, by a preponderance of the evidence, that termination of the parental relationship would be in the best interest of the children. The court noted that

[t]hese children have been subjected to trauma throughout their lives. Both parents physically abused them. . . . They were often left with no one to parent them and developed unhealthy relationships among themselves in an effort to vie for control and power. Then they were removed and have gone from placement to placement.

. . .

If the Court did not terminate mother's rights, the children would be left without the permanency they need. They would not be free for adoption. . . . At least five of the children have caring, involved relatives who are willing to adopt them. The Department is assessing other relatives as possible placement for the other two children. . . . More than anything, these children need permanency. Only with the termination of mother's rights can that be achieved.

¶10 The children timely appealed. See A.R.S. § 8-531(12) (2007); *Pima County Juv. Action No. S-113432*, 178 Ariz. 288, 291, 872 P.2d 1240, 1243 (App. 1993) (holding that a child may be the petitioner in an action to sever the rights of that child's parents under A.R.S. § 8-531).

DISCUSSION

¶11 An order terminating parental rights must be supported by clear and convincing evidence showing at least one statutory ground for severance and by a preponderance of the evidence indicating that severance is in the child's best interest. A.R.S. § 8-533(B) (Supp. 2009); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We do not reweigh the evidence on review of the juvenile court's findings, and we view the facts in a light most favorable to affirming the court's order. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994); *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002). In addition, "[w]e 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).

¶12 The children argue that the trial court erred in finding that termination of their mother's parental rights would be in their best interest.

¶13 The court must make "a finding as to how the child would benefit from a severance or be harmed by the continuation of the [parental] relationship" when considering the children's

best interest. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (emphasis in original) (citations omitted). A current adoptive plan is evidence that a child would benefit from severance. *Id.* at 6, 804 P.2d at 735. Even in the absence of an adoptive plan, however, a best-interest finding may be supported by evidence that severance will free the child from an abusive parent. *Id.* In addition, evidence showing that a child is adoptable supports a finding of termination of the parental relationship. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶14 Regarding placements for the children, Geer testified that the children's paternal grandmother, who resided in Texas, was willing to adopt Felicia and April. The grandmother was very active in the child and family teams, spoke to the children at least once a week, and wrote the children letters. Additionally, the children's great aunt and her husband, who resided in Arizona, had been identified as a potential placement for Solomon and Ezekiel, and Geer opined that both Solomon and Ezekiel were adoptable.

¶15 Geer believed that the termination of Mother's parental rights was in the best interest of the children due to Mother's lack of a willingness to parent the children and Mother's "very limited" parenting skills. Further, Geer

testified that adoption and severance were in the children's best interest because the children would be subjected to physical abuse if they continued to be in the care of Mother. Specifically, Geer believed this was "evidenced by the latest removal of the children when [Mother] beat . . . three of the children with a belt."

¶16 The record contains sufficient evidence to support the court's finding that severance is in the children's best interest. Accordingly, we find no abuse of discretion by the court in terminating Mother's parental rights.

CONCLUSION

¶17 We affirm the trial court's order terminating Mother's parental rights regarding the children.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSON, Presiding Judge

_____/s/_____
MICHAEL J. BROWN, Judge