IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VANESSA H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.H., J.H.,[1] *Appellees*.

No. 1 CA-JV 17-0051
FILED 11-7-2017

Appeal from the Superior Court in Maricopa County
No. JD30150
The Honorable Connie Contes, Judge

AFFIRMED

COUNSEL

Law Office of H. Clark Jones LLC, Mesa
By Clark Jones
Counsel for Appellant

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

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[1] After this matter came before us for conference, we received notice of appellee A.H.'s death. Accordingly, we grant the Department of Child Safety's motion to dismiss appellee A.H. and amend our caption accordingly.

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

S W A N N, Judge:

¶1 This is an appeal from an order severing parental rights based on time-in-care under A.R.S. § 8-533(B)(8). We affirm because reasonable evidence supports the severance order.

FACTS AND PROCEDURAL HISTORY

¶2 Vanessa H. ("Mother") is the mother of minor children J.A.H., J.X.H., and A.H. (collectively, the "Children").[2] In March 2015, the Department of Child Safety removed J.A.H. and J.X.H. from Mother's care based on reports that Mother failed to meet her children's basic needs, constantly yelled at her children without cause, and constantly engaged in domestic violence with then-unborn A.H.'s father. In June 2015, upon A.H.'s birth, the Department removed A.H. from Mother's care as well.

¶3 The superior court found the Children dependent as to Mother in late 2015, and in mid-2016 the Children's guardian ad litem sought to sever Mother's parental rights to the Children based on time-in-care grounds under A.R.S. § 8-533(B)(8)(c) and additionally, with respect to A.H., under § 8-533(B)(8)(b).

¶4 The evidence presented at the severance trial in November and December 2016 established the following facts. The Department offered Mother multiple reunification services: a psychological evaluation; parenting, anger-management, and domestic-violence counseling; visitation and parent-aide services; and transportation. According to Mother, she was unable to immediately participate in services because she suffered a hip injury in March 2015 that caused her to be hospitalized for more than two months, and she thereafter underwent surgeries and took medication for separate issues after A.H.'s birth.

[2] The Children's alleged fathers' parental rights were severed, and they are not parties to this appeal.

¶5 Mother completed a psychological evaluation in August 2015. Mother's counseling was set to start in May 2015, but her inconsistent participation delayed her completion of the parenting and anger-management counseling until March 2016. By July 2016, Mother had completed about sixty percent of domestic-violence counseling. In August 2016, the domestic-violence counseling provider became unable (through no fault of Mother's) to continue to offer services to Mother. The Department did not arrange for a new provider, but Mother reported that she was able to find a new provider and that she resumed classes shortly before the severance trial began.

¶6 Mother's participation in visitation was inconsistent throughout the Children's time in out-of-home care. Mother testified at trial that she "ha[d] reasons" for missing visits. She claimed that she had missed some visits because of her medical issues, some because of a subsequent pregnancy, and some because she "was stressing out" about "the court stuff for my children."

¶7 Mother testified she had housing with a family member and that she recently obtained full-time employment with an office-cleaning company. But she did not provide proof of housing or employment to the Department, and she was unable to provide the name of her employer.

¶8 The superior court ruled that the statutory grounds alleged for severance were proved, and that severance was in the Children's best interests. Mother timely appeals.

DISCUSSION

¶9 To sever a parent-child relationship, the juvenile court must find by clear and convincing evidence that at least one of the grounds set forth in A.R.S. § 8-533(B) exists, and must find by a preponderance of the evidence that severance is in the child's best interests. *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). We accept the court's findings of fact unless they are not supported by any reasonable evidence, and we will affirm the severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶10 We hold that reasonable evidence supports the superior court's determination that severance of Mother's parental rights to the

Children was warranted under A.R.S. § 8-533(B)(8)(c).[3] Severance under § 8-533(B)(8)(c) requires proof that a child is in out-of-home placement and has been for a cumulative total period of at least fifteen months, that the Department has made a diligent effort to provide appropriate reunification services, that the parent has been unable to remedy the circumstances that caused the child to be in out-of-home placement, and that there is a substantial likelihood that the parent will be incapable of exercising proper and effective parental care and control in the near future.

¶11 Mother does not dispute, and the record shows, that the Children were in out-of-home placement for more than fifteen consecutive months and that they remained in out-of-home placement at the time of trial.

¶12 Mother contends, however, that the Department did not make a diligent effort to provide appropriate reunification services. Specifically, she contends that the Department should have assisted her in finding a new domestic-violence counseling program after the original provider became unable to offer services. The Department, citing *Shawanee S. v. Arizona Department of Economic Security*, 234 Ariz. 174 (App. 2014), responds that Mother waived any objection to the adequacy of services because she did not raise the issue in the superior court. *Shawanee S.* is distinguishable. *Shawanee S.* found waiver where a parent argued for the first time on appeal that she should have been provided additional services—specifically, a second psychological evaluation and additional treatment based thereon—after never raising that issue at any of six review hearings held over the course of a year in the juvenile-court proceedings. *Id.* at 239–41, ¶¶ 10–18. Here, by contrast, Mother challenges the Department's failure to assist her in continuing an ongoing service that was cancelled only months before the severance trial. In these circumstances, we find no waiver.

¶13 We conclude the Department's efforts to provide services were diligent. The Department is not required to provide every conceivable service, ensure the parent's participation in each service offered, or duplicate services that the parent receives elsewhere. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994); *Pima Cty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989). The Department

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[3] We therefore do not address whether the evidence also supported severance as to A.H. under A.R.S. § 8-533(B)(8)(b). *See Jesus M.*, 203 Ariz. at 280, ¶ 3 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

consistently offered Mother services, including domestic-violence counseling, starting in 2015. When the original provider became unavailable, Mother found a new provider after a relatively brief gap in services. Mother contends that the gap would have been even shorter had the Department arranged a new provider, and that in such circumstances "the record strongly suggests that Mother . . . would likely have finished [the counseling course] prior to the beginning of the termination trial." But Mother had ample opportunity to complete the course long before the interruption in services, and she failed to do so.

¶14 We further hold that reasonable evidence supports the superior court's determination that Mother was unable to remedy the circumstances that caused the Children's removal, and that there was a substantial likelihood that she would not be capable of exercising proper and effective parental care and control in the near future. The Children were removed because of domestic violence and Mother's failure to provide for their basic needs. Mother failed to complete domestic-violence counseling, and she did not consistently participate in visitation. And though she claimed that she had housing and employment, she did not provide proof of either, and she was unable to name her employer.

¶15 Finally, we hold that reasonable evidence supports the superior court's finding that severance was in the Children's best interests. Severance is in a child's best interests if he or she would benefit from severance or be harmed by continuation of the parent-child relationship. *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Relevant factors include whether the child's existing placement is meeting the child's needs, whether the child is adoptable, and whether an adoptive placement is immediately available. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 383, ¶ 30 (App. 2010). The evidence established that the Children are adoptable and need stability.

CONCLUSION

¶16 Reasonable evidence supports the superior court's severance order. We therefore affirm.

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