IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DEBORAH P.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, B.P., AND J.P.,
Appellees.

No. 2 CA-JV 2016-0084
Filed October 6, 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NOT FOR PUBLICATION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. JD198977
The Honorable D. Douglas Metcalf, Judge

AFFIRMED

COUNSEL

Emily Danies, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Daniel R. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Brammer[1] concurred.

E C K E R S T R O M, Chief Judge:

¶1 Deborah P. appeals from the juvenile court's order terminating her parental rights to her eleven-year-old twin sons, B.P. and J.P. She argues there was insufficient evidence to terminate her parental rights on the ground she had failed to remedy the circumstances that caused the children to remain in court-ordered, out-of-home care for more than fifteen months, *see* A.R.S. § 8–533(B)(8)(c). She also maintains the evidence was insufficient for the court to find termination of her parental rights is in the children's best interests. For the following reasons, we affirm.

Factual and Procedural Background

¶2 The Department of Child Safety (DCS)[2] filed a motion to terminate Deborah's parental rights during the second dependency

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[1]The Hon. J. William Brammer Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[2]DCS has replaced the Arizona Department of Economic Security (ADES) as the agency responsible for administering child welfare and placement services under title 8, A.R.S. *See* 2014 Ariz. Sess. Laws 2nd Spec. Sess., ch. 1, § 20. For simplicity, our references to DCS in this decision encompass both ADES and Child Protective Services, formerly a division of ADES.

proceeding involving B.P. and J.P., and the history of those proceedings, as well as the circumstances of this case, are set forth in the juvenile court's detailed ruling. Deborah does not dispute the accuracy of the court's recitation of the facts, and we summarize them here only as required to address the issues on appeal. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 208-09 (App. 2002) (appellate court need not rehash court's correct ruling).

¶3 B.P. and J.P. have serious "behavioral and mental health issues" and were diagnosed with attention deficit hyperactivity disorder (ADHD) and bipolar disorder at the age of four. During the course of these two dependencies, both children have spent time in therapeutic foster care and on several occasions have required crisis intervention or hospitalization for their mental health issues. Psychological evaluation reports prepared in January and February 2015 confirmed the twins' diagnoses of ADHD and bipolar disorder and included additional diagnoses of post-traumatic stress disorder and oppositional defiance disorder. The evaluator also found indications of clinically significant depression, suicidal ideation, and self-harming behavior for both of the boys.

¶4 The children were first removed from their parents' care in August 2011, after someone passing by the family's home saw the boys' father, Gary P., "throw [J.P.] into a brick wall" and punch him in the stomach.[3] Both parents later admitted allegations in an amended dependency petition filed by DCS.

¶5 DCS provided intensive in-home services to the family and placed the boys with Deborah in October 2012. But B.P. and J.P. "continued to have behavioral problems," as they did "throughout the dependency," and Deborah "struggled to deal with those behaviors." In February 2013, the juvenile court dismissed the dependency, as the DCS case manager had recommended, subject to a joint custody order in the parents' domestic relations case.

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[3]Deborah and her then-husband, Gary P., the boys' paternal grandfather, adopted B.P. and J.P. when they were three months old. The couple divorced in October 2012, and Gary died in August 2015.

¶6 According to a dependency petition filed a few weeks later, DCS "[a]lmost immediately" began receiving reports that Gary was physically abusing the boys during his unsupervised parenting time. The boys were returned to Deborah's physical custody, but "[e]ven though [Gary] no longer was having unsupervised contact with the children," "the boys' aggressive and violent behaviors not only persisted, they escalated," and Deborah "was unable to manage the children and their extreme behaviors." In October 2013, Deborah called a crisis line and agreed to have B.P. and J.P. placed in a therapeutic foster home, where they received psychiatric monitoring, individual therapy, and family therapy with Deborah. The juvenile court again adjudicated the children dependent in December 2013, and DCS continued to provide services to Deborah, Gary, and the boys.

