IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARIA J., VENTURA M., *Appellants*,

v.

DEPARTMENT OF CHILD SAFETY, R.H., A.H., E.H., J.J., *Appellees*.

No. 1 CA-JV 17-0359
FILED 6-5-2018

Appeal from the Superior Court in Maricopa County
No. JD527108
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant Father Ventura M.

Law Office of Bernard P. Lopez, Goodyear
By Bernard P. Lopez
Counsel for Appellant Mother Maria J.

Arizona Attorney General's Office, Phoenix
By Dawn R. Williams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

S W A N N, Judge:

¶1 Maria J. ("Mother") and Ventura M. ("Father") appeal the juvenile court's order severing their parental rights. We affirm because reasonable evidence supports the severance order.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of R.H., born in 2009, and Mother and Father are the biological parents of A.H., born in 2011, E.H., born in 2013, and J.J., born in 2015.[1] All of the children have developmental delays. Further, R.H. is a medically fragile child with significant medical needs. R.H. received care at Saint Joseph's Hospital in 2009 and 2010, and starting in 2010, began receiving extensive care at Phoenix Children's Hospital ("PCH").

¶3 From 2009 to 2013, the predecessor to the Department of Child Safety[2] received six reports that Mother was neglecting R.H.'s medical needs. The reports also alleged concerns that Mother was homeless, mentally unstable, and unable to care for R.H. In October 2013, during a period when R.H. was hospitalized at PCH, the Department scheduled a team decision meeting to discuss continuing concerns regarding Mother's mental health and the parents' care of R.H. At the meeting, Father denied that Mother has mental-health issues, and Mother accused a nurse of hitting R.H. (an accusation that she had made several

[1] The identity of R.H.'s biological father is unknown. The juvenile court terminated, on abandonment grounds, the parental rights of any male person who could claim parental rights to R.H. No such person is party to this appeal.

[2] The Department of Child Safety replaced the Arizona Department of Economic Security and Child Protective Services in 2014. S.B. 1001, Section 157, 51st Leg., 2nd Spec. Sess. (Ariz. 2014). For convenience, we refer to the current entity throughout this decision.

times in the past). After the meeting, the Department immediately took A.H. and E.H. into custody, and planned to take R.H. into custody upon his discharge from the hospital. But when the parents refused to authorize a necessary medical procedure, the Department served a temporary custody notice for R.H. while he was still in the hospital.

¶4 The Department filed a dependency petition and offered the parents visitation, parent-aide services, psychological evaluations, and transportation.

¶5 Mother completed her psychological evaluation in March 2014. Dr. Marta DeSoto diagnosed Mother with bipolar disorder, observed that Mother had no insight into her mental health or the reasons for the children's removal, opined that Mother's condition placed the children at risk of abuse or neglect, and prognosticated that Mother would likely not be able to discharge her parental responsibilities in the near future. Dr. DeSoto recommended that Mother participate in a psychiatric evaluation and, once stable on medication, participate in individual therapy. Dr. DeSoto also recommended that Mother attend couples counseling with Father.

¶6 Father competed his psychological evaluation in April 2014, also with Dr. DeSoto. Father again strongly denied that Mother has mental-health issues. Dr. DeSoto concluded that Father demonstrated codependent traits and needed to obtain insight into Mother's condition, and she reiterated the recommendation for couples counseling.

¶7 Later in April 2014, the court found the children dependent as to their parents, and the court established a case plan of family reunification.

¶8 Mother participated in a psychiatric evaluation in November 2014. Dr. Richard Rosengard diagnosed Mother with a schizophrenia-spectrum and other psychotic disorders. He also diagnosed her with bipolar disorder on a rule-out basis. Dr. Rosengard gave a "guarded" prognosis regarding Mother's ability to care for her children in the near future. He recommended that she be treated by a psychiatrist and perhaps psychotropic medications. Based on Dr. Rosengard's report, the Department requested additional services for Mother: psychiatric counseling with a determination regarding her need for medication, and Ph.D.-level counseling. The Department also requested a best-interests assessment for the family.

¶9 Mother and Father attended couples counseling at Arizona Center for Change, and they engaged in further counseling at Terros. But Mother consistently denied any mental-health issues, and she did not engage in any psychiatric services. Additionally, the Department was unable to obtain Ph.D.-level counseling for Mother. Both parents are fluent in Spanish only, and the Department was unable to identify an appropriate Ph.D.-level counselor who met the language requirement.

