

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ANGELICA P.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, J.A., AND F.A.,
Appellees.

No. 2 CA-JV 2016-0086
Filed October 18, 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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201000061
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

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By Alison Stavris
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
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Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Angelica P., mother of J.A. and F.A., born in December 2001 and February 2012 respectively, appeals from the juvenile court's May 5, 2016 order terminating her parental rights to the children on the grounds of abuse, mental illness, and length of time in court-ordered care pursuant to A.R.S. § 8-533(B)(2), (B)(3), and (B)(8)(c). We affirm for the reasons stated below.

¶2 Viewing the evidence in the light most favorable to sustaining the juvenile court's ruling, *Adrian E. v. Dep't of Child Safety*, 239 Ariz. 240, ¶ 2, 369 P.3d 264, 265 (App. 2016), the record establishes the following. The Department of Child Safety (DCS) took J.A. and her siblings who are not the subject of this appeal into temporary protective custody in April 2010 based on reports that Angelica had been neglecting them and using methamphetamine. DCS filed a dependency petition, and the children were adjudicated dependent as to Angelica after she admitted she was unable to care for them and submitted the dependency petition to the court. The children were placed with the father of two of J.A.'s siblings.

¶3 During the next year, Angelica engaged in substance-abuse treatment and various other services. The dependency was dismissed in January 2012, and F.A. was born the next month. But in October 2013, Angelica began to use methamphetamine again. Based on reports that Angelica had been using drugs, neglecting the children, and giving the children drugs and alcohol, DCS took the children into protective custody and filed a dependency petition. Angelica submitted the issue of the children's dependency to the juvenile court in November 2013, and the court adjudicated them dependent. She participated in services and, based on her

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compliance with the case plan, the dependency was dismissed in October 2014 as to the siblings who had been placed with their father. DCS continued working on a plan to return J.A. and F.A. to Angelica. But after she tested positive for alcohol in January 2015 and was arrested for transportation of marijuana the next month, DCS had “concerns . . . with transitioning the children home” and recommended visitation supervised by the maternal grandmother.

¶4 DCS continued to provide Angelica services, and she was compliant. In April 2015, she moved to dismiss the dependency. Although DCS and the children objected to the dismissal, preferring to proceed cautiously in light of Angelica’s recent arrest and use of alcohol, DCS continued to provide services, retaining the goal of transitioning the children back to Angelica’s custody. In June 2015, however, DCS received a report that Angelica was touching and kissing the children inappropriately. J.A. and her sister stated during a forensic interview in connection with the criminal investigation that Angelica had touched their breasts; J.A. reported Angelica had kissed her sister like “couples” kiss, and the sister confirmed her mother had kissed her “like boyfriend and girlfriend.” J.A. also reported Angelica had put her hand on the “private” of F.A. and another sibling and had showered with them.

¶5 DCS initially changed the case plan from reunification to a concurrent plan of reunification and severance and adoption, and continued to offer Angelica services, including a psychosexual evaluation, which was conducted in December 2015. But in October 2015, the juvenile court changed the case-plan goal to severance, and DCS filed a motion to terminate Angelica’s parental rights. After a severance hearing in April 2016, the court granted the motion, entering a final order in May. In the final order, the court entered specific factual findings related to each of the three grounds DCS had alleged in its motion.

¶6 A juvenile court may only terminate a parent’s rights if it finds there is clear and convincing evidence of at least one statutory ground for severance and that a preponderance of the evidence establishes it is in the child’s best interest to terminate the parent’s rights. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*,

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210 Ariz. 279, ¶¶ 22, 41, 110 P.3d 1013, 1018, 1022 (2005). We will affirm a severance order unless we conclude as a matter of law no reasonable fact-finder could have found that burden was sustained. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We defer to the juvenile court with respect to any factual findings because it is in the best position to assess the credibility of witnesses, weigh the evidence, and resolve disputed facts. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). Thus, we will affirm a severance order unless there is no reasonable evidence in the record to support the factual findings upon which it is based and the ruling is "clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶7 Section 8-533(B)(8)(c) provides that a parent's rights may be terminated if

The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

Angelica contends there was insufficient evidence to support the juvenile court's finding that there was a substantial likelihood she would not be able to properly parent her children in the near future. She points to evidence in the record that establishes her compliance with the case plan, her active participation in the various services DCS provided, and favorable evidence regarding her success at maintaining sobriety and her positive parenting skills.

¶8 The juvenile court entered factual findings specifically related to each ground for terminating Angelica's rights. Although we need not restate those findings in their entirety here, in

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summary, with respect to § 8-533(B)(8)(c) the court reviewed the history of this case and noted Angelica's active participation in some services, pointing out the periods of success as well as relapse. The court also acknowledged the psychological evaluation by Carlos Vega, Psy.D., and found that Angelica's conduct had prevented the children from being reunited with her. The court stated, "Despite mother's participation in services and visitation this case has moved backwards to where mother is required to have therapeutic contact with her children." The court concluded, "[M]other will not be able to parent in the near future."

¶9 The favorable evidence Angelica points to about her participation in services, success at maintaining sobriety, and ability to be an appropriate parent was before the juvenile court. Not only do we presume the court considered this and other evidence before it, *see Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18, 97 P.3d 876, 880-81 (App. 2004), that it did so is reflected in the findings summarized above. Moreover, in its final order the court expressly stated it had "considered and weighed" all of the evidence presented, including the testimony and exhibits, specifically identifying the exhibits that had been admitted and witnesses who had testified, as well as the arguments of counsel. Angelica is essentially asking this court to reweigh the evidence that was presented below, which we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. Rather, as we previously stated, we defer to the juvenile court's resolution of conflicting inferences as long as that resolution is supported by the record. *See Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. That 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). Reasonable evidence supported the factual findings upon which the court based its termination of Angelica's rights under § 8-533(B)(8)(c).

¶10 Because we have rejected Angelica's challenge to the juvenile court's finding that DCS sustained its burden of proving length-of-time in court-ordered care as a ground for terminating her parental rights to J.A. and F.A., we need not decide whether there was sufficient evidence to terminate her rights on the remaining two

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grounds. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246 ¶ 27, 995 P.2d 682, 687 (2000) (appellate court need not address other statutory grounds for terminating parent's rights if sufficient evidence exists for one ground). We therefore affirm the court's order.