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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JANAE T., *Appellant*,

v.

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

No. 1 CA-JV 17-0301
FILED 2-15-2018

Appeal from the Superior Court in Maricopa County
No. JD528997
The Honorable Janice K. Crawford, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Judge James B. Morse joined.

S W A N N, Judge:

¶1 Janae T. (“Mother”) appeals an order terminating her parental rights. Mother does not challenge the court’s findings concerning the statutory grounds for termination under A.R.S. § 8-533(B)(8)(c). Mother’s sole argument on appeal is that there was insufficient evidence to support a finding that severance of her parental rights was in J.T. and T.T.’s best interests. We hold that the state met its burden by a preponderance of the evidence, and we therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Anthony T. (“Father”)¹ and Mother (collectively, “Parents”) are the biological parents of J.T., born in 2012, and T.T., born in 2009 (collectively, “Children”). Parents have a history of domestic violence and alcoholism. Until 2015, Parents resided in Utah with J.T. and T.T., and while there, Parents were regularly cited for domestic violence, assault, public intoxication, and intoxication in or about a vehicle. Two such incidents involved child abuse. In one incident, T.T. reported that Mother had “stabbed him in the leg with a fork” and disclosed that “he does not feel safe at the home.” In Arizona, police officers responded to multiple calls regarding domestic violence disputes, as well. And while responding, officers often found Children unsupervised and Parents and paternal grandmother intoxicated to some degree.

¶3 On July 14, 2015, officers responded to a domestic violence call at Parents’ residence and found Parents and paternal grandmother intoxicated. Parents were arrested and officers felt it was unsafe to leave Children with grandmother after determining that her blood alcohol concentration was 0.17. Accordingly, officers contacted the Department of Child Safety (“the Department”).

¹ The juvenile court also terminated Father’s parental rights and he is not a party to this appeal.

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¶4 The Department filed a dependency petition, alleging that Children were dependent as to Mother because she neglected them, abused alcohol, and engaged in domestic violence. After a series of hearings and reports, the court ordered that Children be placed in the Department's custody. The Department offered Mother the following services as part of the reunification plan: substance-abuse counseling, random drug testing, individual domestic-violence counseling, marriage counseling, anger management, and a referral to a parent aide to maintain scheduled visitation with Children.

¶5 At the severance trial, Department Case Manager Sheila Sykes testified that while Mother participated in and completed a substance-abuse-treatment program through Families First in November 2015, "periodic checking" of Mother's urinalysis testing showed inconsistencies. Compliance reports indicated that Mother was largely non-compliant in providing regular urine samples and she stopped testing in November 2015. Mother resumed testing in July 2016, but she did not comply with testing requirements, and she again stopped testing from January 2017 to April 2017.

¶6 Several police reports were filed throughout the duration of the severance case, frequently describing Mother as having slurred speech, being intoxicated, and being involved in domestic violence. As for individual domestic-violence counseling, Mother was closed out after three sessions for failing to engage. Mother did not successfully complete marriage counseling.

¶7 Based on the case plan, Mother was scheduled to visit with Children twice per week. Mother was referred to a parent aide, and the parent aide's report indicated that she was appropriate with Children. Thereafter, Mother was referred to supervised visits only, but she did not regularly attend the scheduled visits or call to confirm attendance. After missing three consecutive visits, Mother was closed out of the program. Although the Department provided Mother with three more referrals to a parent aide to resume visitation, she did not call to confirm, and was subsequently closed out.

¶8 In November 2015, Dr. Silberman conducted a psychological evaluation of Mother. Silberman's report stated that Mother has "an ongoing alcohol addiction" and recommended "a full-year of sobriety" before Children could be returned to her care.

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¶9 At the time of the severance trial, J.T. and T.T had been residing in out-of-home care for more than 15 months. The Department placed J.T. and T.T. in a foster home, and then in a group home. While in the group home, J.T. and T.T. exhibited behavioral issues. The Department had difficulty finding a higher level of placement for J.T. and T.T. J.T.'s behavioral issues escalated and in August 2016, a crisis team was sent to the group home. In one instance, the placement had to take J.T. to the police department because the home "ran out of options." In January 2017, the Department provided J.T. and T.T. with a behavioral coach, a high-needs case manager, medication management, and therapy. Yet J.T. was admitted into a psychiatric hospital for about a week, due to the severity of the problems he exhibited at the group home. That same month, the group home requested that J.T. and T.T. be removed.

¶10 Since March 2017, J.T. has been placed in therapeutic foster care and his behavior has improved. T.T. was placed in another group home. J.T.'s placement reported that once their license was amended, they were willing to accept T.T. Sykes testified that she discussed J.T. and T.T.'s adoptability with the adoption worker, who stated that "once their behaviors are managed and controlled they [will be] adoptable."

¶11 On June 13, 2017, the court found that the Department had proven by clear and convincing evidence that J.T. and T.T. were in out-of-home placement for 22 months, that the Department made diligent efforts to provide appropriate reunification services, and that Mother had been unable to remedy the circumstances that caused the placement. In addition, the court found that the Department had proven, by a preponderance of the evidence, that termination was in Children's best interests. Mother now appeals.

DISCUSSION

¶12 Mother argues that the Department did not present sufficient evidence showing that termination was in the Children's best interests. To justify termination of the parent-child relationship, the court must find that one statutory ground under A.R.S. § 8-533 has been met by clear and convincing evidence, and that termination is in the child's best interest by a preponderance of the evidence. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). We accept the court's findings unless they are not supported by reasonable evidence, and we 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). We view the evidence in the light most favorable

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to upholding the court's determination. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 20 (App. 2009).

¶13 To determine best interests, the court may consider whether there is an immediate availability of an adoptive placement, whether an existing placement is meeting the needs of the child, the adoptability of the children, and whether the children would be at risk of abuse or neglect if placed in their parents' care. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 383, ¶ 30 (App. 2010); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 26 (App. 2011); *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17 (App. 2005).

¶14 Here, the Department presented considerable evidence that both J.T. and T.T. would benefit from severance and would be harmed if returned to Mother. While there was no immediate availability of an adoptive placement, the evidence showed that adoption was a realistic possibility for both J.T. and T.T. *See Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352 (App. 1994) (holding that a specific adoption plan need not be in place before terminating parental rights). To manage their behaviors, Children received several behavioral and mental-health services including a behavioral coach, a high-needs case management specialist, medication management, and therapy. At the time of the severance trial, J.T.'s behavior had improved in therapeutic foster care and T.T.'s behavior was expected to improve as well. Children's mental and physical needs are being met and they have stable, non-abusive home environments.

¶15 Mother's psychological evaluation, ongoing substance abuse, lack of initiative to participate in treatment services, and multiple reports of domestic violence and child abuse demonstrate a substantial likelihood that she will not be capable of providing Children with a stable home environment and the effective care that they need in the near future. We hold that that the evidence is sufficient by a preponderance of the evidence to sustain the court's decision that severance was in the best interests of J.T. and T.T.

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CONCLUSION

¶16 For the reasons set forth above, we affirm the court's order terminating Mother's parental rights.



AMY M. WOOD • Clerk of the Court
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