¶10 Mother and Father consistently engaged in visitation with the children. At first, the contact was supervised with no overnight visits. Starting in early 2015, the parents were given unsupervised weekend visits. But PCH soon recommended that the overnight visits with R.H. be discontinued, based on concerns that Mother and Father were not adhering to the strict food and medicine regimen that R.H. requires. PCH's concerns were based on two hospital encounters. One encounter occurred during a visit, when Mother took R.H. to a different hospital in violation of PCH's instructions to always bring him immediately to PCH in view of his special needs. And another encounter occurred soon after a visit, based on an emergency resulting from R.H.'s failure to receive routine medication. The court suspended overnight visitation in May 2015. Non-overnight visits continued on an unsupervised basis, but the children's placement — their maternal aunt, with whom they had lived, along with their maternal grandparents, since early 2014 — remained largely responsible for administering R.H.'s medications even during the visits.

¶11 In late 2015, Mother and Father sought assistance from the Family Involvement Center, a nonprofit organization that provides support to parents of children with special needs. They thereafter participated in many parenting classes and support groups at the Center. A supervisor who dealt with Mother and Father reported that they were dedicated parents who made good progress, and she never witnessed them engage in any abnormal behavior. A Department case manager, by contrast, reported that when he met with the parents, Mother often acted erratically, Father constantly acquiesced to Mother's illogical thought processes, and the pair focused on themselves, blamed others for the situation, and made threats. And according to the case manager, the children's therapy providers reported similar interactions and expressed concern about the parents' ability to care for the children.

¶12 Around the same time that Mother and Father made contact with the Family Involvement Center, Dr. Sonia Perala completed the best-interests assessment. In a telephone call some months before, Father had threatened Dr. Perala with litigation. But both parents ultimately

participated in the assessment procedures. Dr. Perala observed that the parents and the children share loving bonds. Dr. Perala concluded, however, that it was in the children's best interests to remain indefinitely with their maternal aunt and grandparents.

¶13 Also in late 2015, the Department learned, though a disclosure by A.H., that Mother had recently given birth to J.J. Mother initially denied J.J.'s existence, but the parents later admitted to his birth. The parents had obtained pediatric care for J.J. during his first few months of life. But based on the other children's open dependency case and the unaddressed mental-health concerns, the Department removed J.J. from his parents' care in November 2015, placed him with his siblings, and filed a dependency petition. J.J. was ultimately found dependent as to both parents.

¶14 In early 2016, a family reunification team was put in place. The team's services were initially delayed because Mother and Father refused to sign documents that identified Mother's mental health as an issue. Starting in April, however, the parents began receiving therapeutic and parenting-skills services. The therapy provider observed the parents' visitation for approximately four months, for one hour each week, and found them to be loving and capable parents. But in July 2016, when the parents were within weeks of qualifying for a successful close-out of the services, R.H. and A.H. reported (over Mother's denial) that Father had struck R.H. in the chest. Based on that report (which R.H. confirmed in a forensic interview much later), the family-reunification-team services were discontinued and the parents were closed out unsuccessfully.

¶15 In November 2016, the Department successfully moved to change the case plan to severance and adoption. At that time, the court also barred the parents from attending the children's medical appointments and, based on an incident between the parents and the maternal aunt's boyfriend, ordered that the parents have no contact with the aunt or boyfriend. The maternal aunt provided a loving and stable home for the children throughout the case, and she met all their special needs. According to the case manager, the children were adoptable but it was unlikely that another placement would be willing to take all four together.

¶16 In January 2017, Father submitted to an updated psychological evaluation. Dr. Gustavo Franza diagnosed Father with an anxiety disorder, a personality disorder with dependent traits, borderline intellectual functioning, and acculturation difficulty. Dr. Franza observed that Father did not seem to understand or believe that Mother has mental health issues, and he prognosticated that Father's ability to adequately

parent the children in the near future was "poor at best." Dr. Franza further opined that there were reasonable grounds to believe that the problematic conditions would continue for an indeterminate time. Dr. Franza recommended that Father participate in individual therapy with a Ph.D.-level or experienced Master's-level therapist, attend Co-Dependent Anonymous meetings, engage in parenting classes and parent-aide services, and engage in community programs to support acculturation.

