

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



DIVISION ONE
FILED: 02/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

REBEKAH A. ,) 1 CA-JV 11-0121
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, BRIAH W. , B'LIYAH A. ,) ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JS 506700

The Honorable Raymond P. Lee, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee

Lincoln Green Jr. Phoenix
Attorney for Appellant

N O R R I S, Judge

¶1 Rebekah A. ("Mother") timely appeals the juvenile court's order terminating her parental rights with her daughters, B.W. and B.A. Mother argues the evidence failed to support the juvenile court's factual findings Mother willfully

abused B.W. or failed to protect her from willful abuse under Arizona Revised Statutes ("A.R.S") section 8-533(B)(2) (2008), B.A. would be at risk for the same abuse if left in Mother's care, and termination would be in the best interests of both children.¹ Because the court's findings were supported by substantial evidence, we affirm its termination order.

FACTS AND PROCEDURAL BACKGROUND

¶2 At approximately one o'clock in the afternoon on January 19, 2010, Mother went to work, leaving her daughter, B.W. -- then age four -- in the care of her boyfriend, C.B., who lived with the family at the time. As C.B. later admitted in a police interview, while Mother was at work, he held B.W. down in a bath of scalding water and hit her on the arm with his belt. B.W. sustained second- and third-degree burns to 26% of her body -- injuries that required over 20 surgeries and will continue to require surgery in the future. Mother returned from work approximately two hours later. At trial, Mother insisted she did not see B.W.'s injuries until five o'clock the next morning and immediately rushed her to the hospital. Doctors who treated B.W. testified, however, that it would be "hard to fathom that these [burns] weren't noticeable," because they would have been

¹Mother also argues the evidence did not support the juvenile court's finding she had neglected the children. The court terminated Mother's parental rights based on abuse, not neglect.

very painful and filled with "a significant amount of fluid." Although the downstairs neighbor told police she had not heard anything that evening, one neighbor reported she heard the child screaming through the night. After examining B.W., the hospital contacted the Arizona Department of Economic Security ("ADES"), noting her injuries were "very suspicious for abuse." When B.W. was released from the hospital approximately one month later, ADES allowed the child's maternal grandmother to have custody of B.W.

¶3 Mother's second child, B.A., was born in April 2010, and when an ADES case manager could not make contact with Mother, an ADES social worker visited the grandmother's house and found Mother there -- a violation of the court's previous order that the grandmother not allow any unsupervised contact between Mother and B.W. or allow Mother to stay with them. On April 27, 2010, ADES removed B.W. from her grandmother's custody, and removed B.A. from Mother's custody the following day. As described in more detail below, the court terminated Mother's parental rights to B.W. for willfully abusing or failing to protect her, and to B.A. because of the risk of future abuse.

DISCUSSION

¶4 We will not disturb the juvenile court's decision to terminate parental rights "absent an abuse of discretion or

unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quotation omitted). The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings . . . [and we] will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Id.* (quotations omitted). We view the facts 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).

¶15 The juvenile court may terminate parental rights when it finds clear and convincing evidence demonstrates a statutory ground for termination, and a preponderance of evidence demonstrates termination is in the best interests of the child. *Raymond F. v. Ariz. Dep't. of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010) (citations omitted). Under A.R.S. § 8-533(B)(2), the court may terminate parental rights if a parent "has neglected or wil[l]fully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child."

¶16 Mother initially argues the juvenile court's finding she had willfully abused or failed to protect B.W. was "clearly erroneous and contrary to the substantial evidence in the record" because Mother had "never witnessed [C.B.] abuse [B.W.]" and "did not know, [or have] reason to know, [he] was abusing or neglecting her daughter prior to his criminal act against [her]." We disagree with Mother's characterization of the evidence. First, Mother testified that approximately one month before C.B. abused B.W., he had abused Mother and she had called the police because she was "scared for [her] life," and, after this incident, she agreed it was "fair to say . . . [she was] aware that [C.B. had] a temper." Second, although disputed by Mother, two ADES case managers testified C.B.'s mother had warned Mother not to leave B.W. alone with C.B., because she had seen him inappropriately discipline B.W. with a belt. Mother also admitted, in an interview with police, she had seen C.B. discipline B.W. with a belt, and warned him not to do so. The case managers further testified Mother had "very poor" judgment in partners, having two relationships "back to back that [were] domestically violent or ha[d] violence issues or criminal issues."

¶17 Third, although Mother argues she "had no way of knowing that [B.W.] was being abused as the child's reactions were not those of an abused child" and doctors testified B.W.

rarely cried, the burn doctor who treated B.W. testified she exhibited "many of the physical and psychological aspects of being abused" and the fact she did not cry in the face of painful burns indicated "she did not have [the] normal pain response that you would expect. Hers was very blunted [as if she had] almost been conditioned . . . not to display any type of pain or discomfort." He further testified this raised the concern B.W. had been beaten with a belt on "enough occasions" that her pain response was "significantly blunted." Thus, substantial evidence supported the juvenile court's findings "Mother knew or should have known that [C.B.] was abusive to her daughter" and that "ADES [had] proven by clear and convincing evidence that Mother willfully abused a child and/or failed to protect a child from willful abuse under A.R.S. § 8-533(B)(2)."

¶18 Substantial evidence also supported the juvenile court's termination of Mother's parental rights to B.A. As this court had held, A.R.S. § 8-533(B)(2) "can mean that parents who abuse or neglect their children, or who permit another person to abuse or neglect their children, can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14, 117 P.3d 795, 798 (App. 2005). Before the court terminates

parental rights on this basis, there must be "a nexus between the abuse or neglect committed on the child who was abused . . . and the risk that such abuse would occur to a different child . . . to whom parental rights [are] being severed." *Id.* at 80 n.3, ¶ 17, 117 P.3d at 799 n.3 (emphasis omitted).

¶19 Here, an ADES case manager testified ADES assessed risk factors of abuse by looking at, among other things, the severity of injuries sustained, the age of the children, the vulnerability of the children, and the parent's ability to protect the children. One case manager testified B.A., as a newborn, would be especially vulnerable, and three case managers testified any child in Mother's care would be at risk of abuse. As one case manager testified, ADES based these opinions on, at least, Mother's failure to protect B.W. despite being warned, the "extent of the incident and [B.W.'s] injuries," and Mother's insistence, in the face of contrary evidence, the incident was an accident -- an insistence ADES interpreted as Mother "defend[ing]" C.B.'s actions. The clinical psychologist who treated B.W. also testified "any child" in Mother's care would be at risk of future harm. Thus, the juvenile court did not abuse its discretion in finding there was "a nexus between the abuse suffered by [B.W.] and the risk of abuse to [both] children . . . if they [were] returned to Mother's care."

¶10 Finally, Mother argues "the [juvenile] court's finding . . . it is within the best interests of the children to have Mother's parental rights severed is clearly erroneous and contrary to the substantial evidence in the record." Again, we disagree. In addition to the evidence described above, including doctors' and case workers' concerns for the children's safety in Mother's care, ADES case managers testified they had found safe and suitable adoptive homes for both children, including a home capable of managing B.W.'s ongoing medical needs. Further, B.W.'s burn doctor testified she "seems a much happier kid in the new surroundings she's in." Finally, the current ADES case manager testified termination was in the children's best interests "as far as their safety, [and] as far as permanency in a safe and stable home where their needs will be met in every sense." Ample evidence, therefore, supported the juvenile court's finding termination was in the children's best interests.

CONCLUSION

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

____/s/_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

____/s/_____
MARGARET H. DOWNIE, Judge

____/s/_____
ANN A. SCOTT TIMMER, Judge