IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

NICOLE D., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.C., *Appellees*.

No. 1 CA-JV 16-0490
FILED 4-27-2017

Appeal from the Superior Court in Maricopa County
No. JD30665
The Honorable Nicolas B. Hoskins, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Denise L. Carroll, Scottsdale
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Donn Kessler and Judge Patricia A. Orozco[1] joined.

T H U M M A, Judge:

¶1 Nicole D. (Mother) appeals the superior court's order terminating her parental rights to her son B.C., arguing the Department of Child Safety (DCS) failed to prove termination was in B.C.'s best interests. Because Mother has shown no error, the order is affirmed.

FACTS[2] AND PROCEDURAL HISTORY

¶2 B.C. was born in May 2014. At birth, he tested positive for marijuana and DCS became involved, but did not remove him from his parents' care at that time. In June 2015, DCS took B.C. into care given concerns about drug use and adults in the home. DCS filed a dependency petition, alleging B.C. was dependent as to Mother based on her substance abuse, domestic violence and unstable housing. In July 2015, the court found B.C. dependent as to Mother and the court ordered a case plan of family reunification concurrent with severance and adoption. B.C. was placed with the maternal grandparents and, when they had to move, with the paternal aunt. Both placements want to adopt B.C.

¶3 DCS provided Mother with various services, including a hair follicle test, random urinalysis tests, parent aide services, a psychological evaluation, individual counseling, substance abuse assessment and treatment, parenting classes and domestic violence classes. Mother participated in the psychological evaluation and consistently participated in visits with B.C. However, for the remaining services, Mother "started out strong and then after the first couple of months [her participation] dropped

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[1] The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

[2] This court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

down." As a result, Mother was unsuccessfully closed out of the parent aide services and substance abuse treatment and testing. In February 2016, Mother was arrested and incarcerated for alleged possession or use of heroin.

¶4 At a scheduled hearing, the superior court changed the case plan to severance and adoption. DCS then filed a motion to terminate Mother's parental rights on the statutory ground of six-months time-in-care. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(8)(b) (2017).[3] At the severance hearing held in October 2016, the court heard testimony from three witnesses (including Mother), received exhibits and heard argument. As relevant here, Mother testified that she, on her own initiative shortly before trial, started attending a substance abuse treatment program that requires random drug testing, that she was also required to take random drug tests through probation and that her tests so far had been clean. She did not, however, provide any documentation regarding those tests.

¶5 After taking the matter under advisement, in an October 2016 ruling, the court granted DCS' motion to terminate. After expressly setting forth the standards of proof, *see Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000), the court found DCS had proven the statutory ground for severance. In doing so, the court tacitly concluded DCS had proven by clear and convincing evidence the statutory ground of six-months time-in-care. Additionally, the court found DCS proved by a preponderance of the evidence that termination was in B.C.'s best interests.[4] Although noting the case worker provided contradictory testimony on B.C.'s best interests, the court did not credit the testimony indicating it would not be in B.C.'s best interests to terminate Mother's parental rights.

[3] Absent material revisions after the relevant dates, statutes cited to refer to the current version unless otherwise indicated.

[4] Although the superior court also terminated the parental rights of B.C.'s father, he is not a party to this appeal.

¶6 This court has jurisdiction over Mother's timely appeal pursuant to Article 6, Section, 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Arizona Rules of Procedure for the Juvenile Court 103 and 104.

DISCUSSION

¶7 To terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K.*, 210 Ariz. at 288 ¶ 41; *Michael J.*, 196 Ariz. at 249 ¶ 12. Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights as long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶8 On appeal, Mother does not challenge the statutory time-in-care finding. Rather, she argues the court erred in finding termination of her parental rights was in B.C.'s best interests. Mother points out that her visits with B.C. were consistent and positive, she had been sober for two months before trial and the case worker, on cross-examination by Mother's counsel, testified there would be no harm in giving Mother more time to prove she is fit to parent B.C.

¶9 As the superior court noted, "[t]he immediate availability of an adoptive placement obviously weighs in favor of severance." *Matter of Pima County Juvenile Action No. S-2460*, 162 Ariz. 156, 158 (App. 1989). The trial evidence shows B.C. currently has two possible adoptive placements with family members that meet his needs. Although the case worker testified that severance was in B.C.'s best interests and later testified it would not be a detriment to B.C. to allow Mother to continue her relationship with him, the court could properly determine which testimony to credit. *See Jordan C.*, 223 Ariz. at 93 ¶ 18. Finally, Mother's testimony of two months of sobriety, although commendable, did not mandate that the superior court find that evidence outweigh other evidence supporting the court's best interest findings. The court properly was concerned that the two months of sobriety was insufficient. Thus, on this record, Mother has not shown that the evidence was insufficient to support the superior court's finding that severance was in the B.C.'s best interests. *See Mary Lou C.*, 207 Ariz. at 51 ¶ 21.

CONCLUSION

¶10 The superior court's order terminating Mother's parental rights to B.C. is affirmed.

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