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AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RANDI B., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY,
E.G., J.G., R.G., *Appellees*.

No. 1 CA-JV 13-0116

FILED 12-26-2013

Appeal from the Superior Court in Maricopa County
No. JD19535
The Honorable Joan M. Sinclair, Judge

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Mesa
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Holguin
Counsel for Appellee ADES

MEMORANDUM DECISION

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

S W A N N, Judge:

¶1 Randi B. (“Mother”) appeals the juvenile court’s order severing her parental rights. We affirm because the court’s findings are supported by reasonable evidence.

FACTS¹ AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of D.B., E.G., J.G., and R.G., born in 1997, 2006, 2009, and 2011, respectively. Robert G. (“Father”), who is not a party to this appeal, is the biological father of E.G., J.G., and R.G.

¶3 In July 2009, Oklahoma Child Protective Services (“CPS”) removed D.B., E.G., and J.G. from Mother’s care and placed them with Father after Mother was arrested for child neglect. As a condition of the children’s placement with Father, Mother, a reported methamphetamine user, was required to participate in random drug testing. She did not do so, and absconded with Father and the children to Colorado. Colorado CPS made contact with the family when the children enrolled in school in that state. Soon thereafter, the family moved to Arizona.

¶4 In September 2010, Arizona CPS removed the children from Mother and Father’s care after receiving reports that Mother and Father had separated, that D.B., E.G., and J.G. were staying with Mother in a dirty home, and that Mother was regularly using methamphetamine. The Arizona Department of Economic Security (“DES”) then filed a dependency petition alleging abuse and neglect related to Mother and Father’s drug use and history of domestic violence. In December 2010, the juvenile court found that the children were dependent and ordered that Mother and Father be offered reunification services consisting of

¹ We view the evidence in the light most favorable to affirming the juvenile court’s order. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

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substance-abuse treatment, random drug testing, psychological evaluations, couples and domestic violence counseling, and visitation with the children and a parent aide.

¶5 Mother and Father did not fully participate in the reunification services until after R.G. was born and removed from their care in March 2011. Thereafter, they completed every service offered to them, and the children were returned to their care in September and October 2011. By April 2012, the family reunification teams assisting in the transition had completed their services. Accordingly, on ADES's motion, the juvenile court dismissed the dependency petitions for E.G., J.G., and R.G. in May 2012.

¶6 Two months later, CPS received reports that Mother and Father had become homeless, were abusing drugs, were not attending to the children's hygiene, and had left E.G., J.G., and R.G. overnight at a daycare facility on multiple occasions. CPS removed the children from Mother and Father's care and DES filed a new dependency petition alleging neglect related to Mother and Father's drug use, history of domestic violence, and failure to provide the children with necessities. In October 2012, the juvenile court found that D.B. was dependent as to Mother and that E.G., J.G., and R.G. were dependent as to Mother and Father. The court ordered that the children's case plan was severance and adoption. DES thereafter moved to sever Mother's parental relationship with D.B., E.G., and J.G. under A.R.S. § 8-533(B)(8)(a) and (B)(11), and moved to sever her relationship with R.G. under A.R.S. § 8-533(B)(8)(b) and (B)(11). DES also moved to sever Father's parental relationship with E.G., J.G., and R.G.

¶7 Mother and Father were offered substance-abuse treatment, random drug testing, and visitation with the children and a case aide. They were also given bus passes to allow them to travel to treatment and testing appointments. But though both parents regularly attended visitation, they did not meaningfully participate in the other services offered to them and did not maintain consistent contact with the case manager. Mother missed all but one of her drug tests and Father missed all but four of his drug tests. And despite multiple referrals to a substance-abuse treatment provider, Father did not complete his intake appointment until the week before the April 2013 severance hearing and Mother scheduled her intake appointment for the day after the hearing.

¶8 At the outset of the severance hearing, the court vacated the proceedings as to D.B. In support of its motion for severance with respect

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to E.G., J.G., and R.G., DES presented evidence of the facts set forth above as well as evidence that E.G., J.G., and R.G. had bonded with their foster father, who was meeting their needs and was willing and able to adopt them. Mother and Father testified that they had been separated, homeless, and unemployed when the children were removed from their care, but had recommenced their relationship and had recently obtained employment (two part-time jobs in Father's case and one part-time, project-based job in Mother's case) and a rented room in another couple's house. Father further testified that he had approximately \$5,000 in savings that could be used to obtain housing appropriate for the children. Mother denied any recent drug use and Father admitted recent drug use but expressed confidence in the treatment program that he had started.

¶9 The juvenile court found that DES had proven the grounds alleged for severance and had proven that severance was in the children's best interests. Accordingly, the court severed Mother and Father's relationship with E.G., J.G., and R.G. Mother timely appeals.

DISCUSSION

¶10 To sever a parent-child relationship, the juvenile court must find by clear and convincing evidence that at least one of the grounds set forth in A.R.S. § 8-533(B) exists, and must find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Because the juvenile court is in the best position to weigh evidence, judge witness credibility, and make appropriate findings, we must accept the court's findings of fact unless they are supported by no reasonable evidence, and we must affirm the 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. REASONABLE EVIDENCE SUPPORTS THE JUVENILE COURT'S FINDINGS THAT SEVERANCE WAS WARRANTED UNDER A.R.S. § 8-533(B)(11) AND (B)(8).

