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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ELAINE C., *Appellant*,

v.

ROBERT C., S.C., L.C., D.C., *Appellees*.

No. 1 CA-JV 13-0103

FILED 11-19-2013

Appeal from the Superior Court in Navajo County

No. SV201200037

The Honorable Ralph E. Hatch, Judge

AFFIRMED

COUNSEL

John A. Banker Attorney at Law, Phoenix
By John A. Banker

Counsel for Appellant

Riggs, Ellsworth & Porter PLC, Phoenix
By Michael R. Ellsworth

Counsel for Appellee

MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Sally S. Duncan joined.

J O N E S, Judge:

¶1 Elaine C. (“mother”) appeals the trial court’s order terminating her parental rights to her children, S.C., L.C., and D.C. (“the children”).¹ On appeal, mother contends the trial court’s decision to terminate her parental rights lacked clear and convincing evidence she abandoned her children, arguing instead that father blocked her efforts to see the children. Mother also argues the trial court lacked clear and convincing evidence her alcoholism would continue for a prolonged indeterminate period. Mother asserts termination of parental rights was not in the best interest of the children because the children enjoyed spending time with her. We disagree. For the following reasons, we affirm the trial court’s decision.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and father married in April 2004. Mother is the biological parent of the children, S.C., L.C., and D.C. Father, the biological parent of S.C. and D.C., legally adopted L.C. in 2007. Parents divorced in 2008 due in part to mother’s alleged alcoholism.² The terms of divorce provided for joint legal custody while father retained primary physical custody. In October 2010, the children spent a total of five days with mother at mother’s residence. The children were returned to father as if they had been “unsupervised.” Father observed the children “basically looked like homeless kids. They hadn’t showered or bathed or brushed their teeth in five days.” Photos of the mother’s residence taken near the time of the incident portrayed a home in disarray. As a result, father filed for an emergency hearing. At the conclusion of the ex parte proceeding, the court modified mother’s parenting time without notice. The modified

¹ We have amended the caption pursuant to this court’s Administrative Order 2013-001.

² Although the Pretrial Statement of Respondent stipulated to the divorce case, mother did not submit the divorce record with the record on appeal.

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order provided mother only supervised parenting time. On December 12, 2010, a subsequent hearing affirmed the order with an additional requirement that mother shall not consume alcohol at any time during visitation.³ Mother did not exercise parenting time rights until June 2011. Between 2009 and 2012, mother availed herself of parenting time primarily on holidays and birthdays.⁴

¶3 Between the time of divorce in 2008 and the severance trial in 2013, mother arrived at the children's residence unannounced and intoxicated "so many times" father could not recall the exact number. As a result of mother's conduct on these occasions, father filed a Petition for an Order of Protection which the trial court granted in April 2012. The trial court modified the Order of Protection in September 2012, and reinstated mother's supervised visits with the children. The modified order kept in place the Order of Protection which prohibited mother from visiting the children while intoxicated. Father moved to terminate mother's parental rights in October 2012. The severance trial began on March 4, 2013. The balance of the hearing was continued and finalized on April 3, 2013. The trial court subsequently terminated mother's parental rights in April 2013, finding mother abandoned the children by virtue of her failure to maintain regular contact and provide normal supervision for a period in excess of six months; mother was unable to discharge her parental responsibilities because of chronic abuse of alcohol; and it was in the best interest of the children to terminate the mother's parent-child relationship.

DISCUSSION

¶4 Mother appeals the termination of her parental rights on four issues. First, mother asserts she did not abandon the children due to her failure to maintain regular contact, asserting that father had presented obstacles to her visitation efforts. Second, mother asserts the trial court lacked clear and convincing evidence her alcoholism would continue for a prolonged indeterminate period. Third, mother argues that termination was not in the children's best interests. Fourth, mother contends the trial court erred by denying mother's motion to join the termination

³ The Motion for Emergency Hearing was granted on November 19, 2010.

⁴ The divorce decree awarded mother visitation once a month, four weeks in summer, every other spring break, and alternate holidays and birthdays.

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proceedings with the post-decree custody matters pending in the same court.

¶5 To terminate a parent-child relationship, the trial court must find by clear and convincing evidence that at least one statutory ground exists, and must find by a preponderance of the evidence that termination is in the child's best interest pursuant to Ariz. Rev. Stat. ("A.R.S.") § 8-533(B) (West 2013); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005); *Michael J. v. Ariz. Dept' of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000).

