IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VIRGINIA C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.L., A.E, F.C., *Appellees*.

No. 1 CA-JV 16-0518
FILED 10-24-2017

Appeal from the Superior Court in Maricopa County
No. JD 528303
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Czop Law Firm, PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Jennifer B. Campbell joined.

D O W N I E, Judge:

¶1 Virginia C. ("Mother") appeals from an order terminating her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Three of Mother's four children are at issue in this proceeding: B.L., born in 2007; A.E., born in 2011; and F.C., born in 2014. A fourth child — B.G.O. — was born in 2003.

¶3 In 2014, infant F.C. fell from furniture in Mother's home on three occasions. Each time, Mother took her to the hospital. The third time, hospital personnel called law enforcement, and Mother was arrested for endangerment. The Department of Child Safety ("DCS") assumed custody of all four children.

¶4 In April 2016, DCS moved to terminate Mother's parental rights to the three youngest children on the basis of neglect and 15-month out-of-home placement grounds. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2), (8)(c). After a contested severance trial, the juvenile court terminated Mother's parental rights, concluding DCS had proven both grounds. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶5 Parental rights may be terminated if the court finds any one of the enumerated grounds in A.R.S. § 8-533(B) by clear and convincing evidence and that termination is in the children's best interests. A.R.S. § 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, ¶ 1 (2005). We view the evidence in the light most favorable to sustaining the juvenile court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008). We will not reverse an order terminating parental rights unless the court's factual findings are clearly erroneous. *Audra T. v. Ariz. Dep't of Econ.*

Sec., 194 Ariz. 376, 377, ¶ 2 (App. 1998). A finding is clearly erroneous if no reasonable evidence supports it. *Id*.

I. Grounds for Termination

¶6 Neglect or willful abuse of a child is a statutory basis for terminating parental rights. A.R.S. § 8-533(B)(2). "Neglect" includes "[t]he inability or unwillingness . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a).

¶7 When a parent has abused or neglected a child, the court may terminate that parent's rights to other children who were not themselves abused or neglected. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14 (2005). There must, however, be a nexus "between the abuse or neglect committed on the child . . . and the risk that such abuse [or neglect] would occur to a different child . . . to whom parental rights were being severed." *Id*. at 80 n.3, ¶ 17. A nexus exists when neglect of the child "is [not] remote in time." *Id*.

¶8 The juvenile court found that in the three months before the children were removed from Mother's care,

> Mother had taken [the] youngest child to the hospital three times for injuries sustained while falling from a bed or a couch, due to Mother failing [to] properly secure the child and leaving the child unattended. Mother also had her seven year old child care for Mother's three month old child without any adult supervision.

Mother does not challenge the finding that she neglected F.C. On the contrary, she admits she "did not provide appropriate supervision for child F.C. and that inability or unwillingness did cause harm to the child's health or welfare." Mother argues, though, that "[t]he record does not establish that B.L. or A.E. were at risk during the periods they were unsupervised." We disagree.

¶9 On one occasion when F.C. fell, Mother had left the three youngest children together alone while she ran an errand. During the third incident, she left B.L. to care for A.E. and F.C. while she went outside the home. At trial, Mother conceded that: (1) it was inappropriate to leave seven-year-old B.L. in charge of infant F.C.; (2) she could have better supervised F.C.; and (3) she acted irresponsibly and placed the three

children at risk. Mother stated that she did not believe it was safe to leave B.L. alone to supervise A.E. and F.C., but she did so anyway.

¶10 The record established that B.L. and A.E. are "emotionally damage[d]" and "parentified" as a result of Mother's neglect of F.C. Mother admitted it was "emotionally damaging to [B.L.] to be in charge of an infant." A former DCS caseworker testified that A.E., at age two and a half years, knew how to change a diaper and prepare a bottle and was "already taking on the role of an adult in the family." A.E.'s foster mother testified that, after she gave birth to a new baby, A.E. was "a little too hands-on with her to the point that it was inappropriate," and the foster parents had to explain the boundaries of being a brother as opposed to a caregiver.

¶11 In evaluating the risk of neglect as to B.L. and A.E., the court may also consider whether there is a pattern of neglect. *See Tina T. v. Dep't of Child Safety*, 236 Ariz. 295, 299–30, ¶ 18 (App. 2014). The record here demonstrates such a pattern. Mother often failed to provide the children with food. In 2011, she knowingly placed B.L. and A.E. in danger by failing to supervise them at a shelter where they were living. B.L. and A.E. were both sexually molested due to Mother's failure to supervise them. In early 2013, Mother allowed an adult male, whom she had seen just twice, to stay the night in the family home and sleep in the same room as Mother and B.L. The man put his hand over five-year-old B.L.'s mouth so she could not scream and sexually abused her. Mother reported the incident to police, but the case was closed because she could not identify the man in a lineup and did not have contact information for him. Later that year, Mother left the children with her boyfriend of three weeks, who had moved in the week before. That man sexually abused B.L. in A.E.'s presence.[1] In early 2014, Mother let 11-year-old B.G.O., who as a five-year-old had been sexually molested, shower with then-three-year-old A.E., even though she knew it was "risky." B.G.O. put his penis in A.E.'s mouth. Mother did not report the incident to the police.