¶7 In the months that followed, the twins' therapeutic foster mother reported their negative behaviors increased after visits with Deborah, and, by the summer of 2014, the boys began to say they felt unsafe with her and did not want to see her. Around the same time, B.P. and J.P. began to allege Gary had sexually abused them. In June 2014, the boys returned from family therapy so "panicked" that they were taken to the Crisis Response Center (CRC) for evaluation. According to the DCS case manager, CRC evaluators were "very concerned" that any contact between the boys and their parents "is further traumatizing the children and . . . has resulted in depression, anxiety and possibly will trigger psychosis." The juvenile court ordered physical custody returned to DCS, the children remained in their therapeutic foster care placement, and contact between Deborah and the boys was "put on hold." Because Deborah was no longer seeing the children and was unable to identify new parenting goals to address, the in-home parenting services she had been receiving also were discontinued. In March 2015, the court suggested a concurrent case plan of severance and adoption was appropriate and granted leave to any party to file a motion to terminate Deborah's parental rights.

¶8 In its termination motion, DCS alleged that Deborah had been unable to remedy circumstances that caused the twins to

be in court-ordered, out-of-home care for fifteen months or more and that there was a substantial likelihood she would be unable to parent them effectively in the near future. *See* § 8-533(B)(8)(c). DCS noted Deborah's participation in case-plan services, but cited the children's "extreme behavioral health needs," their insistence that they not be returned to Deborah's care, and recommendations by mental health professionals that contact with Deborah was not in the children's best interests.

¶9 After a contested hearing, the juvenile court found DCS had established the alleged ground for termination by clear and convincing evidence and also found termination was in the twins' best interests. In finding Deborah "has been unable to remedy the circumstances" that caused the children's removal, the court acknowledged Deborah's engagement in reunification services, but it found the boys "cannot be returned to [Deborah] because she triggers the past trauma [they] suffered." The court added, "This finding is not based solely on the Children's wishes not to be returned to [Deborah] but rather on the testimony of each Child's therapist that it would harm the Children to be returned to [her]." Similarly, the court found Deborah would be incapable of exercising proper and effective parental control of the twins in the near future "because returning [them] to [Deborah] would trigger past trauma and undo the progress the Children have made in dealing with their past trauma." In support of its finding that termination is in the children's best interests, the court wrote,

> [B.P.] and [J.P.] are adoptable. [B.P.] and [J.P.] cannot be returned to [Deborah's] care because doing so would trigger past trauma, and undo the progress the Children have made in dealing with their past trauma. If [Deborah's] parental rights are terminated, it may assist [B.P.] and [J.P.] in their recovery, making them more adoptable.

This appeal followed.

Discussion

¶10 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 a preponderance of evidence that termination of the parent's rights is in the children'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). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] 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. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶11 To determine whether a parent has failed to remedy the circumstances causing a child's court-ordered, out-of-home placement, *see* § 8-533(B)(8)(c), a court is required to consider "'those circumstances existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 22, 152 P.3d 1209, 1213 (App. 2007), *quoting Maricopa Cty. Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993). In challenging the juvenile court's termination order, Deborah relies in part on *In re Maricopa County Juvenile Action No. JS–501568*, in which this court stated, "[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by [DCS] will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties." 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). Deborah maintains she has completed all of the services DCS required of her, has benefitted from them, and is willing to participate in any other reunification services DCS recommends. Her commitment and efforts in participating in services, and in seeking additional services, are undisputed and commendable. When asked, the DCS case manager

agreed that Deborah had "consistently participated in every service that [DCS] has provided to her and asked her to participate in." Deborah characterizes the current situation as an "impasse," stating "the children are not ready to be part of any other services that DCS could make available because the boys refuse to see [her]."

