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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SHANNON S., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, MICHELLE S., and ARIEL S., Appellees.	2 CA-JV 2012-0050
MICHELLE S. and ARIEL S., Appellants, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and SHANNON S., Appellees.	2 CA-JV 2012-0062 (Consolidated) DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19762000

Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Appellants Shannon S. and her children, Michelle S. and Ariel S., challenge the juvenile court's order terminating Shannon's rights to the children, born in 2004 and 2006, respectively.[1] In this consolidated appeal, Shannon asserts there was insufficient evidence to support the court's termination of parental rights based on the children's out-of-home placement for nine months or longer, *see* A.R.S. § 8-533(B)(8)(a). The children argue the court erred in finding that termination of Shannon's parental rights was in their 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 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). To sustain

[1]The fathers of both children, whose parental rights were also terminated, are not parties to this appeal.

its burden of establishing that termination is in a child's best interests, the Arizona Department of Economic Security (ADES) must prove, by a preponderance of the evidence, that the child either would benefit from the severance or be harmed if the parental relationship continued. *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, ¶¶ 7-8, 177 P.3d 327, 329 (App. 2008).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Child Protective Services (CPS) took custody of the children in March 2011, after Shannon was found "passed out" in a car and subsequently reported to police that the children "might be at home alone, but she could not remember." Officers found then six-year-old and four-year-old Michelle and Ariel alone in an apartment that was described as "messy with dirty clothes everywhere and dirty dishes . . . several bottles of alcohol[ic] beverages . . . [and] an open bottle of medication on the table . . . that . . . was hydro codeine syrup." The children "expressed fear of [Shannon's boyfriend and] . . . revealed that he hits them with a belt . . . [and] Ariel . . . indicated that she has witnessed her mother and [the boyfriend] fight and yell at each other." The juvenile court found the children dependent as to Shannon at an April 2011 hearing which Shannon did not attend.

¶4 As detailed in the juvenile court's termination order, CPS and ADES provided Shannon with numerous services in support of reunification, including mental health and substance abuse assessments, medication management, psychological evaluation, drug testing, a domestic violence program, individual therapy, parenting

classes, supervised visitation with the children, and case management.[2] As the court noted, Shannon did not "seem to start taking her case more seriously" until she was placed in jail for an unrelated criminal matter in July 2011, at least four months after the children had been removed from her custody. Until that time, she failed to meaningfully comply with any of the case plan requirements with the exception of visiting the children and attending one parenting class. And, even during the supervised visits with the children, there were reports of "significant incidents" resulting in the temporary imposition of a "strict level of supervision" based on Shannon's conduct.

¶5 Although Shannon began participating in required services to a greater extent in July 2011, the juvenile court nonetheless found she was only partially compliant with the case plan at an August dependency review hearing. She then complied with the case plan to varying degrees during September and October 2011, until she pled guilty in October to two counts of attempted aggravated assault on a police officer and was sentenced to consecutive prison terms totaling two years. Notably, Shannon did not inform ADES of her convictions or sentences when they occurred.

¶6 The juvenile court changed the case plan to severance and adoption in December 2011, and ADES filed a motion to terminate her parental rights to the children the following week, alleging out-of-home placement and that termination was in the children's best interests. *See* A.R.S. § 8-533(B)(8)(a). In February 2012, the court

[2]Because neither Shannon nor the children challenge whether ADES made diligent efforts to provide appropriate reunification services, *see* A.R.S. § 8-533(B)(8), we do not address this aspect of the juvenile court's ruling.

ordered the children placed with the maternal grandfather. Following a contested severance hearing held in March 2012, the court terminated Shannon's rights to the children in an under-advisement ruling containing its findings of facts and conclusions of law.

¶7 At the termination hearing, Shannon testified she did not begin complying with the case plan until July 2011, at least four months after the children had been removed from her custody, explaining she had delayed in engaging in services because she "had to mentally prepare [herself] to get this stuff started." She testified that she had written letters to the children while incarcerated, which she had given to her father, but he "was afraid to give them to [the children], so he still has them." However, she also testified that her father tried to give the letters to CPS case manager Stephanie Rogers, who had returned them to him.

¶8 Rogers testified that Shannon had not provided documentation showing she had participated in any available services since she had become incarcerated, and that she had not written any letters to the children during that time. Despite Shannon's "60 days of clean [drug] drops," Rogers answered affirmatively when asked if Shannon "was still substantially neglecting to participate in services," and added that she was "neglectful and reluctant" to participate in mental health services. Acknowledging that she had supervised visits between Shannon and the children only at the "very beginning" of the case, and that the children were "very bonded to their mother" at that time, Rogers nonetheless testified severance would not have a negative effect on the children's mental or emotional well being. Based on the record establishing Shannon's sporadic

participation in the case plan, she added that termination of Shannon's parental rights was in the children's best interests, and noted that a relative was willing to adopt them. She also explained that the children need permanency in their lives, including a permanent home and a permanent person "that will be able to care for them, [who's] not going to expose them to substance abuse, violence or domestic violence."

¶9 On appeal, Shannon argues there was insufficient evidence to support the juvenile court's finding she had substantially neglected or willfully refused to remedy the circumstances that caused the children to be in an out-of-home placement. Although Shannon concedes she "did not substantially participate in her case plan tasks" during the first five months the children were out of the home, she argues her rights should not have been terminated because she "began participating in her case plan services" in August 2011. To the extent Shannon suggests we reweigh the evidence, we will not do so. The court, as the trier of fact, "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). The record simply does not support Shannon's assertion that "[t]he court's frustration with Shannon's slow start to her case plan is not a sufficient justification for . . . her to lose her fundamental right to parent," and that she showed "particularly better compliance" until she became incarcerated.

¶10 Michelle and Ariel maintain that, although being adoptable or having an adoptive home available may be compelling in some situations, because they were bonded to Shannon and had a close relationship with her, the juvenile court's best

interests' finding is not supportable. Acknowledging that the reports of prior supervised visits with the children indicated a strong bond between Shannon and the children, and recommending future contact between them "[w]ith therapeutic assistance," Rogers nonetheless testified that, since Shannon was incarcerated "the communication is very, very strained, and [the children] haven't had a lot of contact with their mother at this point." And, as the court correctly noted, Shannon is unable to provide the children with "a safe, stable, and secure home," *see Jesus M.*, 203 Ariz. 278, ¶ 15, 53 P.3d at 207 (stability of current placement relevant to best-interests' determination), and they are currently living with their maternal grandfather and his wife, who are willing to adopt them, *see Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) ("One factor the court may properly consider in favor of severance is the immediate availability of an adoptive placement. Another is whether an existing placement is meeting the needs of the child.") (citation omitted). We therefore cannot say the court abused its discretion in determining severance was in the children's best interests.

¶11 The record contains reasonable evidence to support the juvenile court's findings with respect to severance based on out-of-home placement and that termination was in the children's best interests. No purpose would be served by restating the court's ruling on these issues in its entirety. Rather, because there is reasonable evidence to support the court's findings of fact and because we see no error of law in its order, we adopt it. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶12 We therefore affirm the juvenile court's order terminating Shannon's parental rights to Michelle and Ariel.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

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