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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 7/11/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SABRINA G. ,) No. 1 CA-JV 12-0215
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, K.G., L.B., A.G.,) Ct.; Rule 28 ARCAP)
J.G.,¹)
)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD509003

The Honorable David King Udall, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee ADES

Mesa

¹ The caption has been amended to safeguard the identity of the minor children pursuant to Administrative Order 2013-0001.

D O W N I E, Judge

¶1 Sabrina G. ("Mother") appeals the termination of her parental rights to her four children (referred to collectively as the "Children"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In March 2010, police officers responded to a domestic violence call. Mother reported that her boyfriend, D.B., had placed her in a chokehold and threatened her.² The Children were present, and officers noticed several contusions on A.G., who said that D.B. had hit her on an earlier date.

¶3 In April 2010, the Arizona Department of Economic Security ("ADES") filed a dependency petition, alleging the Children were dependent due to: (1) Mother exposing them to domestic violence and allowing D.B. to be in the home despite Child Protective Services ("CPS") and police intervention; (2) Mother's failure to protect the Children from abuse by D.B.; (3) abuse by Mother; and (4) mental illness that placed the Children at risk for abuse and neglect. Mother contested the dependency petition.

² D.B. is K.G.'s father.

¶14 The initial case plan was for family reunification. A.G. advised officers that her home was "not a safe place." She described Mother putting a bag in her mouth and trying to choke her and an incident where Mother "almost" stabbed L.B. with a knife. A.G. also stated that D.B. hit her and threatened to kill L.B. L.B. made similar reports.

¶15 The court initially granted Mother one visit per week and twice weekly telephonic contact, but it asked Dr. Moe to evaluate Mother's contact with the Children. L.B. told Dr. Moe that Mother had "whispered to her in the restroom" during a visit that D.B. would come to the foster home to kill the Children and related that she and A.G. had nightmares about D.B. doing so. Dr. Moe recommended that phone calls and visits with Mother stop.

¶16 Mother opposed ADES's subsequent motion to terminate her visits and calls, citing a CPS report claiming the Children were "compulsive liars." The court, however, granted ADES's motion.

¶17 In ruling on the dependency petition, the juvenile court concluded ADES had not proven Mother had a mental illness that placed the Children at risk. It found, however, "substantial and compelling" evidence that she had exposed them to domestic violence. The court expressed concern that Mother

permitted D.B. back into the home, continuing to place the Children at risk. It stated:

THE COURT FINDS startling that Mother voluntarily chose to lift the order of protection ("OOP") that she had obtained against [D.B.] in order to enable [D.B.] to be at [K.G.'s] birth. Rather than maintain the security of the Children provided by the OOP, Mother elected to disregard the protection it offered and instead invited [D.B.] back into their lives. . . . Mother . . . recognized the danger [D.B.] presents to the Children and herself, describing him pointing a gun at her and threatening her life in the presence of the Children, "liking to break down doors" and "running from the police a lot."

The court found the Children dependent as to Mother, concluding she and D.B. had physically abused them, and Mother had failed to protect them from D.B.

¶18 In September 2010, ADES moved to change the case plan from reunification to severance and adoption. The juvenile court granted the motion over Mother's objection.

¶19 During a psychological evaluation with Dr. Thal, Mother explained she was involved in a "deeply dysfunctional relationship" with D.B. from 2005 until 2009, and she allowed him back into the home after he abused her. She denied, however, that the Children had been abused or neglected. Dr. Thal concluded Mother was "impulsive and emotionally reactive" and appeared incapable of providing a safe and stable environment for the Children. He was uncertain whether Mother

would be able to discharge parental responsibilities in the foreseeable future, even if she participated in proposed interventions. Dr. Thal recommended, *inter alia*, that visitation remain suspended; that a psychosexual evaluation be considered and a psychiatric assessment conducted to determine if Mother would respond to psychotropic medication; and that Mother participate in individual therapy. Noting Mother's "resistance to change and her poor prognosis," though, Dr. Thal opined that severance and adoption may be appropriate.

¶10 L.B. and A.G. were further evaluated by Dr. Moe. L.B. disclosed that Mother and D.B. hit the Children and called her derogatory names. L.B. also reported specific incidents of sexual abuse by Mother and D.B. L.B. was "sad, angry, and scared" living with Mother and said she wanted to remain with her foster parents. Dr. Moe concluded that "details and specifics" gave L.B.'s statements credibility. A.G. likewise described physical and sexual abuse by Mother and D.B. and said that they wanted to kill her. Dr. Moe believed severance and adoption was appropriate if A.G. could not be reunited with her biological father.

¶11 On October 13, 2010, ADES moved to terminate Mother's parental rights pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-201(22) and -533(B)(2). See A.R.S. §§ 8-201(22)(a) ("neglect" means a parent's "inability or unwillingness" to

provide a child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare), -533(B)(2) (termination for neglect or willful abuse includes "serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child"). Mother denied the allegations and moved to resume visitation. The court denied her request, whereupon Mother threatened to kill the judge and ADES case manager. Mother subsequently pleaded guilty to two criminal charges based on those threats.