¶11 Mother's parental rights were severed as to E.G. and J.G. under A.R.S. § 8-533(B)(8)(a) and (B)(11), and were severed as to R.G. under § 8-533(B)(8)(b) and (B)(11). Mother contends that this was error because she was able to exercise her parental responsibilities and had remedied the circumstances that led to the children's removal from her

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care. We conclude that reasonable evidence supported the juvenile court's findings.

¶12 Under § 8-533(B)(11), DES was required to prove that the children had been returned to Mother's care after a period of court-ordered out-of-home placement during which DES made diligent efforts to provide appropriate reunification services, that the children were again removed to an out-of-home placement within 18 months, and that Mother was "currently unable to discharge parental responsibilities." DES presented sufficient evidence to meet its burden of proof. E.G., J.G., and R.G. were cared for in an out-of-home placement during the first dependency case and were returned to Mother and Father's care after the parents successfully completed numerous reunification services. The children were then again removed from their parents' care less than a year later, based on reports of neglect and drug use. We reject Mother's contention that "[n]o evidence was presented to suggest that she no longer was capable of parenting or that she had forgotten some necessary parenting skills." Mother refused to participate in drug testing and treatment programs and recommenced her relationship with Father, an admitted drug user with whom she shared a violent history. The juvenile court could reasonably have concluded that Mother was unable to exercise her parental responsibilities.

¶13 Because sufficient evidence supports severance under § 8-533(B)(11), we need not address whether the evidence also supports severance under § 8-553(B)(8)(a) and (b). *See Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205. We do so only to fully address Mother's arguments on appeal.

¶14 Under § 8-533(B)(8)(a), DES was required to prove that E.G. and J.G. had been in an out-of-home placement for at least nine months, that DES had made a diligent effort to provide appropriate reunification services, and that Mother had "substantially neglected or wilfully refused to remedy the circumstances that cause[d] the child[ren] to be in a out-of-home placement." Similarly, under § 8-533(B)(8)(b), DES was required to prove that R.G. was under three years old, that R.G. had been in an out-of-home placement for at least six months, that DES had made a diligent effort to provide appropriate reunification services, and that Mother had "substantially neglected or wilfully refused to remedy the circumstances that cause[d] the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department." DES presented sufficient evidence to meet its burden of proof under both subsections of § 8-533(B)(8). E.G., J.G., and R.G., who was two years old at

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the time of the severance hearing, had been cared for in an out-of-home placement for well over nine months, during which time DES offered Mother drug testing, drug treatment, and visitation. Mother contends that her failure to participate in drug testing and treatment was “irrelevant” because the only circumstance she was required to remedy was her homelessness. Mother misunderstands the record. CPS removed the children from Mother and Father’s care based on reports of neglect and renewed drug use, and DES obtained dependency determinations on the same grounds. Mother’s refusal to participate in drug testing and treatment was directly relevant to the determination of whether she had substantially neglected or willfully refused to remedy the circumstances that caused the children to be removed from her care.

II. REASONABLE EVIDENCE SUPPORTS THE JUVENILE COURT’S FINDING THAT SEVERANCE WAS IN THE CHILDREN’S BEST INTERESTS.

¶15 Mother next contends that severance of her parental rights was not in E.G., J.G., and R.G.’s best interests because she shares a bond with the children and she secured employment and housing. We conclude that reasonable evidence supported the court’s finding that it was in the children’s best interests to sever Mother’s parental rights.

¶16 The best-interests inquiry focuses primarily on the children’s interests in a safe and stable home life. *See Kent K.*, 210 Ariz. at 286-87, ¶¶ 35, 37, 110 P.3d at 1020-21. “[A] determination of the child’s best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship.” *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). This determination requires the court to engage in a balancing test that considers the totality of the evidence. *Maricopa Cnty. Juv. Act. No. JS-9104*, 183 Ariz. 455, 461, 904 P.2d 1279, 1285 (App. 1995), *abrogated on other grounds by Kent K.*, 210 Ariz. 279, 110 P.3d 1013. One relevant factor is whether the child would be at risk of abuse or neglect if placed in the parent’s care. *Christina G. v. Ariz. Dep’t of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 27, 256 P.3d 628, 635 (App. 2011); *Linda V. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17, 117 P.3d 795, 799 (App. 2005). Other relevant factors include (but are not limited to) whether an adoptive placement is immediately available, whether the existing placement is meeting the children’s needs, and whether the children are adoptable. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010).

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¶17 DES presented evidence that the children had been in out-of-home placement for much of their lives and that both Mother and Father, with whom Mother resided, had failed to meaningfully participate in services designed to address the circumstances that had previously led to the children's neglect. It was reasonable for the juvenile court to conclude that the children would be at risk of abuse or neglect if they were returned to Mother's care, and the evidence showed that the children had bonded with a foster parent who was meeting their needs and was able and willing to adopt them. The court's best-interests finding is sufficiently supported by the evidence.

CONCLUSION

¶18 The juvenile court did not err by severing Mother's parental relationship with E.G., J.G., and R.G. Reasonable evidence supports the court's findings that severance was warranted under A.R.S. § 8-533(B)(11) and (B)(8), and reasonable evidence supports the court's finding that severance was in the children's best interests. We affirm.



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

r*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.