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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/07/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAIME M.,)
) No. 1 CA-JV 11-0177
)
) DEPARTMENT E
)
) Appellant,)
)
) **MEMORANDUM DECISION**
)
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
) ARIZONA DEPARTMENT OF ECONOMIC)
) SECURITY, PATRICK M., DANIEL G.,)
)
) Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD16685

The Honorable Colleen McNally, Judge

AFFIRMED

Sandra L. Massetto
Attorney for Appellant

Phoenix

Thomas C. Horne, Attorney General
By Michael F. Valenzuela, Assistant Attorney General
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Phoenix

H A L L, Judge

¶1 Jaime M. (Mother) appeals the juvenile court's order terminating her parental rights to Patrick M. and Daniel G. (the children).¹

FACTUAL² AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of Patrick and Daniel, born in 2005, and 2007, respectively. On April 23, 2008, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging the children were dependent to Mother because she (1) suffered from untreated schizophrenia, (2) failed to provide proper supervision, and (3) failed to protect them from Father's physical abuse. On April 28, 2008, the juvenile court found the children dependent to Mother. Over the next year, Mother was compliant with ADES' services and, on August 28, 2009, ADES filed a motion to return the children to Mother's custody. On September 14, 2009, the juvenile court granted ADES' motion and ordered that the children be returned to Mother's care.

¹ The children's Father, Enrique G., has also had his parental rights terminated, but is not a party to this appeal.

² We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

¶13 On November 15, 2010, Child Protective Services (CPS) received a report that the children had been found wandering outside. Two weeks after the children were found and returned to Mother's custody, CPS determined that an out-of-home dependency was appropriate because the children were at risk due to Mother's neglect and continuing relationship with Father, who had committed numerous acts of violence against Mother and the children.

¶14 In its dependency petition, ADES alleged that Mother "[was] unable to safely parent her children due to untreated mental illness [schizophrenia]." It further alleged that "Mother [was] unable to safely parent the children" because she was "unwilling" to sever her relationship with Father, "despite his violent behaviors toward Mother and [the] children."

¶15 The juvenile court found the children dependent, made them wards of the juvenile court and committed them to the care, custody and control of ADES. The juvenile court ordered and ADES provided Mother with the following services: parent-aide services, a psychological evaluation, counseling, and visitation.

¶16 On February 28, 2011, ADES filed a motion for termination alleging that (1) the children had previously been cared for in an out-of-home placement pursuant to court order, (2) ADES made diligent efforts to provide appropriate

reunification services, (3) the children were returned to Mother's legal custody, and (4) within eighteen months after the children were returned, pursuant to court order the children were removed and are being cared for in an out-of-home placement, and Mother "is currently unable to discharge parental responsibilities." Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(11) (Supp. 2011). ADES subsequently filed an amended motion for termination that added that Mother is unable to discharge her parental responsibilities because of mental illness and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period. A.R.S. § 8-533(B)(3).

¶17 The juvenile court held a contested severance hearing in August 2011. At the hearing, James Thal, Ph.D., testified that he conducted a psychological evaluation of Mother and diagnosed her with schizophrenia. Despite this diagnosis, Mother informed Dr. Thal that she has no need for medication or therapy. Based on his evaluation, Dr. Thal opined that Mother is inattentive to the children, unaware of their need for supervision, and experiences "difficulty controlling her own anger." Finally, Dr. Thal opined that the children are not "safe" in Mother's care because she "remains involved" with Father and thereby exposes the children to domestic violence. During the evaluation, Mother revealed that Father has

repeatedly assaulted her, conveyed multiple death threats via mail and telephone, and assaulted the children, kicking one in the face.

¶18 During her testimony, Mother acknowledged that Father assaulted her repeatedly, threatened her life on multiple occasions, and committed acts of violence against the children. Nonetheless, she testified that Father is a "close friend" and it is "hard" to "let[] go of him." Indeed, she acknowledged that despite numerous admonishments by her case manager to sever her relationship with Father, she had contact with him the day before the hearing. Mother also revealed that she is pregnant with Father's child.

¶19 The juvenile court found that ADES proved by clear and convincing evidence that Mother's parental rights should be terminated pursuant to A.R.S. § 8-533(B)(11) because the children were previously cared for in an out-of-home placement pursuant to court order, ADES made diligent efforts to provide reunification services, the children were returned to Mother's custody, and within eighteen months of their return, the children were again removed from Mother's care and have remained in an out-of-home placement.³ The juvenile court additionally

³ Mother does not challenge the juvenile court's finding of a statutory basis for termination and we will therefore not address it on appeal.

found that ADES proved by a preponderance of the evidence that termination was in the best interest of the children.

¶10 Mother timely appeals and argues that the record contains insufficient evidence to support the juvenile court's finding that termination of Mother's parental rights is in the children's best interest.

¶11 We have jurisdiction under A.R.S. §§ 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(a).

DISCUSSION

¶12 In order to terminate parental rights, the juvenile court must find, by clear and convincing evidence, a minimum of one of the factors listed in A.R.S. § 8-533(B) and that termination is in the best interest of the children. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). We will affirm the judgment unless the juvenile court abused its discretion by making "factual findings [that] 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) (citations omitted). "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted).

"Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶13 The juvenile 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 child's best interest. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (citations omitted). Evidence that a child is adoptable supports a finding that severance is in the child's best interest. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶14 In support of its best interest finding, the juvenile court found that the children are in a potential adoptive home with their aunt, "she is willing and able to meet all of their needs including their special needs," and it is in their best interest to have a "stable safe permanent home."

¶15 Mother argues that the juvenile court erred by terminating her parental rights because there was insufficient

evidence to support a finding that severance was in the children's best interest. Specifically, Mother contends that the only evidence presented regarding the best interest of the children related to Father. We disagree.

¶16 At the outset of the trial, the juvenile court inquired whether the State would first present evidence relating to Father. The State's attorney confirmed that she would proceed with evidence relating to Father first, but stated that she would not "repeat" the evidence "when we get to Mother's [] trial." The juvenile court responded that it would therefore "consider[] the testimony presented for the whole case." The State's attorney then called the CPS case manager, who testified that the children are in an adoptive placement with their paternal aunt who is providing a stable, safe home and meeting all of their physical, social, educational, medical, psychological, and emotional needs, including their special needs. The case manager further testified that severance would benefit the children because they would no longer be exposed to violence. Contrary, to Mother's claim, this evidence, as clearly explained by the juvenile court, applied to her trial as well as Father's trial and is sufficient to support the juvenile

court's finding that severance was in the children's best interest.⁴

CONCLUSION

¶17 For the foregoing reasons, we affirm the judgment terminating Mother's parental rights to the children.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge

⁴ As noted in the State's appellate brief, the juvenile court provided Mother's attorney with an opportunity to cross-examine the case manager.