¶12 Despite knowledge that B.L. and A.E. had been molested, Mother did not obtain therapy for either child. She admitted that the police

[1] The case was closed after B.L. said she had lied about the incident because the boyfriend made her do homework and after A.E. would not speak with the forensic interviewer. However, B.L. and A.E. continued to talk about the incident and Mother acknowledged it occurred.

and even her landlord advised her to get help for B.L. She told her therapist she had not done so, in part because she feared the children would be taken away from her.

¶13 Mother contends the children's sexual abuse does not demonstrate she is unable or unwilling to provide supervision and care. We conclude otherwise. Mother repeatedly failed to recognize the dangers inherent in leaving her children with strangers. She told her therapist that she sensed the first man who molested B.L. "was not an okay guy to have around [her] children." She admitted at trial that she did not think it was safe to leave B.L. and A.E. with the second man — her new live-in boyfriend. She nevertheless left her young children with him. She also admitted that the children were harmed by her decisions.

¶14 Dr. Juliano, a psychologist who evaluated Mother, concluded she is "well intentioned, but largely ineffectual, with this due to a combination of learning disabilities, below average cognitive functioning, poor choices, possible depression and features of anxiety." Dr. Juliano opined that "[t]he risk factors are significant for neglect and [for] the children potentially being hurt" and that "[g]iven the vulnerable age of the children, the prognosis needs to be viewed as poor."

¶15 Based on the evidence presented, a reasonable trier of fact could conclude both that Mother's admitted neglect of F.C. posed a risk of neglect to A.E. and B.L. *and* that she neglected A.E. and B.L. within the meaning of A.R.S. § 8-201(25)(a). We therefore affirm the juvenile court's conclusion that severance was proper based on A.R.S. § 8-533(B)(2). Because we affirm that ground for severance, we need not address the additional ground for severance found by the juvenile court. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002).

II. Reasonable Efforts

¶16 DCS was required to make reasonable efforts to preserve the family relationship before Mother's parental rights were terminated. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 193, ¶ 42 (App. 1999). DCS must provide Mother with the time and opportunity to participate in programs designed to help her become an effective parent. *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994).

¶17 The record supports the juvenile court's finding that DCS made reasonable efforts here. DCS provided Mother with numerous services, including therapy, parent aide services, visitation, case management, transportation, a bonding assessment, and a psychological

evaluation. The court, the Foster Care Review Board, and the children's court-appointed special advocate consistently found DCS's reunification efforts to be reasonable.

¶18 Mother contends she was not allowed an opportunity to demonstrate her parenting of all four children. However, the evidence established that she could not parent the children together, even after numerous services. The children began visiting Mother in pairs due to her "lack of control and supervision." Mother admitted to the caseworker she could not "control all four children at the same time during visits." As of the time of trial, visits with B.L. and F.C. had been suspended because they were traumatic for the children. B.L. and A.E. had problems in school after visiting Mother, to the point that A.E.'s school asked that he not attend on those days. The court-appointed special advocate reported that the children "demonstrate visible emotional upset before and especially after visits by crying, acting out, having flashbacks and having trouble sleeping after the visits."

¶19 Although Mother identifies additional services DCS could have provided, Dr. Juliano opined that, even with more services, Mother's prognosis was "poor." DCS need not undertake rehabilitative measures that are futile; rather it must pursue only those measures "with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34; *see also Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 49–50, ¶¶ 16–18 (App. 2004) (appellate court may conclude reunification efforts would be futile even if the juvenile court did not expressly do so); *In re Pima Cty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989) (finding "it would be very difficult" for parent to care for children "because of her mental deficiencies and lack of a strong family support system" and that requiring DES to provide psychotherapy would be futile).

¶20 Reasonable evidence supports the juvenile court's finding that DCS provided appropriate reunification services under the circumstances.

III. Best Interests

¶21 The only best interests argument Mother makes on appeal is that the juvenile court erroneously focused on the children's best interests in addressing the A.R.S. § 8-533(B)(8)(c) ground, rather than focusing on whether she had failed to remedy the circumstances causing the out-of-home placement. But as noted *supra*, we need not address this statutory ground because DCS proved neglect by clear and convincing evidence.

Mother has waived any other best interests argument, and we therefore do not consider that issue further. *See MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 304 n.7, ¶ 19 (App. 2008) (arguments not developed on appeal are waived).

CONCLUSION

¶22 For the foregoing reasons, we affirm the order terminating Mother's parental rights.

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