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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JESSICA S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.U., A.R., *Appellees*.

No. 1 CA-JV 15-0340
FILED 3-29-16

Appeal from the Superior Court in Maricopa County
Nos. JD28985, JS17691 and JS18004 (CONSOLIDATED)
The Honorable Bruce R. Cohen, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Tucson
By Laura J. Huff
Counsel for Appellee

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge John C. Gemmill and Judge Margaret H. Downie joined.

G O U L D, Judge:

¶1 Jessica S. (“Mother”) appeals from the juvenile court’s order terminating her parental rights as to A.U.¹ and A.R.² (the “Children”). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Jessica S. is the biological mother of A.U. born August 2013, and A.R. born April 2015.

¶3 In August 2014, while Mother was pregnant with A.R., she took A.U. to the pediatrician for an exam. She claimed when she put him to bed his face was normal, but when he awoke the next morning his eye was swollen and bruised. A pediatric nurse practitioner examined A.U. and observed bruising on his back, hip, stomach and legs; bruising and swelling on his head and face, including his left eye, which was swollen shut; and burns on his feet. After completing her evaluation, she suspected abuse and called an ambulance to transport A.U. to Phoenix Children’s Hospital for further evaluation.

¶4 At the hospital, Dr. Fraser, the admitting physician, asked Mother how A.U. received his injuries. Mother stated A.U.’s head injury was the result of him falling down and hitting his head against the wall.

¶5 During the initial examination, doctors found A.U. had complex skull fractures on both sides of his head, brain tissue bleeding, facial bruising, fractures on his left tibia and fibula, blisters on his feet, a chipped tooth, and a bruised back and abdomen. After the examination,

¹ Antonio U. is the biological father of A.U. His parental rights were terminated in April 2015, and he is not a party to this appeal.

² Julio R. is the biological father of A.R. and is not a party to this appeal.

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A.U. was admitted to the pediatric intensive care unit. The hospital's forensic pediatrician, Dr. Tiffany Coffman, examined A.U. and determined his injuries were the result of repetitive, non-accidental trauma.

¶6 During a follow up examination about two weeks later, the doctors discovered a fracture on A.U.'s left hand and hearing loss that may have been the result of head trauma.

¶7 Police officers also questioned Mother about A.U.'s injuries. Mother advised the officers she left A.U. in the care of her boyfriend, Julio R., for five to ten minutes while she left the house. When she returned, she noticed a small red spot on A.U.'s head. When she asked Julio R. about the mark, he stated A.U. fell and hit his head on the wall. Mother stated the next morning A.U. woke up with a swollen eye, and, after conferring with her mother, she took A.U. to the doctor.

¶8 DCS took A.U. into temporary custody and filed a dependency petition alleging A.U. was dependent based on physical abuse and neglect.³ DCS subsequently moved to terminate Mother's parental rights. After Mother gave birth to A.R., DCS took A.R. into custody and filed a petition to terminate Mother's parental rights as to A.R. based on her abuse of A.U.

¶9 At trial, Mother testified A.U. did not display any indication he was in pain, and that she had no idea how he was injured. Dr. Coffman testified, however, that based on A.U.'s injuries, A.U. would have been in severe pain. In addition, Dr. Coffman testified that A.U.'s injuries were the result of non-accidental trauma, and that his complex fractures, the swelling around his eye, the bruising all over his body, and the numerous fractures were consistent with significant and repetitive trauma and were not consistent with a falling injury.

¶10 Following trial, the court terminated Mother's parental rights to both children pursuant to Ariz. Rev. Stat. ("A.R.S.") section 8-533(B)(2) (abuse). Mother timely appealed.

³ Based on the juvenile court's termination order, Mother's claim there was insufficient evidence to support the court's order adjudicating the children dependent is moot. *Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 515, ¶ 9 (App. 2000).

DISCUSSION

I. Standard of Review

¶11 To justify termination of the parent-child relationship, the juvenile court must find at least one of the statutory grounds by clear and convincing evidence; the court must also find that “termination is in the best interests of the child.” *Mary Lou C. v. Ariz. Dep’t. of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). “The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.” *Jesus M. v. Ariz. Dep’t. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). Accordingly, we review the juvenile court’s termination of parental rights for an abuse of discretion and will affirm if the court’s findings are supported by reasonable evidence. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8.

II. Statutory Ground: Abuse and Neglect

¶12 Mother argues the juvenile court did not have sufficient evidence to terminate her parental rights on the grounds of abuse. A.R.S. § 8-533(B)(2).

A. Abuse of A.U.

¶13 Under § 8-533(B)(2), the juvenile court may sever a parent's rights if the parent has “neglected or willfully abused a child.” Abuse “includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.” A.R.S. § 8-533(B)(2). See *Mario G. v. Ariz. Dep’t of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 13 (App. 2011).

¶14 The record shows A.U. suffered serious physical injuries while under the care of Mother and her boyfriend, Julio R. Mother denied she was the cause of the injuries, denied she was aware of the extent of the child’s injuries, and denied she was aware how the injuries could have occurred. The juvenile court, however, did not find Mother to be a credible witness, and determined that Mother either committed the abuse or knew the abuse was occurring and was unable to protect A.U. Accordingly, we conclude the evidence was sufficient to terminate Mother’s rights as to A.U. on the grounds of abuse.

B. Abuse of A.R.

¶15 Based on the abuse suffered by A.U., the juvenile court also terminated Mother's rights as to A.R. A parent's rights may be terminated on the grounds of abuse even if the child at issue has not been abused or neglected if there is sufficient proof the parent abused or neglected another child or permitted someone else to abuse or neglect another child. *Mario G.*, 227 Ariz. at 285, ¶ 15, citing *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14 (App. 2005). In order to justify termination on this basis, there must be sufficient evidence showing a nexus between the past abuse of another child and the risk of such abuse to the child at issue. *Linda V.*, 211 Ariz. at 80, ¶ 17, n.3.

¶16 Here, the juvenile court was justified in terminating Mother's rights as to A.R. because the evidence shows a clear nexus between the abuse of A.U. and the risk of abuse to A.R. Dr. Coffman opined that based on the suspicious and unexplained cause of A.U.'s injuries, she would be concerned if either of the Children was returned home. Mother's DCS case manager testified that she was concerned Mother's abuse/failure to protect A.U. placed A.R. at risk. Specifically, she testified that although it was unclear whether Mother was in still a relationship with Julio R. at the time of trial, throughout the dependency proceedings Mother had a pattern of splitting up and getting back together with him. She also testified that Mother failed to participate in a psychological evaluation, and although she participated in some individual counseling, she refused to discuss A.U.'s injuries. Indeed, the record shows that Mother either refused or was unable to recognize the seriousness of A.U.'s injuries, and that she was not forthcoming about the cause of his injuries. *See supra*, ¶¶ 5-6, 8, and 13. We find no error.

III. Best Interests of the Children

¶17 Mother asserts the State provided insufficient evidence to show severance was in the best interest of the Children. We disagree.

¶18 To establish that severance of a person's parental rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18 (App. 1998). In making the determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19.

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¶19 The record supports the juvenile court's finding that the termination was in the Children's best interests. The juvenile court determined the Children were placed together in the same home and were free from Mother's abuse in the new home; the placement was meeting all of their needs; and the placement was willing to adopt both Children.

CONCLUSION

¶20 For the reasons above, we affirm the juvenile court's termination of Mother's parental rights to the Children.



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