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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANALISA S., DEPARTMENT OF CHILD SAFETY, *Appellants,*

v.

N.S., *Appellee.*

No. 1 CA-JV 16-0235
FILED 2-14-2017

Appeal from the Superior Court in Mohave County
No. S8015JD201400024
The Honorable Richard Weiss, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellant DCS

Mohave County Legal Defender's Office, Kingman
By Eric Devany
Counsel for Appellee

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kent E. Cattani joined.

K E S S L E R, Judge:

¶1 Analisa S. (“Mother”) appeals the termination of her parental rights as to her son, NS. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and JS (“Father”) are the biological parents of NS, born August 2008.¹ The Department of Child Safety (“DCS”) was notified of potential child abuse after the FBI arrested Father on child pornography charges.² Mother and NS moved in with TB, the paternal grandmother, after Father’s arrest.

¶3 DCS received a report that the home was a “hoarder” home and that TB was paddling NS to the point of bruising. Mother did not stop the paddling and paddled NS herself on at least one occasion. TB kept Mother confined in her bedroom and the children confined in TB’s room. NS told his therapist that TB physically abused him. Mother testified that she and NS were mentally and physically abused for years by both Father and TB. Mother described how TB beat NS until he was bruised, gagged him so he would not scream, taped his eyes open to force him look at her, and refused to feed him as a punishment. The original DCS case manager, LVK, testified that Mother was not able to protect NS from abuse by either Father or TB. DCS filed a dependency petition alleging abuse and neglect in March 2014.

¹ Father is also the biological father of KP, born 2007. KP and NS were raised together and are currently in the same placement. KP’s mother’s rights were previously severed.

² Father’s parental rights were terminated in the proceedings below, and he was originally a party to this appeal. However, Father filed a notice of no issue in September 2016 and this Court dismissed him as a party.

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¶4 MS, a DCS case manager, expressed “ongoing concern” that Mother will enter into another unhealthy relationship and expose NS to abuse and instability. MS testified to a series of relationships Mother entered into and which escalated very quickly. For example, Mother met someone at her first shelter and within a few weeks was introducing her to NS and moving into a hotel room together. Another romantic partner came to DCS’s attention because he had a criminal background, including an assault on a child. MK, Mother’s aunt, testified she asked Mother to leave her home after learning that Mother’s boyfriend at that time was a member of the mafia. Mother currently lives with her fiancé, who has four felonies and an outstanding warrant in Washington.

¶5 Mother has a pattern of treating her mental health issues for a time and then discontinuing services. MS testified that Mother was initially very engaged but became sporadic in her efforts at receiving treatment, and at one point stopped taking medication. By June 2014, Mother was no longer addressing her mental health needs, and MS testified that Mother’s behavioral changes were “superficial.”

¶6 In January 2015, the superior court granted a modification of physical custody and allowed NS to be placed with Mother’s grandparents in New Mexico. Mother moved to New Mexico in April 2015. Mother had supervised visits with NS in New Mexico which ended after she tried to introduce him to a new romantic partner.

¶7 NS’s current placement, Mother’s grandparents, noted that NS begins to talk like a baby and act out after visits from Mother. Mother’s therapist reported that placement has observed that Mother acts more like an older sister than a mother and that Mother lacks parental boundaries. The Court Appointed Special Advocate (“CASA”) reported a lack of confidence in Mother’s ability to be a stable and adult figure to NS. Although noting the obvious affection between Mother and NS, the CASA expressed her view that Mother continues to lack the level of maturity needed to meet the high needs of an extremely traumatized child. MS testified Mother was “a great playmate for her children” but that “she wasn’t an authoritative figure.”

¶8 Mother’s parental rights were severed on the grounds of neglect and that NS has been in an out-of-home placement for more than fifteen months. Mother timely appealed. We have jurisdiction under

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Arizona Revised Statutes (“A.R.S.”) sections 8-235(A) and 12-120.21(A)(1) (2016).³

DISCUSSION

I. Standard of Review

¶9 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, at least one of the statutory grounds set out in A.R.S. § 8-533(B). See A.R.S. § 8-533(B); *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). It must also find DCS has shown by a preponderance of the evidence that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We will review the record in the light most favorable to sustaining the court’s decision and will affirm unless, as a matter of law, we conclude that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10 (App. 2009) (citations and quotations omitted). We will affirm the juvenile court’s severance order absent an abuse of discretion or unless the court’s findings of fact were clearly erroneous. *E.R. v. Dep’t of Child Safety*, 237 Ariz. 56, 58, ¶ 9 (App. 2015) (citations and quotations omitted).

