

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 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

CHAUNTEAL R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,¹ A.N., *Appellees*.

No. 1 CA-JV 13-0318

FILED 07-10-2014

Appeal from the Superior Court in Maricopa County

No. JD21005

The Honorable Bradley Astrowsky, Judge

AFFIRMED

COUNSEL

John L. Popilek, PC, Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellee Arizona Department of Child Safety

¹ Pursuant to S.B. 1001, Section 157, 51st Leg., 2nd Spec. Sess. (Ariz. 2014) (enacted), the Arizona Department of Child Safety is substituted for the Arizona Department of Economic Security in this matter. See ARCAP 27.

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge John C. Gemmill and Judge Peter B. Swann joined.

O R O Z C O, Judge:

¶1 Chaunteal R.² (Mother) appeals the juvenile court’s order terminating her parental rights to A.N. (Child) pursuant to Arizona Revised Statute (A.R.S.) section 8-533.B.1 (2014) -- abandonment,³ and A.R.S. § 8-533.B.8(c) (2014) -- Child’s out-of-home placement for a cumulative period of fifteen months or longer. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Child has resided with maternal grandmother (Grandmother), since her birth in July 2009. In July 2011, Grandmother and other family members heard Mother threaten suicide and “threatened to jump off a bridge and take [Child] with her.” Mother suffers from bipolar personality disorder and depression. As a result of these threats, Mother was admitted to a mental hospital and was released in September 2011.

¶3 After her release, Mother moved to Snowflake, Arizona for a job opportunity. Upon her arrival, however, Mother learned the employment opportunity no longer existed. Nevertheless, Mother remained in Snowflake to “preserve her mental health.” However, in Mother’s move to Snowflake, Child was left with Grandmother. Mother failed to maintain contact with Child and Grandmother, resulting in the Department of Child Safety (DCS) taking legal custody of Child and filing a dependency petition alleging Mother had neglected Child and was

² We use the spelling of Mother’s first name as written by her personally in the record before us on appeal.

³ We cite the current version of applicable statutes when no revisions material to this decision have since occurred.

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unable to provide for Child's basic needs. Following a preliminary protective hearing, the juvenile court found Child was in need of out-of-home placement and affirmed temporary placement with Grandmother.

¶4 After a contested dependency hearing, the juvenile court found Child dependent as to Mother and approved concurrent case plans with a guardianship, family reunification with severance and adoption. The juvenile court ordered services for Mother that included: parent aid services, TERROS, psychological evaluation and consultation, and random urinary analysis testing. Mother began to participate in parent-aide services in Phoenix with Arizona Baptist Children's Services (ABCS) in March and continued through May 2012. The parent aide made positive comments about Mother's parenting skills and willingness to make appropriate behavior changes.

¶5 Mother also participated in a psychological evaluation and was diagnosed with bipolar disorder, general anxiety disorder, and relationship problems with Grandmother. The psychologist believed placing Child with Mother would be a "high-risk reunification" due to Mother's lack of independent parenting. The psychologist further opined that Child would be at risk if returned to Mother home.

¶6 At a report and review hearing in May 2012, the juvenile court expressed concerns that Mother's lack of employment and housing prevented reunification with Child. The court warned Mother that the "longer [Child was] in an out-of-home placement, the less chance [Mother was] going to have a successful reunification." At the time, Mother was pregnant and residing with her boyfriend in Snowflake. The juvenile court found the current case plan was appropriate and affirmed Child's continued placement with Grandmother.

¶7 Subsequently, Mother cancelled parent aide services for her visits with Child for the last week of May and all of June 2012 because of difficulties obtaining transportation from Snowflake to Phoenix. As a result of Mother's nonparticipation in services, ABCS terminated parent-aide services in July 2012. Thereafter, Mother visited with Child only on the dates of court hearings.

¶8 In November 2012, the juvenile court approved Mother's plan to only visit Child around future scheduled court dates. However, the court also stated, "I do not want [DCS] to spend \$800 on a cab fare for something that can be addressed telephonically." DCS again re-emphasized its continuing concern over Mother's failure to visit Child.

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Furthermore, as of November 2012, Mother had failed to provide Child with any financial support, provide gifts, or send letters.

¶9 In March 2013, DCS filed a motion for termination of Mother's parental rights, alleging she failed to: maintain a normal relationship with Child; provide reasonable support for Child; maintain regular or meaningful contact with Child; and provide normal parental supervision of Child. Based on DCS's motion and over the objections of Mother, the juvenile court changed the Child's case plan to severance and adoption and set the matter for a contested severance hearing.

