IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SHEILA C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, K.C., S.C., *Appellees*.

No. 1 CA-JV 17-0358
FILED 1-23-2018

Appeal from the Superior Court in Maricopa County
No. JD529254
The Honorable David J. Palmer, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Jennifer L. Holder
Counsel for Appellee DCS

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Paul J. McMurdie joined.

C A T T A N I, Judge:

¶1 Sheila C. ("Mother") appeals from the superior court's ruling terminating her parental rights as to her daughters K.C. and S.C. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Christopher C. ("Father") are the biological parents of K.C., born in July 2002, and S.C., born in July 2004.[1] In 2009, Mother and Father separated, and Father moved the children from their home in Colorado to Arizona to live with him and his mother. Mother worked multiple jobs in Colorado and spoke with the children on a regular basis. After Father filed for divorce a few months later, Mother moved to the New York City area, where she had significant family ties. Although she maintained contact with K.C. and S.C., by 2011 their parent–child contact had diminished, and she had not made physical contact with the children since they left for Arizona.

¶3 In 2015, the Department of Child Safety ("DCS") took the children into care after learning of Father's serious mental health issues, which had placed the children in danger. By September 2015, when DCS initiated dependency proceedings as to Mother and Father, Mother had not contacted the children in several years. The dependency petition alleged abandonment and neglect because Mother had not provided the children with the "basic necessities of life, including . . . food, clothing, financial support, and supervision." Shortly thereafter, DCS arranged for twice-weekly two-hour video chats between Mother and the children so that they could begin rebuilding their relationship. And in December 2015, Mother and DCS agreed that she would self-refer to the following reunification services in her home state of New Jersey: urinalysis testing to rule out substance abuse; individual and then family counseling when appropriate;

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[1] Father's parental rights to K.C. and S.C. were also terminated, but he is not a party to this appeal.

parenting classes; and a psychological evaluation, with an agreement that she would follow the recommendations of her evaluation. She also agreed that a home study—which was necessary before for the children would be allowed to visit her in New Jersey—would not be submitted until she engaged in the services.

¶4 Communications went well initially, but the children nevertheless expressed that they did not want to live with Mother. By June 2016, the two-hour video chats were reduced to 15–30 minute phone calls because the children complained that the visits were too long and interfered with their studies. The children indicated that they still felt uncomfortable around Mother and did not want to live with her. Arguments between Mother and the children's placement (their paternal aunt) made communication with the children difficult, so DCS appointed a case aide to supervise the calls. Mother visited Arizona in June 2016 for a court hearing and DCS set up a supervised visit, but S.C. refused to attend, and K.C. insisted that her aunt be with her for any visits. Considering these facts, and that Mother still had not engaged in several services, the court found the children dependent as to Mother and adopted a case plan of family reunification.

¶5 Soon after the children were found dependent, Mother successfully engaged in the required reunification services. Although her psychological evaluation was generally favorable, it noted that her estrangement with the children would pose "significant difficulty for parenting in the near-term future." The evaluation also recommended that Mother self-refer for individual counseling, but she did not do so, and DCS accordingly did not proceed with the home study.

¶6 By September 2016, the phone calls had ended because the children indicated that they did not want to talk to Mother on the phone. Insistent on talking with the children, Mother brought up the issue during a hearing, and the court ordered that she could only contact them during therapy sessions when "therapeutically recommended." The children stopped regularly attending therapy around July 2016, which may have affected Mother's ability to speak with them, but DCS informed the aunt that therapy must continue or the children would be taken from her care. DCS encouraged Mother to send gifts, letters, and cards so she could maintain some contact and possibly repair some level of trust with the children. Mother sent one card in October 2016, but nothing after that because she had not received confirmation of its delivery. Despite further attempts to restart phone contact, the October 2016 card was her last contact with the children.

