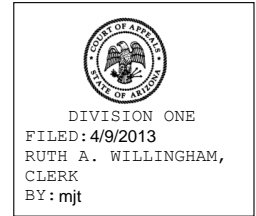


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

C.R.,) 1 CA-JV 12-0028
)
Appellant,) DEPARTMENT C
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, LEANNA S.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause Nos. JD17200 and JS9877

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

The Stavris Law Firm, PLLC
by Christopher Stavris
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Scottsdale

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Tucson

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T H U M M A, Judge

¶1 C.R. appeals from the superior court's order denying a petition to terminate Leanna S.'s parental rights to C.R.¹ Because the record does not show that the superior court abused its discretion, the order is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Leanna is the biological mother of C.R., who was born in 1994. In September 2008, when C.R. was fourteen years old, the Arizona Department of Economic Security (ADES) removed C.R. from Leanna's care and filed a dependency petition alleging C.R. had been subject to medical neglect at the hands of Leanna. Following a dependency trial, in April 2009, the superior court found C.R. dependant as to Leanna and adopted a case plan of family reunification.

¶3 By September 2010, however, ADES had developed additional concerns and filed a severance petition seeking to terminate Leanna's parental rights as to both C.R. and C.R.'s younger sister. As grounds to terminate Leanna's parental rights to C.R., the petition alleged abuse, neglect, mental illness and 15 months time in care. The petition led to a hotly contested 14-day severance hearing in August and September 2011. Evidence at the hearing conflicted significantly and included differing

¹ The caption on appeal is amended to refer to C.R. only by her initials.

expert and lay accounts of C.R.'s experiences. Among other things, ADES argued that Leanna had undermined C.R.'s health, exaggerated C.R.'s symptoms and prompted C.R. to feign illness, leading to unnecessary treatment and causing C.R. physical harm. C.R., who was represented by counsel, agreed with ADES. C.R.'s guardian ad litem also agreed and took the position that ADES had met its burden of proof and agreed that severance was in C.R.'s best interests, "even though she is nearly the age of majority." In contrast, Leanna denied any wrongdoing, arguing that C.R.'s accounts of medical abuse by Leanna were the product of "manipulation and coaching" by C.R.'s therapists and foster placement.

¶14 Given scheduling concerns, the superior court had the parties submit written closing arguments, the last of which was filed less than two months before C.R.'s 18th birthday. C.R. reiterated her agreement with ADES that severance was in her best interests and asked the court to rule before she turned 18 "so that she can move on with her life and achieve closure."

¶15 The day before C.R.'s 18th birthday, the superior court issued a minute entry denying the petition to terminate Leanna's parental rights to C.R. The court found ADES had not shown by a preponderance of the evidence that "termination of [Leanna's] parental rights for [C.R.] on the verge of reaching her majority would serve the child's best interests." The court

found insufficient evidence to establish that severance was in C.R.'s best interests when C.R. was "immediately about to turn 18 years old." Given this finding, the court did not address the substantive grounds for severance.²

¶16 C.R. timely appealed.³ This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) section 8-235.⁴

DISCUSSION

¶17 This court reviews the superior court's severance decision for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). When reviewing a superior court's decision to which deference must be given, this court "will not second-guess or substitute [its] judgment for that of the trial court." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 185, 188, 836 P.2d

² Three days later, the court granted the severance petition as to C.R.'s sister on grounds of willful abuse and neglect, a ruling this court affirmed. *Darrell S. v. Ariz. Dep't of Econ. Sec.*, No. 1 CA-JV 12-0029, 2013 WL 440624 (Ariz. App. Feb. 5, 2013).

³ C.R.'s guardian ad litem also filed a notice of appeal, which states she does not handle appeals and asks that counsel be appointed to represent C.R. on appeal. Apparently given the unique circumstances of this case, ADES filed a notice indicating it would not file a brief on appeal. As a result, this court has received two briefs, one by counsel for C.R. and the other by counsel for Leanna.

⁴ Absent material revision after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

398, 401 (App. 1992). “[T]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason.” *Assoc. Indem. Corp. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (citation omitted). Accordingly, this court will not substitute its judgment for that of the superior court as long as reasonable evidence supports the superior court’s conclusions. See *Maricopa County Juv. Action No. JD-500200*, 163 Ariz. 457, 461, 788 P.2d 1208, 1212 (App. 1989).

¶18 Termination of the parent-child relationship requires, in addition to sufficient proof of a statutory severance ground, a finding that a preponderance of the evidence shows severance is in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The best interests determination involves consideration of “how the child would benefit from [the] severance or be harmed by the continuation of the relationship” with the biological parent. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Although the age of a child is an insufficient basis by itself to determine the best interests, the court may properly consider the child’s age in making its best interests determination. *Cf. Maricopa County Juv. Action No. J-93117*, 134 Ariz. 105, 107-08, 654 P.2d 39, 41-42 (App.

1982); *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010) (listing non-age factors potentially relevant to best interests analysis); *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50 (same).

¶9 The superior court determined that ADES had not proven severance would be in C.R.'s best interests. Although the ruling did not detail the court's best interests considerations beyond listing C.R.'s age, the court stated it considered the evidence and arguments presented over the 14-day severance hearing and in written closing arguments. Particularly given the substantially divergent testimony elicited from witnesses during the lengthy hearing, the short time remaining until C.R. turned eighteen and that the superior court is in the best position to assess witness credibility, see *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002), this court cannot find that the superior court abused its discretion in concluding that ADES failed to prove that severance was in C.R.'s best interests.

¶10 It is true that the record shows C.R. thrived after being removed from Leanna's care. Indeed, by the time of trial, C.R. was a straight A student, was excelling in college classes, was on track to graduate on schedule, was on the tennis team, worked two jobs and essentially had no medical issues. These substantial achievements, and the future success they suggest

for C.R., appear to be the result of C.R.'s tenacity and hard work. Moreover, given that C.R. is now an adult, she can decide for herself what relationship (if any) she wishes to have with Leanna. Accordingly, although finding no abuse of discretion by the superior court in denying severance, as a practical matter, C.R. may now "move on with her life and achieve closure," permanency and finality even without legal severance.

CONCLUSION

¶11 Because there was no abuse of discretion, the superior court's order is affirmed.

/S/_____
SAMUEL A. THUMMA, Presiding Judge

CONCURRING:

/S/_____
MICHAEL J. BROWN, Judge

/S/_____
DIANE M. JOHNSEN, Judge