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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BIANCA T., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and XAVIER T., Appellees.	2 CA-JV 2011-0147 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19224400

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

Sarah Michèle Martin — Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Claudia Acosta Collings — Tucson
Attorneys for Appellee Arizona Department of Economic Security

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V Á S Q U E Z, Presiding Judge.

¶1 Bianca T., mother of Xavier born in 2006, appeals from the juvenile court's order of December 16, 2011, terminating her parental rights to Xavier based on mental illness, *see* A.R.S. § 8-533(B)(3), and length of time in care, *see* § 8-533(B)(8)(c).[1] On appeal, Bianca challenges the sufficiency of the evidence to sustain either of the grounds for severance or to sustain the court's finding the state made a good faith effort to preserve the family by providing appropriate remedial services. She also asserts that terminating her parental rights was not in Xavier's best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). Bianca gave birth to Xavier in 2006, when she was fourteen years old. In July 2007, Child Protective Services (CPS) received a "hotline" report expressing concerns about the safety of the family home, primarily because Xavier had a sore on his face and a burn mark on his thigh. In September 2009, CPS conducted a

[1]Xavier's father, whose rights were also terminated, is not a party to this appeal.

home visit in response to a report that Bianca's sixteen-year-old sister, who had given birth to premature twins, had tested positive for marijuana. At that time, CPS discovered that Xavier, who appeared to be developmentally delayed and whose immunizations were not up to date, was living in the home of the maternal grandmother, which was replete with safety hazards and lacked hot water and adequate food. Although the grandmother, who had tested positive for cocaine and was "overwhelmed" trying to care for her own children, told CPS she could not support Bianca and Xavier, Bianca made no effort to "formulate a plan for self-sufficiency."

¶4 In light of the home situation, including Bianca's apparent inability to protect Xavier from domestic violence and her admitted use of marijuana, CPS took Xavier into protective custody in October 2009. The Arizona Department of Economic Security (ADES) filed a dependency petition, and Xavier was adjudicated dependent in December 2009. Xavier subsequently was placed with Bianca in a group home, and Bianca was provided with a variety of services in the ensuing months, including the Growing Together program, individual and family therapy, parenting and life skills classes, Meet Me Where I Am classes, and substance abuse testing. Psychologists Michael German and Edward Lovejoy conducted a family evaluation in March 2010, and concluded Bianca "showed absolutely no ability" to set boundaries for Xavier, and noted that if Xavier's "behavior doesn't get under control soon, it may be impossible for Bianca to parent him." In addition, Dr. German later testified at the severance hearing that Bianca suffered from depression or possibly "dysthymia," which he defined as a "kind of a depression that becomes part of your personality; it's your way of dealing with the world, as a depressed, flat, unresponsive way of dealing with it."

¶5 In June 2010, based on Bianca's demonstrated inability to care for Xavier, including one occasion when she did not notice as he "approached a pot of boiling noodles and poured dish soap in them and started stirring the noodles," CPS removed Xavier from Bianca's care and placed him in a foster home. Bianca continued to work toward the case plan goal of family reunification. But by May 2011, noting that Bianca had "disengaged from her therapy, that she ha[d] failed to maintain drug testing protocol by having diluted and missed drops, and that she ha[d] not participated in all areas of case plan tasks and services," the juvenile court changed the case plan goal to severance and adoption and directed ADES to file a motion to terminate the parents' rights. After a two-day contested severance hearing in October 2011, the court terminated Bianca's rights based on mental illness and Xavier's having been out of the home for fifteen months or longer, pursuant to § 8-533(B)(3) and (B)(8)(c).

¶6 On appeal, Bianca argues there was insufficient evidence to support the juvenile court's finding she had been unable to remedy the circumstances that caused Xavier to be in an out-of-home placement and that there is a substantial likelihood she will be incapable of exercising proper and effective parental care and control in the near future. Citing favorable testimony by her parenting instructor, Andrea Martinez, Bianca asserts the court's order is unsupported. However, after summarizing the extensive evidence pointing to Bianca's inability to parent Xavier, the court concluded, "Parenting skills aside, the Court does not find that [Bianca] will be able to parent her child in the foreseeable future." To the extent Bianca suggests we reweigh the evidence, we will not do so. The juvenile court, not this court, resolves any conflicts in the evidence, and it did so here. *See In re Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744

P.2d 455, 458 (App. 1987) (as fact-finder in termination proceedings, juvenile court in best position to weigh evidence and judge witness credibility).

¶7 Bianca also argues the juvenile court improperly found ADES had provided appropriate remedial services, as evidenced by the inappropriate living environment in the group home. Notably, the juvenile court agreed the group-home situation "was not ideal," and thus "focus[ed] only on circumstances that were within [Bianca's] control" in making its ruling. Bianca also contends there was insufficient evidence to support the court's findings both that her mental condition will continue for a prolonged indeterminate period of time and that termination is in Xavier's best interests.

¶8 In its thorough ten-page ruling, the juvenile court entered extensive factual findings and legal conclusions. The court specifically found, as § 8-533(B)(3) and (B)(8)(c) require, that ADES had made diligent efforts to provide reunification services; Bianca had not remedied the circumstances causing Xavier's dependency and she would not be able to parent him properly and effectively in the foreseeable future; her mental illness prevented her from providing safe and proper parenting for Xavier now or in the foreseeable future; and termination was in Xavier's best interests.

¶9 We conclude the record contains reasonable evidence to support the juvenile court's factual findings with respect to both the statutory grounds for termination and Xavier's best interests. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264-65 (App. 2009) (factual findings upheld if supported by reasonable evidence). We therefore adopt the court's findings of fact and approve its conclusions of law. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶10 Additionally, to the extent Bianca asserts the juvenile court improperly terminated her parental rights based on her "poverty, lack of employment and housing," the court's ruling belies this notion. The court expressly found:

> If the remaining issues for [Bianca] were *only* employment and independent housing as was argued by counsel for [Bianca], the Court might very well have reached a different conclusion. However, it is . . . both her denial of the need for services and her failure to address her mental health issues that convinced this Court that [Bianca] did not remedy the reasons her son has been in out-of-home care.

¶11 Because the record amply supports the juvenile court's termination of Bianca's parental rights to Xavier, we affirm.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge