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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

NAOMI H., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, C.H., K.B.,
Appellees.

No. 1 CA-JV 13-0142

FILED 12-5-2013

Appeal from the Superior Court in Maricopa County

No. JS12301

The Honorable Linda H. Miles, Judge

AFFIRMED

COUNSEL

Jennifer Perkowski, Mesa

Counsel for Appellant

Arizona Attorney General's Office, Mesa

By Eric Devany

Counsel for Arizona Department of Economic Security

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Kent E. Cattani joined.

G E M M I L L, Judge:

¶1 Naomi H. (“Mother”) appeals the juvenile court’s order terminating her parental relationship with her two minor children, C.H. and K.B. For the following reasons, we affirm.

BACKGROUND

¶2 C.H. was born in June 2007. In June 2009, after Mother had been arrested and charged with armed burglary, the Arizona Department of Economic Security (“ADES”), through Child Protective Services (“CPS”), took C.H. into temporary custody and placed her in a foster home. When C.H. was removed from Mother’s residence, CPS observed drugs, drug paraphernalia, and unsafe items accessible to C.H. in the home. C.H. was dirty and appeared to have been neglected. Mother had a lengthy history of drug abuse and she admitted to using controlled substances, including methamphetamine and heroin, from ages 13 through 19, other than when she was pregnant. She participated in various substance abuse and behavioral health services while incarcerated in jail and upon her release from custody in October 2009. She was again incarcerated in December 2009. Upon her release in summer 2010 she transitioned to a halfway house, but she was discharged after a few days. She relapsed and continued to use drugs periodically, but in May 2011 she began making progress through a program provided by the Maricopa County Drug Court, consistently submitting to drug testing and attending support groups. She also moved into a substance abuse facility, Changing Lives Center, in February 2012. As of fall 2012, she had not tested positive for banned substances for more than a year and had reasonable explanations for all but one of the times she missed her random urinalysis testing.

¶3 Mother participated in a variety of services offered by ADES while C.H. was in the State’s care, including completing three substance-abuse programs and three parent aide programs; participating in a

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psychological evaluation, bonding assessment, and best-interests evaluation; and attending therapy and individual counseling sessions.

¶4 K.B. was born in February 2012 and lived with Mother at Changing Lives Center. In June 2012, C.H. began spending weeknights with Mother and K.B. ADES intended to begin reunification efforts for C.H. at that time. C.H. often had traumatic, hours-long tantrums while in Mother's care, however, twice requiring the assistance of a crisis team. Overnight visits were discontinued in mid-September.

¶5 Mother was asked to leave Changing Lives Center in late September 2012 because of rules violations for smoking cigarettes, allowing another resident's children to sleep over in her apartment, letting C.H. sleep in another resident's apartment, and using a computer in an inappropriate manner. K.B. was taken into ADES custody that month. C.H. and K.B. were placed in Phoenix Child Crisis Nursery, where C.H. had already been staying on weekends when not in Mother's care.

¶6 Changing Lives told Mother there would be a seven-week waiting period to get into a different residence facility. Mother was also told that she could return to Changing Lives after 90 days if she remained sober. Instead of taking either option, Mother moved to Michigan in October 2012, leaving the children behind. She did not financially support the children or maintain physical contact with them. She called three or four times per week, however, and had brief conversations with the children. Additionally, she sent cards and money for Christmas photos and presents.

¶7 ADES continued with a reunification plan that called for Mother to remain sober, create a positive support network, and to take advantage of available services. ADES advised Mother, however, that living in Michigan while her kids were in Arizona and dependant on the state was counterproductive.

¶8 ADES had previously offered Mother an array of services including psychological evaluations, parent aide services, parenting classes, child and family team meetings, substance abuse treatment, and urinalysis testing. Mother availed herself of these services off and on but stopped participating when she left the state.

¶9 ADES notified Mother that services could not be provided through the Interstate Compact on Placement of Children (ICPC), because

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ICPC is used for placement purposes only. ADES suggested that Mother seek services in Michigan. Mother submitted documentation showing she had obtained a part-time job, attended counseling, and completed a family workshop on discipline. She testified at the April severance hearing that she was better able to find work in Michigan because she did not have a felony on her record in that state. She also submitted records from four urinalysis tests, all negative for banned substances, from October 2012 to January 2013.

