IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LACIE H., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, M.H., M.H.,
Appellees.

No. 1 CA-JV 13-0134
FILED 11-26-2013

Appeal from the Superior Court in Maricopa County
No. JD22019
The Honorable Jay R. Adleman, Judge *Pro Tem*

AFFIRMED

COUNSEL

John L. Popilek, Scottsdale

Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Michael Valenzuela

Counsel for Appellee Arizona Department of Economic Security

MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

D O W N I E, Judge:

¶1 Lacie H. ("Mother") appeals the juvenile court's order terminating her parental rights to M.B.H. and M.D.H. (collectively, "Children"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 M.B.H. was born in December 2005 in Iowa. In October 2007, Mother was charged with serving alcohol to minors. She was already on probation for writing "about $10,000 worth of bad checks." Facing a possible prison sentence, Mother arranged for her mother ("Grandmother") to take M.B.H. for a few months.

¶3 In November 2007, Grandmother traveled from her home in Arizona to Iowa. She found M.B.H.'s living conditions "horrible" and "very dirty." Grandmother and M.B.H left Iowa with a handwritten note from Mother consenting to the arrangement. Mother did not see her son again until October 2009.

¶4 Grandmother successfully petitioned for guardianship over M.B.H., and Mother consented to the guardianship. Mother continued to have "regular [telephone] contact" with M.B.H. until about September 2008, at which point Mother concedes her contact "started waning."

¶5 Mother gave birth to M.D.H. in Iowa in December 2008. Grandmother was concerned about M.D.H. and eventually suggested that he and Mother relocate to Arizona, where they could live with her rent-free. Mother and M.D.H. moved to Arizona in October 2009.

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[1] We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005) (citation omitted).

¶6 Although Mother and Grandmother agreed that Grandmother would continue to parent M.B.H. and Mother would parent M.D.H., Mother left many parenting obligations to Grandmother. When M.D.H. arrived in Arizona, he had scabies. Mother would leave M.D.H. in his playpen for hours and would not bathe him until Grandmother asked her to do so. Grandmother had to remind Mother to feed M.D.H. Additionally, Mother would frequently leave M.D.H. with Grandmother while she stayed with her fiancé.

¶7 When her fiancé relocated to Nebraska, Mother left the Children in Arizona on Christmas Day 2009 to follow him. Over the next two years, she did not visit or send letters. With Mother's consent, Grandmother was appointed M.D.H.'s legal guardian.

¶8 Mother and Grandmother offered divergent testimony about Mother's telephone calls after leaving Arizona. Mother described her telephonic contact through November 2010 as "sporadic" five- to ten-minute conversations. Grandmother, though, testified that Mother had no contact with the Children until October or November 2010, whereupon she began calling on holidays and birthdays.

¶9 In March 2012, Mother petitioned to revoke the guardianships. Her petition prompted commencement of the underlying dependency proceedings. The initial case plan was for family reunification. Mother was expected to participate in out-of-state services and drug testing, begin developing a relationship with the Children, and visit them more than once. Mother began making Sunday telephone calls to the Children. Dr. Azzie, consulting psychologist for CPS, in his June 2012 report, recommended Mother visit for ten days in Arizona, where she would "incrementally increas[e] her role in the [C]hildren's life from a new friendly person, to someone that meets their needs (e.g. feeding, bathing, putting to bed, etc.)."

¶10 Mother's ten-day visit began on November 1, 2012, about five months after Dr. Azzie made his recommendation. CPS prohibited Mother from staying overnight at Grandmother's house. Mother spent "a couple of hours" with the Children on weekdays and "most of the day" on weekends. Mother testified that she bathed the Children approximately three times, read to them, met them at church, and tucked them into bed. Mother, though, did not prepare meals or accompany the Children to dental appointments. And although CPS had specifically prohibited Mother from telling the Children she was their mother, she did

so anyway. CPS also reported that Mother missed a few visits during the ten-day period because she was "spending time with friends."

¶11 Mother separated from her fiancé but did not return to Arizona. She lives in Wisconsin with a new fiancé and his children. Mother has not seen the Children since November 2012. She did not submit evidence of participation in services or drug testing.

¶12 Mother has obtained child support orders against her sons' biological fathers and has received some child support payments during the 2010–2013 timeframe. But despite these payments and a recent history of full-time employment, Mother has never provided financial support or gifts to the Children.[2]

¶13 The trial court severed Mother's parental rights under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1), finding she had "abandoned the [C]hildren by failing to provide reasonable support and to maintain regular contact with the [C]hildren, including providing normal supervision."

DISCUSSION

I. Jurisdiction

¶14 The juvenile court ordered Mother's parental rights terminated in an unsigned minute entry on May 20, 2013. Mother filed a notice of appeal on June 3, 2013. The court thereafter entered a signed severance order on June 28, 2013. Under these circumstances, Mother's notice of appeal was premature. *See Barassi v. Matison*, 130 Ariz. 418, 421, 636 P.2d 1200, 1203 (1981) (characterizing notice of appeal filed after minute entry but before formal judgment as "premature"). We may exercise jurisdiction over a premature appeal if: (1) no appellee is prejudiced by the premature notice, (2) the notice came after the court made its final decision but before it entered the formal judgment, and (3) we may otherwise exercise jurisdiction over the judgment. *See Barassi*, 130 Ariz. at 422, 636 P.2d at 1204.