¶10 At the October 2013 severance hearing, Mother admitted to providing "hardly any [support]" to Child since moving to Snowflake in November 2011. Mother also acknowledged visiting Child only on the days of scheduled court hearings. Mother testified she chose not move back to Maricopa County because she feared her "mental health would unravel." Moreover, Mother acknowledged that Child suffered from Mother's failure to send letters, gifts, or any financial support.

¶11 Grandmother testified that since Child's birth, she and her husband had been Child's primary caregivers. Grandmother also reported that in the past six months, Mother had visited Child on only six occasions.

¶12 The DCS case manager (Case Manager) testified at the hearing and expressed her concern that by moving to Snowflake, Mother chose her boyfriend over parenting Child. Case Manager also testified that she offered to have DCS pay for half of Mother's transportation costs from Snowflake to Phoenix when Mother explained her transportation issues. Case Manager opined that Mother had addressed her mental health issues but had not made the appropriate behavioral changes for her overall parenting.

¶13 The juvenile court terminated Mother's parental rights as to Child. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235.A (2014), 12-120.21.A.1 (2003), and -2101.A.1 (Supp. 2013).

DISCUSSION

¶14 The juvenile court, as the trier of fact, "is in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). A parent has a fundamental liberty interest in the "care, custody and management" of

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her children. *Maricopa Cnty. Juv. Action No. JS-6520*, 157 Ariz. 238, 241, 756 P.2d 335, 338 (App. 1988). This right, however, is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶ 12, 995 P.2d 682, 684 (2000). We will not disturb the juvenile court's decision unless the court has abused its discretion or the court's findings of fact were clear error. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

I. Grounds for Severance

¶15 To terminate parental rights, a juvenile court must find the existence of one statutory ground for termination and that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (App. 2005). We will not reverse a termination order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). DCS alleged two statutory grounds for termination of Mother's parental rights: (1) abandonment, pursuant to A.R.S. § 8-533.B.1; and (2) fifteen months or more in out-of-home placement, pursuant to § 8-533.B.8(c).

¶16 "Evidence sufficient to justify the termination of the parent-child relationship shall include . . . [t]hat the parent has abandoned the child." A.R.S. § 8-533.B.1. Abandonment includes a finding that a parent has made minimal efforts to provide support and communicate with the child. *See Michael J.*, 196 Ariz. at 249-50, ¶ 18, 995 P.2d at 685-86. Under § 8-533.B.1, abandonment is measured by a parent's conduct - not by a parent's subjective intent. *Id.* The test is "whether a parent has provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship" with the child. *See id.*

¶17 Mother argues both the abandonment and fifteen months' in out-of-home placement grounds were predicated on Mother residing in Snowflake. We find sufficient evidence supports the juvenile court's finding that Mother abandoned Child.

¶18 At the time of the severance hearing, Child was over four-years of age and had resided with Grandmother since birth. Mother testified she lived with Grandmother after Child's birth for "about a year and a half" before moving out. After moving to Snowflake, Mother visited Child only on court dates and never arranged her own transportation to visit Child. Mother contends that by not providing her with transportation for visitation with Child, DCS penalized her for

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remaining in Snowflake. However, the juvenile court warned Mother that if she continued to reside in Snowflake and have limited visitation with Child, these factors could hinder reunification efforts. Moreover, in 2013, Mother did not send Child cards, gifts, or letters; and she did not provide Child with any financial support. Mother acknowledged that Child suffered the most when she failed to send any gifts, letters, or financial support. Accordingly, we find the juvenile court did not err in finding that Mother's conduct demonstrated she had abandoned Child by leaving Child with Grandmother without good cause, failing to provide support, and having little contact with Child. Therefore, sufficient evidence supports the juvenile court's finding that Mother abandoned Child.

¶19 Mother also argues DCS did not make reasonable efforts to provide transportation services for visitation with Child. When DCS seeks to terminate parental rights based on abandonment, neither the statute nor the constitutional considerations require DCS to first make diligent efforts to provide appropriate reunification services. *See, e.g., Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 65-66, ¶¶ 12, 15, 993 P.2d 462, 466-67 (App. 1999). Therefore, we do not address this issue.

¶20 Because we affirm the juvenile court's order terminating Mother's parental rights on the grounds of abandonment, we need not consider whether the trial court's findings justified severance on the grounds Child was in an out-of-home placement for fifteen months or longer. *See, e.g., Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.

II. Best Interests of Child

¶21 Mother does not dispute the juvenile court's findings that severance was in the best interests of Child. Because Mother does not challenge these findings on appeal, we do not address them. *See Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960) ("Inasmuch as the trial court's findings of fact are not themselves challenged by this appeal, we may assume their accuracy is conceded.").

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CONCLUSION

¶23 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights as to Child.



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