¶7 In May 2017, DCS moved to terminate Mother's parental rights based on 15 months' time in care, alleging that, "[d]espite her participation in services, the relationship between Mother and the children remains broken and the children cannot be returned home to Mother." *See* Ariz. Rev. Stat. ("A.R.S.") 8-533(B)(8)(c). Mother failed to appear at the July 2017 severance hearing and the court severed her parental rights to K.C. and S.C. Mother timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶8 The superior court is authorized to terminate a parent–child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶9 Severance based on 15 months' time in care under A.R.S. § 8-533(B)(8)(c) requires proof that: (1) the child has been in an out-of-home placement for at least 15 months, (2) "[DCS] has made a diligent effort to provide appropriate reunification services," (3) "the parent has been unable to remedy the circumstances" necessitating the out-of-home placement, and (4) "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." The relevant circumstances are those existing at the time of severance. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96 n.14, ¶ 31 (App. 2009).

¶10 Mother does not dispute that K.C. and S.C. have been in care for over 15 months or that severance is in their best interests. She contends only that DCS failed to offer adequate reunification services, and she argues specifically that DCS did not afford her the individual counseling that was recommended in her July 2016 psychological evaluation, and that DCS failed to ensure she received a home study for her home in New Jersey.

¶11 DCS must provide the time and opportunity for parents to participate in programs designed to help them become effective parents. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234–35, ¶ 14 (App. 2011). Here, Mother agreed that she would self-refer to the required

reunification services because she lived in New Jersey. That agreement applied to individual counseling as recommended, so Mother was responsible for engaging in that service. Furthermore, Mother agreed that the home study would be conducted once she engaged in all of her services, and because she had not yet self-referred for individual counseling, she did not undergo the home study. *See id.* (noting that the parent, not DCS, is responsible for participating in required services).

¶12 Similarly, Mother argues that DCS failed to assist her in maintaining a relationship with the children by not giving her an opportunity to communicate with them over the phone and by not paying her airfare to Arizona to facilitate in-person visits. DCS is required to undertake reunification measures that have a reasonable prospect of success, but not measures that are futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34 (App. 1999). Here, DCS offered Mother various means of communication—first it offered twice-weekly two-hour video chats, and when the children indicated that they did not want to participate in such long conversations with Mother, DCS instead arranged regular 15–30 minute phone calls. DCS facilitated regular conversations until September 2016, when the children stated that they did not want to talk to Mother at all. The reasonableness of DCS's decision to stop arranging phone calls is evidenced by a subsequent court order that Mother only contact the children when "therapeutically recommended." And after calls ended, DCS encouraged Mother to continue trying to build the relationship through letters, but Mother did not do so. Because DCS offered appropriate communication services until they no longer presented a reasonable prospect of success, the court did not abuse its discretion by finding that DCS provided sufficient services.

¶13 The same reasoning applies to Mother's argument that DCS should have provided her with airfare so she could afford to visit the children in Arizona. When Mother flew to Arizona in mid-2016, one daughter refused to meet with her and the other would only meet if her paternal aunt, the placement with whom Mother frequently argued during calls, was present. With that considered, in conjunction with the children's response to the telephone and video interactions, the court did not abuse its discretion by determining that DCS made reasonable efforts despite not flying Mother to Arizona for additional visits. *See Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994) (noting that DCS "is not required to provide every conceivable service").

¶14 Mother also broadly contends that the superior court erred by finding that she was unable to remedy the circumstances causing the

continued out-of-home placement and that she would not be capable of exercising proper parental care in the near future. Mother's absence for the six years preceding DCS's dependency petition made it difficult for her to establish a relationship with the children. Throughout the services, Mother was unable to build trust with the children, as exemplified by their interactions becoming more limited over time—from twice-weekly two-hour video chats to 15–30 minute telephone calls supervised by a case aide to telephonic interaction only when "therapeutically recommended." Additionally, although Mother completed most of the required reunification services, she did not take the steps necessary to undergo a home study to enable the children to visit her in New Jersey. The parent–child bond, even after a year and a half of effort, remained essentially non-existent. *Compare* A.R.S. § 8-533(B)(8)(c) (focusing on whether the parent was *actually able* to remedy the circumstances), *with* § 8-533(B)(8)(a) (focusing on the parent's *efforts* to remedy the circumstances). Accordingly, the superior court did not abuse its discretion by finding that DCS met its burden for severance based on 15 months' time in care.

CONCLUSION

¶15 The severance order is affirmed.

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