¶10 Mother told the court she moved to Michigan for family support, but ADES expressed concern that Mother was maintaining relationships with family members who allegedly abused and neglected her as a child. She identified her main support as her mother, who has a history of drug abuse and health issues and had previously been rejected as a possible placement for C.H.

¶11 In December 2012, the court approved a case plan of severance and adoption for C.H. Later that month, ADES moved to terminate Mother's parental rights to both children on the ground of abandonment, under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1). Additional grounds for termination were 15 months' out-of-home placement, under A.R.S. § 8-533(B)(8)(c), for C.H., and six months' out-of-home placement, under A.R.S. § 8-533(B)(8)(b), for K.B.

¶12 At the April severance hearing, Mother admitted that she had not actually parented the children or spent time with them since leaving Arizona. She also acknowledged that there had been a break in the parental bonds between her and her children since she left the state, especially with K.B., due to his young age.

¶13 The children's social worker testified that, although she believed Mother loved and wanted to be with the children, Mother did not appear to have the level of maturity necessary to parent the children. The social worker opined that, were the reunification plan to continue and Mother to remain in Michigan, C.H.'s existing attachment issues would likely become more of a problem. The social worker also opined that attachment issues can cause a number of serious problems and that it was critical for C.H. to be put in a permanent placement.

¶14 The children's CPS case manager testified at the hearing that Mother was not able to consistently provide the safe environment C.H. needed. The case worker stated that Mother's income - \$230 to \$290 every

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two weeks – was insufficient to support the children, so she would have to rely on her mother if the children were returned to her.

¶15 After considering the testimony presented at the severance hearing, the juvenile court terminated Mother’s parental rights after finding that ADES had proven the grounds for severance by clear and convincing evidence. The court held that Mother had abandoned the children and failed to maintain a normal parental relationship with them without just cause. The court acknowledged that Mother had maintained contact with the children after leaving the state, but held that those efforts were minimal compared to the physical contact and parental relationship potential she gave up by moving away.

¶16 The court also found that C.H. had been in an out-of-home placement for 15 months or longer, and that K.B., who was under the age of three, had been in out-of-home placement for six months or longer. The court found that Mother had been unable to remedy the circumstances that caused C.H.’s out-of-home placement and there was a substantial likelihood that she would not be capable of effective parenting in the near future. The court similarly found that Mother had substantially neglected or willfully refused to remedy the circumstances that caused K.B.’s out-of-home placement, including refusing to participate in the reunification services ADES offered. The judge commended Mother for her progress but explained that Mother had not demonstrated an ability to provide the stable environment and permanency the children needed.

¶17 The court further held that ADES had proven, by a preponderance of the evidence, that termination of the parent-child relationship was in the children’s best interests. Although the children continued to be in a temporary placement at Phoenix Child Crisis Nursery as of the date of the severance hearing, an adoptive family had been identified and the children were expected to transition into that home by mid-May 2013.

¶18 Mother timely appeals, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

ANALYSIS

¶19 A juvenile court may terminate a parent-child relationship if it finds by clear and convincing evidence at least one of the statutory grounds for severance under A.R.S. § 8-533(B) and finds, based on a

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preponderance of the evidence, that severance is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1017 (2005). “If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). Because the juvenile court, as the trier of fact, “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, . . . we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Id.* at ¶ 4, 53 P.3d at 205 (citations omitted). We view the evidence in the light most favorable to upholding the juvenile court’s findings. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000).

¶20 Mother does not challenge the juvenile court’s finding that severance was in the best interests of the children. Therefore, we address only whether the State established the statutory grounds of abandonment and out-of-home placement, and we will affirm if we find either statutory ground supported by clear and convincing evidence.

Abandonment
Under A.R.S. § 8-533(B)(1)

¶21 Under A.R.S. § 8-533(B)(1), termination of parental rights is justified if the parent has abandoned the child. Abandonment is defined as failing to provide reasonable support and failing to maintain regular contact with the child. Abandonment can be found when the parent has made only minimal efforts to support and communicate with the child. A.R.S. § 8-531(1). Failure to maintain a normal parental relationship without just cause for at least six months is prima facie evidence of abandonment. *Id.*

¶22 “[A]bandonment is measured not by a parent’s subjective intent, but by the parent’s conduct.” *Michael J.*, 196 Ariz. at 249, 995 P.2d at 685. In determining whether abandonment has been established, courts should consider whether the parent has “provided ‘reasonable support,’ ‘maintain[ed] regular contact with the child’ and provided ‘normal supervision.’” *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶18, 243 P.3d 636, 640 (App. 2010). “What constitutes reasonable support, regular contact, and normal supervision varies from case to case.” *Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). Therefore,

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questions of abandonment are factual issues to be resolved by the trial court. *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990).

