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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALICIA F., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.F., *Appellees*.

No. 1 CA-JV 16-0273
FILED 2-2-2017

Appeal from the Superior Court in Maricopa County
No. JD 38020
The Honorable John R. Ditsworth, Judge

AFFIRMED

COUNSEL

Denise L. Carroll, Esq., Scottsdale
By Denise L. Carroll
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

H O W E, Judge:

¶1 Alicia F. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her minor child, J.F. Mother argues that the juvenile court erred by admitting court reports of the Department of Child Safety (“the Department”) and by allowing a witness to testify telephonically. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2013, the juvenile court severed Mother’s rights to her three children under the grounds of mental illness and 15 months’ in an out-of-home placement. Five months later, Mother gave birth to J.F. The Department took custody of J.F. two weeks later due to the prior terminations, concerns of domestic violence, and Mother’s substance abuse and mental health issues. The Department placed J.F. with his paternal aunt, who also had custody of J.F.’s brother.

¶3 The juvenile court found J.F. dependent in August 2014 and set concurrent goals of family reunification and severance and adoption. The Department offered Mother services to address her substance abuse, counseling services, and parent-aide services. The Department also had concerns about domestic violence between Mother and J.F.’s father and offered domestic violence classes and couple’s counseling. In November 2014, Mother’s psychologist diagnosed Mother with major depressive disorder, post-traumatic stress disorder, cannabis-use disorder, a moderate neurocognitive disorder, and borderline intellectual functioning.

¶4 In August 2015, the Department moved to terminate Mother’s parental rights on four grounds: (1) substance abuse under A.R.S. § 8-533(B)(3), (2) mental illness under A.R.S. § 8-533(B)(3), (3) nine months’ in an out-of-home placement under A.R.S. § 8-533(B)(8)(a), and (4) prior termination in the preceding two years under A.R.S. § 8-533(B)(10). Six months later, the Department moved to add the 15 months’ in an out-of-home placement ground pursuant to A.R.S. § 8-533(B)(8)(c).

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¶5 Before the severance hearing, the Department filed its initial disclosure form, which included all court reports and psychological reports as exhibits. Mother objected to the admission and use of the Department's court reports unless each report's author testified. Also before the severance hearing, the Department moved to allow Mother's psychologist to testify telephonically, which the juvenile court granted.

¶6 During the subsequent severance hearing, Mother renewed her objections to the admission of the court reports and the psychologist's telephonic testimony. The Department argued that the court reports were admissible as business records under Arizona Rule of Evidence 803(6) and that allowing the psychologist to testify telephonically would not be prejudicial. The juvenile court admitted the court reports and allowed the psychologist to testify telephonically about her evaluation of Mother.

¶7 Mother testified that domestic violence with the father started in early 2012. Mother also stated that the domestic violence between them worsened after J.F. was born. A parent-aide helped Mother locate domestic violence shelters and obtain other domestic violence resources. Even though the parent-aide told Mother of a shelter that would take her in, however, she never followed through by leaving J.F.'s father, and she testified that she was still living with him. Mother also admitted that in August 2015, J.F.'s father hit her in the face, and the blow left a mark. Further, Mother testified that two months before the severance hearing, she and J.F.'s father fought, and he kicked her out of their apartment.

¶8 The case manager testified that the Department took J.F. into custody in May 2014 because both parents had prior severances, and the Department had concerns about the parents' substance abuse, untreated mental illness, and domestic violence. The case manager also testified that Mother's parental rights to her other children were severed because Mother's mental illness prevented her from appropriately parenting her children and because she failed to remedy the circumstances that brought them into the Department's care. The case manager stated that the Department had current concerns of domestic violence, both parents' untreated substance abuse, and untreated or inconsistent treatment of mental health issues. The case manager further testified that she believed that Mother was unable to discharge her parental responsibilities to J.F. based on the same circumstances from the previous termination. Regarding J.F., the case manager testified that J.F. was stable with his paternal aunt and that he was happy being with his brother. She also testified that if parental rights were severed, J.F. would be in a drug- and violence-free environment and that J.F. was adoptable.

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¶9 The juvenile court terminated Mother’s parental rights under all five of the grounds alleged. The court noted that the psychologist was a very credible witness and accepted all of her testimony and opinions. The juvenile court found that termination was in J.F.’s best interests. Mother timely appealed.

DISCUSSION

1. Admissibility of Evidence

¶10 Mother argues that the juvenile court violated her due process rights by admitting court reports because the authors were not available for cross-examination as Arizona Rule of Juvenile Procedure 45(C) requires. Rule 45(C) provides that a report shall be admitted “into evidence if the worker who prepared the report is available for cross-examination” and the report was properly disclosed to the parties. Mother challenges the admissibility of all court reports entered into evidence as well as the psychologist’s report. We need not address whether the juvenile court properly admitted the reports, however, because the evidence presented independent of the reports was sufficient to establish termination. Accordingly, any arguable error was harmless. *See Alice M. v. Ariz. Dep’t of Econ. Sec.*, 237 Ariz. 70, 73 ¶ 12, 345 P.3d 125, 128 (App. 2015) (providing that even if the juvenile court erred by admitting disputed exhibits, the error was harmless); *see also State v. Davolt*, 207 Ariz. 191, 205 ¶ 39, 84 P.3d 456, 470 (2004) (providing that error is harmless when “the reviewing court can say beyond a reasonable doubt that the error did not contribute to the verdict”).

