

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CHRISTINA R.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND R.B.,
Appellees.

No. 2 CA-JV 2015-0157
Filed January 5, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD203233
The Honorable Susan A. Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Office of Emily Danies, Tucson
By Emily Danies
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Christina R. appeals from the juvenile court's July 2015 order terminating her parental rights to her son, R.B., born in October 2013, on the ground he had been in court-ordered, out-of-home placement for fifteen months or more. *See* A.R.S. § 8-533(B)(8)(c). For the following reasons, we affirm the court's termination order.

Background

¶2 The Department of Child Safety took temporary custody of R.B. shortly after his birth, based on a report that his toxicology and meconium tests indicated the presence of amphetamines. DCS filed a dependency petition alleging Christina had exposed R.B. to amphetamines during her pregnancy, had a history of methamphetamine use, and lacked legal income or stable housing. DCS also alleged a history of domestic violence between Christina and R.B.'s putative father, Ricky B.¹ In November 2013, the juvenile court conducted a preliminary protective hearing and, among other things, set a facilitated settlement conference for the following month. The juvenile court ordered Christina to be present for the settlement conference. After Christina failed to appear for the settlement conference, the juvenile court deemed the allegations of dependency admitted and adjudicated R.B. a dependent child.

¹Ricky B.'s parental rights have also been terminated. He is not a party to this appeal.

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¶3 In February 2015, DCS filed a motion to terminate Christina's parental rights on the ground she had failed to remedy the circumstances causing R.B. to be in out-of-home care for more than fifteen months and there was a substantial likelihood she would be unable to exercise proper and effective parental care in the near future. *See* § 8-533(B)(8)(c). After a contested hearing, the trial court issued a comprehensive under-advisement ruling terminating Christina's parental rights. This appeal followed.

Discussion

¶4 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and finds by a preponderance of the evidence that termination is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

Statutory Ground for Termination

¶5 Christina first contends the juvenile court abused its discretion in finding termination warranted under § 8-533(B)(8)(c). She argues generally that "[t]he Court made certain rulings that were simply not true, or were taken in part out of context[,]" asserting, by way of example, that the juvenile court "completely bought into the unscientific conclusions" of a parent-child relationship therapist who opined that (1) Christina lacked the empathy required to foster R.B.'s cognitive, social, and emotional growth; (2) additional therapy was unlikely to remedy this deficit and (3) reunification would not be in R.B.'s best interests. But she

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does not allege any of the court's findings were unsupported by evidence; instead, she disputes the court's assessment of witness credibility and the weight it afforded to the evidence received.

¶6 “The juvenile court, as the trier of fact in a termination proceeding, ‘is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.’” *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303, quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). “We do not reweigh the evidence,” *id.*, which was sufficient to support the court's finding that termination was warranted under § 8-533(B)(8)(c), as detailed in the court's thorough ruling.

Best Interests Finding

¶7 Relying on *Mary Lou C. v. Arizona Department of Economic Security*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004), Christina also maintains the juvenile court abused its discretion in finding termination of her parental rights was in R.B.'s best interests. She asserts, “There is no benefit from severing [her] parental rights and there is no harm in continuing the parental relationship.” But in *Mary Lou C.*, this court explained that “[t]he best interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child, or even that the child is adoptable.” *Id.* (Citation omitted). And Christina acknowledges evidence that R.B. is adoptable and is currently placed in an adoptive home. Such evidence is sufficient to support the court's best interests finding. *See id.* To the extent Christina appears to suggest her preference for a particular placement, we have explained that a court's best interests finding “is separate from and preliminary to its determination of placement after severance” of parental rights. *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1011-12 (App. 2009); *see also Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court does not “weigh alternative placement possibilities to determine” if termination is in child's best interests). Thus, the issue of R.B.'s placement is not before us.

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Disposition

¶8 Christina has failed to establish any legal basis for interfering with the juvenile court's termination of her parental rights. Because the court's ruling includes "thorough findings of fact and sustainable conclusions of law with respect to both the statutory grounds for severance and [R.B.'s] best interests," and because the court's findings are well-supported by the record, "little would be gained by our further 'rehashing the trial court's correct ruling' in our decision." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), quoting *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Accordingly, the juvenile court's order terminating Christina's parental rights to R.B. is affirmed.