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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/22/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SHAUNA T.,) 1 CA-JV 11-0240
)
Appellant,) DEPARTMENT A
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, KIEGAN C.,) ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause Nos. JS 506817, JD 506839 (Consolidated)

The Honorable Raymond P. Lee, Judge (Retired)

AFFIRMED

Thomas C. Horne, Arizona Attorney General Mesa
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee

Robert D. Rosanelli Phoenix
Attorney for Appellant

N O R R I S, Judge

¶1 Shauna T. ("Mother") timely appeals the juvenile court's order terminating her parental rights to Kiegan.¹ On

¹Mother also appeals the juvenile court's order finding Kiegan dependent as to her under Arizona Revised Statutes ("A.R.S.") section 8-201(13)(A) (Supp. 2011). Because the basis

appeal, Mother challenges the sufficiency of the evidence supporting the juvenile court's findings and conclusions. As discussed below, we disagree and affirm the juvenile court's order.

FACTS AND PROCEDURAL BACKGROUND

¶2 On October 13, 2010, Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("ADES"), took Kiegan, who was seven weeks old at the time, into temporary custody. CPS reported to the juvenile court it took Kiegan into custody after discovering courts in California and Arizona had terminated Mother's parental rights to nine other children due to abuse stemming from psychological disorders Mother had been diagnosed with, including factitious disorder by proxy.²

¶3 On October 18, ADES filed a dependency petition asserting Mother's "mental health issues affect[ed] her ability

for the court's termination of Mother's parental rights was the same for finding Kiegan dependent, and because we affirm the juvenile court's termination order, the dependency appeal is moot. And, even if not moot, the evidence presented amply supported the juvenile court's dependency order, which relied on the same evidence as the court's termination order, as discussed below.

²Factitious disorder, as explained by a psychologist during the hearing, "is a disorder whereby somebody falsifies illness . . . either through exaggerating a symptom that they truly have, [or] by simulating an illness. . . . [F]actitious disorder by proxy . . . is when somebody does this to somebody else."

to safely parent." Mother contested the petition, and the juvenile court set the matter for mediation and a contested dependency hearing. On May 18, 2011, ADES petitioned to terminate Mother's rights to Kiegan -- who had been living in foster care since CPS removed him from Mother's home -- based on several statutory grounds, including "abuse" under A.R.S. § 8-533(B)(2) (Supp. 2011).

¶4 In July and August, the juvenile court held a ten-day consolidated hearing on ADES' dependency and termination petitions. During the hearing, as discussed below, ADES presented evidence supporting its allegation Mother's mental illnesses and her prior abuse of other children made it likely she would abuse Kiegan and indeed had already started to abuse him. The juvenile court found Kiegan was dependent as to Mother. The court also concluded ADES had presented clear and convincing evidence supporting termination under several statutory grounds, including A.R.S. § 8-533(B)(2). Specifically, the court found "[t]he evidence presented at trial demonstrates that Mother has abused a child. . . . [I]n April 2010 the juvenile court terminated Mother's parental rights to the Arizona children, in part based on the abuse she had inflicted upon those children and the California children," and there was "a sufficient nexus . . . between the abuse Mother

inflicted upon the Arizona children . . . and the risk of abuse that her abusive behaviors posed to Kiegan.”

DISCUSSION

¶15 On appeal, Mother challenges the juvenile court’s findings that ADES presented sufficient evidence supporting termination of her parental rights. Specifically, Mother asserts ADES did not present sufficient evidence, including evidence of her mental illnesses, establishing she had abused or posed a risk of abuse to Kiegan. Mother also argues ADES did not make diligent reunification efforts. As discussed below, we disagree and affirm the juvenile court’s order.

¶16 We uphold the juvenile court’s termination of 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). Although the juvenile court terminated Mother’s parental rights based on several statutory grounds, “[i]f clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (citations omitted). Thus, we address only the sufficiency of the evidence supporting

the juvenile court's findings on termination of Mother's parental rights under A.R.S. § 8-533(B)(2).

I. Abuse

¶7 Under A.R.S. § 8-533(B)(2), "[e]vidence sufficient to justify the termination of the parent-child relationship shall include . . . [t]hat the parent has neglected or wilfully abused a child." As Mother recognizes, "§ 8-533(B)(2) can mean that parents who 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). In such cases, ADES must establish "a sufficient nexus . . . between the prior abuse and the risk that such abuse would occur to" the child concerned. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285-87, ¶¶ 16-19, 257 P.3d 1162, 1165-67 (App. 2011).

¶8 The juvenile court found ADES had demonstrated by clear and convincing evidence "Mother [had] willfully abused a child or failed to protect a child from willful abuse." Specifically, the court found "ADES ha[d] proven that there [was] a nexus between the prior abuse Mother inflicted upon her older children and the risk of abuse to Kiegan." On appeal, Mother argues "there is no 'nexus' with the prior abuse . . .

[so] there can be no termination of parental rights on that ground." We disagree.

¶9 As the juvenile court noted, in April 2010 a different division of that court (the "2010 court") terminated Mother's parental rights to four children (the "2010 children") after finding "Mother exaggerated and falsified all of the children's medical symptoms and sought unnecessary medical care for them, causing them unwarranted trauma and pain and placing the children at risk of physical and emotional harm, including death." The 2010 court found "Mother's exaggerations and lies about medical symptoms resulted in [a child] undergoing two unnecessary surgeries, both of which involved anesthesia, cutting, and cauterizing, and placed [the child] at risk of death." The record therefore supports the juvenile court's finding "[t]he evidence presented at trial demonstrate[d] that Mother [had] abused a child."