II. Out-of-Home Placement Exceeding Fifteen Months

¶10 Section 8-533(B)(8)(c) provides that a parent’s rights may be terminated if the child is in an out-of-home placement under the supervision of DCS, DCS has made a diligent effort to provide reunification services, and

[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer,^[4] . . . the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

³ We cite to the current version of statutes unless changes material to this decision have occurred.

⁴ NS was removed from Mother’s care in March 2014. At the time of severance in June 2016, NS had been in an out-of-home placement for over two years.

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A.R.S. § 8-533(B)(8)(c) (2014). As a threshold matter, to terminate parental rights under A.R.S. § 8-533(B)(8), there must be evidence in the record that the child is adoptable. *Matter of Yavapai Cty. Juv. Action No. J-9956*, 169 Ariz. 178, 180 (App. 1991) (citation omitted) (discussing A.R.S. § 8-533(B)(6), later renumbered as A.R.S. § 8-533(B)(8)). As we discuss below, NS's current placement is willing to adopt and the record indicates that NS is otherwise adoptable.

¶11 The record shows and Mother does not dispute that NS was in an out-of-home placement for almost two years, thus meeting the time element of A.R.S. § 8-533(B)(8)(c). Mother argues DCS did not make diligent efforts to provide her with reunification services. The record shows that Mother was provided with parenting classes, counseling and psychological evaluations, and visitation, among other services. Mother is essentially asking us to reweigh the evidence presented with respect to DCS's diligence, which is not the role of this court. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 81, ¶ 13 (App. 2005) (citations omitted). Since reasonable evidence supports the superior court's finding, we affirm.

¶12 Mother also asserts the superior court incorrectly found she had not remedied the circumstances that caused the out-of-home placement and that she was incapable of exercising effective parental care in the near future. The superior court commended Mother for the progress she had made, but noted that the record demonstrated continuing issues with mental health, inappropriate relationships, and executive functioning. The court observed that the same concerns expressed in 2014 regarding Mother are still being expressed in 2016.

¶13 Although Mother notes that she has successfully maintained a ten-month relationship with the father of her newborn and that he presented no danger to that child, evidence regarding a child born during severance proceedings is not relevant to the determination of whether termination is in NS's best interests. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 12 (App. 2008). Furthermore, the superior court was not persuaded that was sufficient proof that Mother had remedied the circumstances leading to NS's removal. Because the superior court is in the best position to weigh the evidence, our function is only to ensure that the record supports its findings. *Lashonda M.*, 210 Ariz. at 81, ¶ 13 (citations omitted). Thus, we affirm the superior court's finding that Mother has not remedied the circumstances leading to the out-of-home placement and that Mother was incapable of exercising effective parental care in the near future.

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III. Neglect

¶14 If sufficient evidence supports any one of the statutory grounds upon which the superior 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 (App. 2002) (citations omitted). Having found that there was sufficient evidence to support the superior court’s A.R.S. § 8-533(B)(8)(c) finding, we will not address the court’s A.R.S. § 8-533(B)(2) findings.

IV. Best Interests of the Child

¶15 In addition to finding statutory grounds for termination, the juvenile court must also find terminating parental rights is in the best interests of the child. A.R.S. § 8-533(B). To establish that severance of a parent’s 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 parental relationship.” *James S. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18 (App. 1998) (citation omitted). In making this 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. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (citations omitted).

¶16 NS’s current placement is willing to adopt both him and his half-sister, KP. The CASA testified that NS is thriving in his current placement and would benefit from the stability and permanence of being adopted. The superior court found it is in NS’s best interest to have the stability of a permanent placement, especially one that includes his sister. *See Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15 (App. 2008) (finding it was not in the child’s best interests to be separated from a closely bonded half-sibling when a placement is willing to adopt both). We have no basis to disturb the superior court’s finding that termination is in NS’s best interests.

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CONCLUSION

¶17 For the foregoing reasons, we affirm the termination of Mother's parental rights as to NS.



AMY M. WOOD • Clerk of the Court
FILED: AA