¶12 In April 2011, Mother moved to resume visitation and services, contending ADES had failed to offer the services Dr. Thal recommended. ADES opposed the motion, arguing Mother's "treatment of the children during visits was aggressive, abusive and harmful, and would be reasonably calculated to traumatize these children further." ADES further asserted Mother had received ample reunification services. The court denied Mother's motion.

¶13 In October 2011, ADES moved to discontinue services, arguing they were not required pursuant to A.R.S. § 8-846(B)(1)(d) (reunification services unnecessary if court finds a child "is the victim of serious physical or emotional injury by the parent or guardian or by any person known by the

parent or guardian, if the parent or guardian knew or reasonably should have known that the person was abusing the child"). Mother did not respond, and the court granted ADES's motion.

¶14 After several days of trial, the court issued a ruling terminating Mother's parental rights. It noted Mother's lengthy history of CPS involvement in Arizona and California and the numerous reunification services offered, including a parent aide, psychological consultation and evaluation, individual counseling, and family preservation. The court found CPS had made reasonable efforts to provide appropriate services but that those services had proven unsuccessful due to Mother's actions. After detailing the trial evidence, the court ruled that ADES had proven the petition's allegations by clear and convincing evidence and found by a preponderance of the evidence that termination was in the Children's best interests.

¶15 Mother filed a timely notice of appeal. We have jurisdiction pursuant to A.R.S. § 8-235.

DISCUSSION

¶16 Mother challenges the findings that: (1) ADES made diligent efforts to provide reunification services; and (2) she abused the Children or allowed others to do so. We will accept the juvenile court's findings of fact unless "no reasonable evidence" supports them, and we will affirm a severance order unless it is "clearly erroneous." *Jesus M. v. Ariz. Dep't of*

Econ. Sec., 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

I. Reunification Services

¶17 Mother had substantial involvement with ADES before the dependency petition was filed, including services through the Family Builders Program, the Family Connections Program, and Family Preservation Services. Additionally, before filing the petition, ADES offered a parent aide, psychological consultation, visitation, individual counseling, psychological evaluation, parenting classes, and domestic violence classes. According to Mother, though, because ADES did not offer the psychosexual evaluation, psychiatric assessment, and individual therapy recommended by Dr. Thal, the juvenile court's finding of diligent efforts to provide reunification services was clearly erroneous. We disagree.³

¶18 ADES offered numerous services designed to keep the family together, including individual counseling that Mother failed to attend after one session. Notwithstanding these substantial reunification services, Mother continued to "traumatiz[e]" L.B. and A.G. during visits and calls, forcing the court to terminate those contacts.

³ We assume, without deciding, that ADES was required to provide Mother with reunification services.

¶19 The record also supports the juvenile court's finding that delays or omissions in services were largely attributable to Mother's own conduct, including her threats to kill the judge and caseworker and her failure to complete individual counseling or to attend one-on-one parent aide sessions. Even Dr. Thal expressed reservations about the benefits of his proposed interventions, noting Mother's long history of CPS involvement, resistance to change, and "poor prognosis."

¶20 ADES is "not required to provide every conceivable service." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is it required to offer futile services. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 18, 83 P.3d 43, 50 (App. 2004). ADES's mandate is to offer parents "the time and opportunity to participate in programs designed to help [them] become" effective parents. *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239. Based on the record before it, the juvenile court could reasonably conclude that ADES provided ample time, opportunity, and services for Mother to become an effective parent.

II. Abuse and Neglect

¶21 Parental rights may be terminated when a parent has neglected or wilfully abused a child, including "serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing

or neglecting a child." A.R.S. § 8-533(B)(2). Section 8-201(2) defines abuse as:

the infliction or allowing of physical injury . . . or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety . . . diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:

- (a) Inflicting or allowing . . . sexual conduct with a minor . . . [and] molestation of a child

¶122 Mother contends the Children's allegations of physical and sexual abuse lack credibility because L.B. "has been known to lie about sexual abuse," and there was no corroborating evidence of sexual abuse and "[v]ery little" evidence of physical abuse. The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We do not reweigh the evidence, but look to the record to determine if there is evidence to sustain the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (citation omitted). We defer to the juvenile court's resolution of conflicting inferences and claims if supported by reasonable

evidence. See *Pima County Adoption of B-6355*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978) (citations omitted).

¶23 The record here supports the determination that Mother abused and neglected the Children and failed to protect them from D.B. It includes documented allegations of specific sexual acts perpetrated on L.B. and A.G. by Mother and D.B., and the girls made the same allegations over time to the case manager, Dr. Moe, and their therapist. A caseworker also testified about L.B. and A.G.'s sexual role-playing depicting acts involving Mother, D.B., and the Children. L.B. and A.G. were afraid to live in their own home. Dr. Moe testified that L.B. was "parentified," which is a sign of neglect, and that her tantrums, hair-pulling, and self-inflicted scratches were "signs of her being abused."

¶24 The juvenile court obviously found the evidence of abuse and neglect credible. Substantial evidence in the record supports its findings of abuse and neglect.

CONCLUSION

¶25 The order terminating Mother's parental rights is affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
LAWRENCE F. WINTHROP, Presiding Judge

/s/
DIANE M. JOHNSEN, Chief Judge