¶23 Here, Mother moved to Michigan while the children were living in and dependant on the State of Arizona. Although she frequently communicated with the children, calling multiple times each week and occasionally sending cards and money, she failed to provide reasonable support or parental supervision. Although she maintains that she moved to Michigan to distance herself from bad influences and to be in a better position to provide for her children, we must look to her conduct rather than her stated intentions.

¶24 Furthermore, by living across the country from her children and having limited contact with them, Mother has failed to maintain a normal parental relationship since October 2012. Without just cause, that is prima facie evidence of abandonment. Accordingly, we find that the juvenile court had sufficient evidence from which to conclude that Mother had abandoned C.H. and K.B., and severance on the basis of abandonment was therefore a reasonable determination.

**Fifteen and Six Months' Out-Of-Home Placement
Under A.R.S. § 8-533(B)(8)**

¶25 Under A.R.S. § 8-533(B)(8), termination of parental rights is justified if the child has been in an out-of-home placement for a cumulative period of at least 15 months, the parent has been unable to remedy the circumstances that caused the out-of-home placement, and there is a substantial likelihood the parent will not be able to effectively parent in the near future. Termination is justified for a child under three years of age if the child has been in an out-of-home placement for at least six months, during which time the parent has "substantially neglected or willfully refused to remedy" the circumstances that caused the out-of-home placement, including by refusing to participate in reunification services offered by ADES. A.R.S. § 8-533(B)(8). Additionally, the agency responsible for the child's care must have made a "diligent effort" to provide reunification services. *Id.*

¶26 "[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement." *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz.

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571, 576, 869 P.2d 1224, 1229 (App. 1994). However, when a parent “makes only sporadic, aborted attempts to remedy [the circumstances], . . . a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis.” *Id.*

¶27 Mother made some efforts over the years to remedy the circumstances that caused C.H. to be in out-of-home placement for more than three years, but those efforts were insufficient. Mother took advantage of some of the services offered by the State as she attempted to remedy her substance abuse issues. But, she dropped out of some of the programs she enrolled in or was asked to leave for nonparticipation on multiple occasions. She has had sporadic contact with C.H. over most of the child’s life, due to multiple incarcerations, missed visits, a visitation rights suspension, and the traumatic responses C.H. had during some visits.

¶28 Mother’s efforts regarding reunification with K.B. have similarly been insufficient. In fact, after K.B. was also taken into the State’s care, Mother did little to pursue reunification.

¶29 Mother has lived in a different state than where her children live, despite ADES indicating that that the living arrangement was counterproductive to reunification efforts. By leaving Arizona, Mother opted out of services provided through ADES. Her personal efforts to obtain services in Michigan are commendable, but her efforts were insufficient to comply with the reunification program outlined by ADES.

¶30 Mother’s claim on appeal that there was insufficient evidence that ADES made a diligent effort to reunite the family is unpersuasive. Both children have been in the State’s care for the majority of their young lives, and over that time ADES offered Mother a variety of services and continued to work with her despite treatment setbacks such as drug abuse relapses and incarcerations. In C.H.’s case, ADES sought parental severance after trying to reunite the family for three and a half years, during which time the child lived in a series of out-of-home placements. Because the statutory grounds for 15 months’ out-of-home placement do not require neglect or refusal to remedy the circumstances but merely the fact that the circumstances have not been remedied and the substantial likelihood that the parent will not be able to effectively parent in the near future, the evidence also supports termination of Mother’s parental relationship with C.H. A.R.S. § 8-533(B)(8)(c). The juvenile court relied on the ADES case manager’s testimony to support its finding that

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there is a substantial likelihood that Mother would not be able to effectively parent C.H. in the near future. The case manager also referenced ADES's numerous attempts to provide services to help Mother achieve reunification with K.B., to which Mother responded by leaving the state.

CONCLUSION

¶31 For the foregoing reasons, we affirm the juvenile court's decision terminating Mother's parental rights to C.H. and K.B.



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