¶11 We review a juvenile court’s termination order for an abuse of discretion. *E.R. v. Dep’t of Child Safety*, 237 Ariz. 56, 58 ¶ 9, 344 P.3d 842, 844 (App. 2015). We accept the juvenile court’s factual findings unless no reasonable evidence supports those findings, and we will affirm a severance order unless clearly erroneous. *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1, 200 P.3d 1003, 1005 (App. 2008). Here, sufficient evidence, without the challenged reports, supports each element of termination under the prior termination ground. Accordingly, the juvenile court did not abuse its discretion by terminating Mother’s parental rights.

¶12 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one of the statutory grounds for termination, and find by a preponderance of the evidence that termination is in the child’s best interests. *See* A.R.S. §§ 8-533(B), -537(B); *Jennifer S. v. Dep’t of Child Safety*, 240 Ariz. 283, 287 ¶ 15, 378 P.3d 725, 729

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(App. 2016). As relevant here, to terminate parental rights for prior termination in the preceding two years for the same cause, the juvenile court must find that (1) the parent had parental rights to another child terminated in the preceding two years and (2) the parent is currently unable to discharge parental responsibilities due to the same cause. A.R.S. § 8-533(B)(10). To determine whether a parent is unable to discharge parental responsibilities due to the “same cause,” the court looks to the factual cause that led to the termination of parental rights to the first child. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 48 ¶ 11, 83 P.3d 43, 48 (App. 2004).

¶13 Here, Mother’s parental rights to her other children were severed in December 2013 and the Department moved to terminate her parental rights to J.F. in August 2015. Accordingly, the first element is satisfied. See *Tanya K. v. Dep’t of Child Safety*, 240 Ariz. 154, 156 ¶ 6, 377 P.3d 351, 353 (App. 2016) (“[T]he statutory language directs a court to measure the ‘within the preceding two years’ requirement from the date the court terminated the parent’s rights to the first child to the date an interested party petitions to terminate the parental rights to the second child.”).

¶14 Additionally, Mother was unable to discharge parental responsibilities due to the same factual cause. The case manager testified that Mother had her parental rights terminated in the first severance because she failed to remedy the causes that brought the children into care. Here, the case manager testified that the previous causes were the same causes that resulted in J.F. being taken into care, i.e., substance abuse, mental illness, and domestic violence. Mother testified that the domestic violence started in 2012—before the first severance—and got worse after J.F. was born. Mother also testified that even though case workers provided her ample resources to leave the father, they still lived together at the time of the severance hearing. Accordingly, the juvenile court did not err by finding by clear and convincing evidence the prior termination ground under A.R.S. § 8-533(B)(10).

2. Psychologist’s Testimony

¶15 Mother also contends that the juvenile court erred by allowing the psychologist to testify telephonically because Mother was unable to properly confront the psychologist and because the juvenile court was unable to judge the credibility of the witness. Arizona Rule of Juvenile Procedure 42 provides that the juvenile court may permit telephonic testimony in severance hearings. The juvenile court has great discretion in permitting telephonic appearances and its ruling is reviewed for a clear

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abuse of discretion. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 234 ¶ 13, 119 P.3d 1034, 1037 (App. 2005). Because severance proceedings are civil in nature, parents have no rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution. *Dep't of Child Safety v. Beene*, 235 Ariz. 300, 305-06 ¶ 12, 332 P.3d 47, 52-53 (App. 2014).

¶16 In the instant case, even though Mother argues that she was unable to confront the psychologist, the record shows otherwise. The psychologist appeared telephonically and Mother's counsel ably cross-examined her. Additionally, although Mother contends that the juvenile court would be unable to judge the psychologist's credibility, the juvenile court specifically found the psychologist credible and accepted all of her testimony and opinions. Because Mother cross-examined the psychologist and because the juvenile court could judge the psychologist's credibility, the juvenile court did not abuse its discretion by allowing the telephonic appearance.

3. Best Interests

¶17 Mother does not challenge or otherwise discuss the best interests finding but the record shows that termination of Mother's parental rights was in J.F.'s best interests. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20, 319 P.3d 236, 241 (App. 2014). In determining whether the child will benefit, relevant factors to consider include whether the current placement is meeting the child's needs and if the child is adoptable. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3-4 ¶ 12, 365 P.3d 353, 355-56 (2016).

¶18 Here, the record supports the juvenile court's finding that termination was in J.F.'s best interests. J.F. is currently with his brother at his paternal aunt's house and has been there all but the first two weeks of his life. The case manager testified that the current placement provides a drug- and violence-free environment for J.F. Further, the case manager testified that J.F. is happy and adoptable. Thus, the juvenile court did not err.

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CONCLUSION

¶19 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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