¶6 The trial court may terminate the parent-child relationship if it finds by clear and convincing evidence that a parent is unable to discharge parental responsibilities due to a history of chronic abuse of alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period. A.R.S. §§ 8-533(B)(3), -537(B). The record supports the termination order based on chronic abuse of alcohol. As such, we need not address the other independent grounds for the termination of mother's parental rights. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (to affirm severance order, appellate court need only determine that clear and convincing evidence supports any one ground for termination).

I. Chronic Alcoholism

¶7 Substantial evidence indicates mother is unable to discharge parental responsibilities because of chronic alcoholism. Mother has chronically abused alcohol since high school, resulting in DUI arrests and several criminal incidents.⁵ Mother's numerous attempts to rehabilitate from chronic alcoholism have been unsuccessful. At the severance trial, mother testified she entered seven different rehabilitation programs.⁶ As recently as March 2012, mother was hospitalized for acute alcohol poisoning.

⁵ Mother's misdemeanor convictions included a DUI in 2007 and disorderly conduct in 2008 and 2009. At the time of the severance trial, mother had pending two misdemeanor cases: a DUI incurred on June 9, 2012, and a disorderly conduct arrest on December 8, 2012.

⁶ Mother participated in a court-ordered, six month alcohol rehabilitation program at the Salvation Army. Mother completed the program in October 2008.

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¶8 During January 2013, in an interview with the court appointed counselor, mother stated she failed to attend AA meetings for two weeks. Mother also identified herself as an alcoholic who consumed alcohol several times a week. Furthermore, mother agreed she was not in a long enough period of sobriety necessary to provide adequate supervision of the children, and for that reason, wanted supervised visitation to continue. The counselor concluded mother's alcohol abuse was likely to continue in the future.

¶9 As part of a plea agreement to excuse sentencing time for a third DUI arrest in June 2012, mother agreed to undergo a detoxification protocol at an inpatient treatment facility. Mother entered the treatment facility on March 13, 2013; nine days after the severance trial began.⁷ There, mother received treatment for severe alcohol dependence. Records from the treatment facility indicate mother reported her "daily binge consist[ed] of about 30 beers and 2 pints," and her longest period of sobriety in 2012 was one month. On March 18, 2013, mother completed the program.

¶10 Father testified he had no reason to believe mother's seven day stay at the treatment facility would help her with her alcohol problem. Mother acknowledged at least 10 admissions to different treatment centers, and "falling off the wagon" repeatedly since 2006.

¶11 Based upon the above evidence, reasonable grounds were established for the trial court to determine mother's chronic alcoholism will continue for a prolonged indeterminate period.

II. Best Interest Standard

¶12 The trial court found mother had abandoned her children and termination was in the children's best interest due to mother's chronic alcoholism. To find termination is in the child's best interest, the trial court must find by a preponderance of the evidence the child will either benefit from termination or be harmed by continuation of the parent-child relationship. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998); *See Kent K.*, 210 Ariz. at 288, ¶ 41, 110 P.3d at 1022 (trial court must find by preponderance of the evidence

⁷ The severance trial began on March 4, 2013, and continued on April 3, 2013.

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termination is in child's best interest). We find the record supports the trial court's decision.

¶13 In March and April 2012, mother visited the children six times. On five of those occasions, mother was intoxicated. During one visit, mother arrived at the children's home intoxicated, uninvited, in possession of marijuana, and demanded to see the children. Later that day, the children attended a church play where mother appeared uninvited and intoxicated, and in the presence of several witnesses, disrupted the play when she spoke loudly and accused her then 12 year old daughter of having sex with little boys, called the daughter a "whore," and told the daughter she was under investigation by the F.B.I.

¶14 The children claimed mother was verbally and physically abusive when intoxicated. The eldest daughter alleged she was physically abused on several occasions. The daughters' journal entries document memories of mother's intoxication and physical abuse.

¶15 Finally, the court-appointed counselor who completed the home study recommended termination of mother's parental rights was in the best interest of the children. The trial court accepted the home study determinations, finding them "compelling."

¶16 Because the trial court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings," this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling. *Maricopa Cnty Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996); *Pima Cnty Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987).

CONCLUSION

¶17 Mother's own admissions, the testimony of witnesses, and the results of the home study presented compelling evidence to the trial court of mother's continued alcohol abuse and supported the trial court's finding that there was substantial likelihood mother would be unable to parent the children effectively in the near future. Accordingly, we affirm the termination order.

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The Honorable Sally Schneider Duncan, Judge Pro Tempore of the Court of Appeals, Division One, is authorized by the Chief Justice of the Arizona Supreme Court to participate in the disposition of this appeal pursuant to Article 6, Section 3, of the Arizona Constitution and A.R.S. §§ 12-145 to -147.



Ruth A. Willingham · Clerk of the Court
FILED: mjt