¶15 Mother's premature notice did not prejudice the Arizona Department of Economic Security ("ADES"). When the notice was filed,

[2] Mother claims she offered Grandmother financial support, but Grandmother testified that Mother never offered to pay anything.

the juvenile court had already announced its severance decision. There were no other substantive issues pending, and the only remaining task was ministerial. *See Craig v. Craig*, 227 Ariz. 105, 107, ¶ 12, 253 P.3d 624, 626 (2011). The severance order is a final judgment over which we have jurisdiction. *See* A.R.S. §§ 8-235(A), 12-120.21, and -2101(A)(1).

II. Case Plan Change

¶16 At the permanency planning hearing, the juvenile court approved ADES's request to change the case plan from reunification to severance and adoption.[3] According to Mother, neither she nor her court-appointed attorney was present because counsel had not calendared the hearing date correctly. Although substitute counsel appeared and objected to the change in case plan, Mother contends she was denied due process. We disagree.

¶17 After the court approved the change in case plan and ordered ADES to file a severance motion, it held a trial, finding by clear and convincing evidence that grounds existed for terminating Mother's parental rights. The decision at the permanency planning hearing to change the case plan to severance and adoption has been subsumed by the outcome of the severance trial. *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 515, ¶ 9, 1 P.3d 155, 158 (App. 2000) ("[F]indings made after a permanency hearing will be subsumed by a severance proceeding, should one follow . . . ."); *cf. State v. Agnew*, 132 Ariz. 567, 573, 647 P.2d 1165, 1171 (App. 1982) (challenge to probable cause determination moot after conviction); *State v. Canaday*, 117 Ariz. 572, 576, 574 P.2d 60, 64 (App. 1977) (conviction after trial renders alleged constitutional violations in preliminary hearing phase moot). According to Mother, had she attended the permanency planning hearing, she would have challenged ADES' claim that "she left the November 1-11, 2012, visits early to 'meet with friends.'" But Mother was free to dispute this claim and to present evidence supporting her position at the severance trial. We find no due process violation.

[3] We assume, without deciding, that our appellate jurisdiction extends to a review of this interlocutory order.

III. Grounds for Severance

¶18 The court may terminate parental rights if it finds one of the statutory grounds for severance by clear and convincing evidence. A.R.S. § 8-537(B). The court must also find by a preponderance of the evidence that termination is in the best interest of the child.[4] *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will not disturb the juvenile court's ruling unless no reasonable evidence supports its findings or its order is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We assume the juvenile court made every finding necessary to support the judgment. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010) (citation omitted).

¶19 The court terminated Mother's rights based on abandonment, which is defined as:

> the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

A.R.S. § 8-531(1). Relevant factors include the regularity of the parent's visits with the children; the nature of the parent's relationship with the children; the parent's supervision and guidance of the children; and the parent's provision of gifts, clothes, cards, and food. *See, e.g., Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶ 20, 243 P.3d 636, 640 (App. 2010).

¶20 The record supports the finding of abandonment. After sending M.B.H. to Arizona in November 2007, Mother did not see her son for almost two years. Even then, she did not stay long, opting to follow her fiancé to Nebraska on December 25, 2009, when she left both boys with Grandmother. When Mother later parted ways with that fiancé,

[4] Mother has not challenged the juvenile court's best interest finding, so we do not address it. *See, e.g., Michael J. v. Ariz. Dep't Econ. Sec.*, 196 Ariz. 246, 249, ¶ 13, 995 P.2d 682, 685 (2000).

instead of returning to Arizona, she moved to Wisconsin, where she searched for employment. Mother visited one time in November 2012 at the psychologist's recommendation.

¶21 The juvenile court could reasonably conclude from the evidence presented that Mother's voluntary extended absences prevented her from developing or maintaining a normal parent-child relationship. The Children consider Mother a "stranger" and know Grandmother as "Mommy." M.B.H. was 22 months old when Mother sent him to Arizona. At the time of the severance trial, he was seven years old, having lived with Grandmother for roughly five-and-a-half of his seven years. M.D.H. was 12 months old when Mother left him with Grandmother. At the time of the severance trial, he was four years old, having lived with Grandmother for three of his four years of life.

¶22 Mother's efforts to communicate with the Children were minimal. Her history of telephone calls is inconsistent and includes large gaps of time. And Mother concedes that M.D.H. was too young to have a telephone conversation and that in-person interaction would have been a more meaningful way to maintain a relationship with her Children.

¶23 Mother also failed to provide normal parental supervision. She does not know the Children's medical and dental providers or when they were last examined. Nor does Mother know where M.D.H. attends daycare or the whereabouts of M.B.H.'s school. Mother did not use child support payments she has received for the specific benefit of her Children. And although she has been employed at various times, Mother has never sent money, gifts, or cards to her sons.

¶24 Citing our recent decision in *Calvin B. v. Brittany B.*, Mother claims Grandmother "repeatedly thwarted" her attempts to maintain a relationship with the Children by restricting her access. 232 Ariz. 292, 304 P.3d 1115 (App. 2013). However, she points to no specific facts supporting this claim, and our review of the record reveals no such evidence.

¶25 Grandmother testified that she "begged" Mother not to move away from her Children in December 2009, but that Mother left anyway. Grandmother thereafter permitted Mother to speak with the Children by phone, though she acknowledged that she may not have been available every time Mother called. The record reflects that Mother could have moved back to Arizona at any time, as Grandmother testified to an

"open door policy." When Mother did visit in November 2012, Grandmother merely followed CPS's instructions by preventing Mother from staying overnight. The record is devoid of support for Mother's claim that Grandmother somehow prevented her from developing or maintaining a relationship with the Children.

CONCLUSION

¶26 We affirm the juvenile court's severance orders.