¶12 Deborah's reliance on *Maricopa County No. JS–501568* is misplaced, however. In that case, the court considered allegations that a parent had "substantially neglected or willfully refused" to remedy the circumstances that caused her child to remain in a court-ordered, out-of-home placement. *Id.* at 575-76, 869 P.2d at 1228-29, *quoting* 1988 Ariz. Sess. Laws, ch. 50, § 1 (former A.R.S. § 8–533(B)(6)(a)); *see now* § 8–533(B)(8)(a). This court has since explained that § 8–533(B)(8)(a) "focuses on the level of the parent's effort . . . rather than the parent's success" and permits an "expedited termination" after nine months of out-of-home care when a parent's efforts are inadequate. *Marina P.*, 214 Ariz. 326, ¶ 20, 152 P.3d at 1212. In contrast, § 8–533(B)(8)(c), at issue in this case, focuses on a parent's success, or near success, in being able to effectively parent children who have remained in out-of-home care for fifteen months or more.

¶13 Deborah also relies on *Desiree S. v. Department of Child Safety*, 235 Ariz. 532, 334 P.3d 222 (App. 2014), which she argues "controls in this case." As here, the mother in *Desiree S.* had "completed all services offered" to reunify with her eleven-year-old son, R.S., who had been physically abused by Desiree's ex-husband. *Id.* ¶¶ 4, 9, 11 and n.3. Desiree had been willing to engage in family counseling with R.S. as well, but, according to the DCS case manager, R.S. refused to participate because he "did not think [Desiree] could keep him safe." The juvenile court terminated Desiree's rights pursuant to § 8-533(B)(8)(c), finding, "'[She] is unable at this time and will be unable in the near future to remedy the root cause of the dependency because the child does not believe [she] is able to protect the child from abuse.'" *Id.* ¶¶ 6, 10.

¶14 The court of appeals reversed the termination order, concluding, "[t]he youngster's subjective belief, without more" did not constitute clear and convincing evidence of Desiree's likely

inability to parent him effectively in the near future. *Id.* ¶¶ 11, 14. The court expressly noted that "[a]lthough R.S. participated in individual counseling, there was no evidence indicating why R.S. could not or should not participate in therapeutic family counseling with [Desiree]." *Id.* n.5.

¶15 In contrast here, the juvenile court received evidence from both of the boys' therapists that contact with Deborah would be detrimental to the twins. J.P.'s therapist explained even the mention of Deborah's name triggers past trauma he experienced when Gary abused him, causing a "very intense negative reaction" of feeling unsafe, which in turn leads to "reactive behaviors" that "almost always . . . threaten the safety of himself or others." And, according to B.P.'s therapist, the risk of reinstating contact between B.P. and Deborah "is that the progress he had made in therapy in developing some form of self-identity and self-control would be washed away" by "a flood of the trauma reminders of what he went through." She continued, "And when I say trauma reminders, it doesn't mean that he is cognitively aware of those trauma reminders, but that trauma is imprinted in the brain and . . . the body reacts very often without the person being aware of why that reaction has taken place."

¶16 The case manager stated she understood from one of the therapists that it could be another year before the boys would be ready to receive correspondence from Deborah as part of their therapy. She testified she did not see "anything in the foreseeable future that . . . would change" the therapists' opinions that contact with Deborah would be detrimental to the boys. Despite Deborah's efforts, these circumstances appear beyond her present control. But the evidence nonetheless supports the juvenile court's determination that she has failed to remedy the circumstances causing the boys' out-of-home placement and would likely be unable to parent them in the near future. *Cf. Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶¶ 33-34, 971 P.2d 1046, 1053 (App. 1999) (DCS must make reasonable effort to preserve family but not required "to undertake rehabilitative measures that are futile").

¶17 In challenging the juvenile court's determination that severance is in the boys' best interests, Deborah disputes the case manager's testimony that the boys are adoptable and that a "certain answer" precluding their return to Deborah's care could provide them greater stability. But the juvenile court "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). We do not reweigh the evidence on appeal. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. Rather, we consider only whether the evidence is sufficient to sustain the court's ruling. *Cf. In re Maricopa Cty. Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (review of delinquency restitution order). There was sufficient evidence here to support the court's finding regarding the boys' best interests.

Disposition

¶18 Sufficient evidence supported the juvenile court's order terminating Deborah's parental rights to B.P. and J.P. Accordingly, we affirm.