IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PATRICIA L., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.F., I.G., S.G., *Appellees*.

No. 1 CA-JV 17-0294
FILED 11-28-2017

Appeal from the Superior Court in Maricopa County
No. JD29775
The Honorable John R. Ditsworth, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Tucson
By Laura J. Huff
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Thomas C. Kleinschmidt[1] joined.

J O N E S, Judge:

¶1 Patricia L. (Mother) appeals the juvenile court's order terminating her parental rights to S.G., I.G., and A.F. (the Children). For the following reasons, we affirm.

FACTS[2] AND PROCEDURAL HISTORY

¶2 In January 2015, the Children, then ages ten, eight, and two, were removed from Mother's care after the Department of Child Safety (DCS) received a report of neglect, domestic violence, and substance abuse. The juvenile court adjudicated the Children dependent as to Mother in March 2015 and adopted a case plan of family reunification with a concurrent case plan of severance and adoption for A.F. only.[3]

¶3 By July 2016, Mother had been referred for a substance abuse assessment and treatment three times. She tested positive for methamphetamine in July 2015, did not engage in treatment, and was closed out of the service three times. Mother did enroll in inpatient substance abuse treatment in March 2015 and again in March 2016. Both

[1] The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

[2] We view the facts in the light most favorable to upholding the termination order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008) (citing *Maricopa Cty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106 (1994)).

[3] The Children were also adjudicated dependent as to their fathers in March 2015 and January 2016, and the fathers' rights were terminated in April and June 2017. The fathers do not challenge that determination and are not parties to this appeal.

times, Mother left the facility after a few days without completing the program.

¶4 Mother was also referred for substance abuse testing three times and closed out each time for noncompliance. Mother tested twice in August 2015, returning positive for marijuana on one occasion, but missed seven other scheduled tests. She submitted two negative tests each in September and October 2015 but missed eleven scheduled tests and then stopped participating in substance abuse testing.

¶5 Given these circumstances, the juvenile court ordered the case plan changed, over Mother's objection, to severance and adoption. DCS immediately filed a motion to terminate Mother's parental rights, alleging severance was warranted on the grounds of substance abuse and the length of time the Children had been in out-of-home care. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3), (8)(b)-(c).[4] A termination hearing was held in April 2017.

¶6 In the interim, Mother was re-referred for substance abuse treatment a fourth time, but the service was again closed for noncompliance. Mother tested negative for substances in October and November 2016 but missed six scheduled tests and refused to provide a hair sample on two occasions. She admitted using methamphetamine again in January 2017 and enrolled in a forty-five-day inpatient substance abuse treatment program for the third time; however, she left after only four days. Mother visited the Children one time each in November and December 2016. The visitation service was closed when DCS was unable to contact Mother, and, by the time of the termination hearing, Mother had not seen the Children in four months.

¶7 The DCS caseworker testified the Children were residing with relatives who were meeting their needs; additionally, the Children were adoptable, and the placements were willing to adopt. The caseworker opined termination of Mother's parental rights was in the Children's best interests because it would allow the Children the opportunity to live in a safe, stable, permanent, and nurturing home.

¶8 After taking the matter under advisement, the juvenile court entered an order finding DCS proved severance was warranted on the grounds of substance abuse and time-in-care by clear and convincing

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[4] Absent material changes from the relevant date, we cite a statute's current version.

evidence. The court also found DCS proved severance was in the Children's best interests by a preponderance of the evidence and entered an order terminating Mother's parental rights. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶9 Mother argues she was denied due process and a fair trial when the juvenile court admitted, over her objection, two reports authored by a DCS investigator and three reports authored by a DCS case manager when neither was present to testify, or be cross-examined, at the termination hearing. We review evidentiary rulings for an abuse of discretion. *Alice M. v. DCS*, 237 Ariz. 70, 72, ¶ 7 (App. 2015) (citing *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 11 (App. 2008)). To warrant reversal on this ground, Mother must prove both error and resulting prejudice. *Id.* at ¶ 12 (citing *State v. Davolt*, 207 Ariz. 191, 205, ¶ 39 (2004)).

¶10 Even assuming Mother had a right to cross-examine the authors of those reports, *see DCS v. Beene*, 235 Ariz. 300, 305-06, ¶ 12 (App. 2014) (holding a parent has no due process right to confront witnesses in a severance proceeding), and had proven the witnesses were truly unavailable where DCS disclosed their contact information and Mother simply chose not to secure their appearance at trial, *see* Ariz. R.P. Juv. Ct. 45(A); Ariz. R. Evid. 804(a), Mother has not alleged prejudice from the admission of these reports, and our review of the record reveals none.

¶11 The exhibits Mother objects to contain information regarding the circumstances through which the Children came into DCS's care and describe Mother's participation in services between March and June 2015. Most of this same information is repeated elsewhere within the record, in documents and statements to which Mother offers no objection. Mother has not and cannot show prejudice where the evidence is "merely cumulative to other evidence presented . . . on this point." *State v. Dunlap*, 187 Ariz. 441, 458 (App. 1996); *see also State v. Williams*, 133 Ariz. 220, 229 (1982) (concluding erroneously admitted evidence was not prejudicial because the evidence was merely cumulative to other testimony and, at worst, established a fact the defendant admitted).

¶12 The only unique information contained in the exhibits concerns Mother's lack of cooperation with DCS upon the Children's removal. However, such constitutes no more than harmless error, and harmless error is not prejudicial. *State v. Krone*, 182 Ariz. 319, 321 (1995)

(citing *State v. Bible*, 175 Ariz. 549, 588 (1993)). These events, occurring more than two years prior, were not recounted at the termination hearing. Moreover, they have no bearing upon the juvenile court's ultimate determination that Mother was presently unable or unwilling to care for the Children by virtue of her chronic substance abuse and failure to remedy the circumstances causing them to be in out-of-home care — conclusions which have substantial support in the record. Accordingly, we are satisfied beyond any reasonable doubt that the admission of the evidence, even if erroneous, did not contribute to or affect the court's conclusions. *See id.*; *accord Alice M.*, 237 Ariz. at 73-74, ¶¶ 12-13 (citing *Davolt*, 207 Ariz. at 205, ¶ 39).

CONCLUSION

¶13 Mother does not argue any other error in the juvenile court's order. *See Denise H. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 257, 259, ¶ 7 (App. 1998) (holding that a parent has no right to an independent review by the appellate court for fundamental error). Accordingly, the order terminating Mother's parental rights to the Children is affirmed.