¶10 The record further supports the juvenile court's finding "[t]here [was] ample evidence that Mother continued to engage in similar behavior -- exaggerating and falsifying the child's medical conditions or over-medicalization of the child." ADES presented evidence that, in the seven weeks after Kiegan's birth, Mother sought medical intervention for him seven times, reporting gastrointestinal symptoms for which a pediatrician prescribed antacid medications and special formulas. ADES also

presented evidence that after Kiegan was taken into custody, his foster parents took him to a different pediatrician who discontinued the antacid medications and special formulas without encountering the symptoms reported by Mother. This evidence reasonably supports the juvenile court's finding "[t]hese behaviors [were] consistent with Mother's history of over-medicalizing her children, which is a form of child abuse . . . [and] ADES [had] proven that there [was] a nexus between the prior abuse Mother inflicted upon [the 2010 children] and the risk of abuse to Kiegan."

¶11 In addition, although Mother argues on appeal her "mental status is not such that a child would be at risk in her care," the record supports the juvenile court's finding that her "over-medicalizing" of Kiegan was consistent with her factitious disorder-related abuse of the 2010 children. During the hearing, ADES presented evidence that, in 2001, two mental health professionals in California diagnosed Mother with factitious disorder by proxy. Psychologist Brenda Bursch, Ph.D., again diagnosed Mother with factitious disorder in 2008, and the 2010 court relied on Dr. Bursch's diagnosis in terminating Mother's parental rights to the 2010 children. Although Dr. Bursch testified she had not formally renewed her diagnosis because Mother had "declined to be clinically interviewed by [her]," she explained that, based upon her review

of Kiegan's and Mother's medical records and other records, Mother's "pattern of illness falsification has not been altered."

¶12 Mother emphasizes on appeal she presented testimony from psychiatrist Jack Potts, M.D., that conflicted with ADES' evidence she was suffering from factitious disorder. Dr. Potts performed a psychiatric evaluation of Mother in July 2011, and although he diagnosed her with personality disorder, he testified she did not have factitious disorder and Dr. Bursch's diagnosis "relied on misinterpreted medical records." In its order, the juvenile court noted it was "persuaded that Dr. Bursch has far more extensive expertise in this area of human behavior and pathology than does Dr. Potts. She interacts with medical staff and practitioners on a constant basis regarding this malady and has published and testified extensively in this area." The record reasonably supports the court's characterization of Dr. Bursch, and "[t]he juvenile court, as the trier of fact . . . [was] in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citation omitted). Thus, reasonable evidence supports the juvenile court's finding Mother had willfully abused a child and there was a nexus between the prior abuse and the risk of abuse to Kiegan.

II. Reunification

¶13 Mother further argues the evidence fails to support "the juvenile court's finding that [ADES had] made a diligent effort to provide [her] with appropriate reunification service." We disagree.

¶14 We note first that A.R.S. § 8-533(B)(2) does not require ADES to provide reunification services. Assuming, without deciding, ADES was required to make reasonable efforts to provide Mother with reunification services, the record reflects it did so.

¶15 ADES offered Mother a "therapeutic visitation team" to supervise visits with Kiegan, a "supplemental psychological evaluation with Dr. Bursch," and transportation services. A CPS caseworker testified Mother eventually agreed to participate in therapeutic visitation, but refused to be evaluated by Dr. Bursch because she felt Dr. Bursch was biased against her. Although Mother argues on appeal CPS refused to provide her with counseling, the CPS caseworker testified she did not refuse to offer Mother counseling; rather, she testified ADES and CPS took the position "[t]hat if [Mother] participated in the psychological evaluation with Dr. Bursch . . . [CPS could] receive the recommendation if counseling [was] even needed and, if it [was], what type of specialized counseling she should participate in." The CPS caseworker further explained CPS

insisted on Dr. Bursch evaluating Mother because Dr. Bursch "already knew [Mother's] history . . . [and] had already went through reviewing all of the records and the time that it took to gather those records and gather all that information." Thus, the record reflects ADES "provided [Mother] with the time and opportunity to participate in programs designed to help her become an effective parent," *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), and therefore provided Mother with appropriate services aimed at evaluating and treating Mother's abusive behaviors.

III. Best Interests

¶16 Finally, Mother argues "[t]he record contains insufficient evidence to support the [juvenile] court's finding" termination of her parental rights was in Kiegan's best interests. See *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010) (citation omitted) (juvenile court "need only find by a preponderance of the evidence that severance is in the child's best interest"). We disagree. As Mother points out, to meet its burden, ADES must present sufficient evidence to prove "the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (citations omitted). We review the juvenile court's best interests determination for an

abuse of discretion. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47. The juvenile court found Kiegan would “be harmed by the continuation of the parent-child relationship.” This finding is supported by the evidence, as discussed above. Thus, we hold the juvenile court did not abuse its discretion in finding termination of Mother’s parental rights would be in Kiegan’s best interests.

CONCLUSION

¶17 For the foregoing reasons, we affirm the juvenile court’s termination order.

_____/s/_____
PATRICIA K. NORRIS, Judge

CONCURRING:

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

_____/s/_____
PETER B. SWANN, Judge