¶17 Father began the Ph.D.-level counseling with Dr. Mark Magier in early 2017. Based on his interactions with Father, Dr. Magier disagreed with Dr. Franza's testing methods and his assessment of Father's mental ability. Dr. Magier further disagreed with Dr. Franza's prognosis regarding Father's parenting ability. Dr. Magier opined that Father would likely be able to parent in the foreseeable future.

¶18 Mother refused to submit to an updated psychological evaluation with the provider obtained by the Department. Mother claimed that she could not understand the provider because of a dialect issue, and she requested that she too be evaluated by Dr. Franza. The Department accommodated Mother's request, and her evaluation with Dr. Franza took place in February 2017. Dr. Franza diagnosed Mother with post-traumatic stress disorder, a mood disorder, a personality disorder with dependent traits, borderline intellectual functioning, and acculturation difficulty. Dr. Franza also diagnosed Mother, on a rule-out basis, with bipolar disorder and a schizophrenia-spectrum and psychotic disorder. Dr. Franza found that Mother had no insight into her conditions, opined that her conditions would continue for a prolonged and indeterminate time, and prognosticated that her ability to adequately parent the children in the near future was "poor at best." Dr. Franza recommended that Mother receive intensive trauma therapy from a Ph.D.-level or experienced Master's-level therapist, engage in parenting classes and parent-aide services, and engage in community programs to support her self-care and acculturation. The Department submitted a referral for the counseling.

¶19 The juvenile court was presented with evidence of all the foregoing facts at a four-day severance trial held in April and June 2017. The court concluded that severance was warranted as alleged under A.R.S. § 8-533(B)(8)(a) and (B)(8)(c), and that severance was in the children's best interests. Mother and Father timely appeal.

DISCUSSION

¶20 Mother and Father contend that the Department failed to present sufficient evidence to support the termination order. Our review of the record reveals otherwise.

¶21 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 the court 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).

¶22 Severance under A.R.S. § 8-533(B)(8)(c) requires proof that a child in out-of-home placement has been in out-of-home placement 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 out-of-home placement, and that 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. We hold that reasonable evidence supports the juvenile court's determination that severance of Mother and Father's parental rights was warranted under § 8-533(B)(8)(c).[3]

¶23 First, the record shows that at the time of the severance trial, each of the children was in out-of-home placement and had been for over fifteen months.

¶24 Second, contrary to Mother and Father's contentions, the Department presented sufficient evidence to show that it made diligent efforts to provide appropriate reunification services. The Department is not required to provide a parent 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,

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[3] We therefore do not address whether the evidence also supported severance under § 8-533(B)(8)(a). *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.").

353 (App. 1994); *see Pima Cty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989). The record reveals that Mother and Father consistently engaged in numerous appropriate services, including multiple evaluations, counseling, classes and support groups, visitation, and family reunification team services. In view of those services, we cannot say that the Department's failure to obtain a Ph.D.-level counselor for Mother, and its provision of such a counselor to Father late in the case (but promptly after it was recommended), required a finding that the Department failed to make diligent reunification efforts.

¶25 The record belies the parents' contentions that the Department failed to adequately communicate with them. The Department's contact with the Family Involvement Center was sufficient to enable the Center to assist the parents in engaging in appropriate services, and to allow the supervisor from the Center to attend several meetings with the parents. The case manager also frequently met with the parents when they visited his office (usually unannounced), and he always enlisted the aid of a Spanish-speaking co-worker on those occasions. The Department provided services in Spanish, and even accommodated Mother's objection to the dialect spoken by the psychologist initially assigned to perform the updated psychological evaluation.

¶26 The parents contend that they were not provided adequate services to assist them in understanding how to manage the children's special needs, particularly R.H.'s medical needs. Assuming without deciding that the parents did not waive any objection to the adequacy of services, *see Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 177–79, ¶¶ 10–18 (App. 2014), the record establishes that the parents had sufficient opportunity to educate themselves about their children's needs. The Family Involvement Center assisted the parents in this regard, obtaining information from the maternal aunt regarding R.H.'s care and directing the parents to a library resource at PCH. The parents also had access to the children's therapists.

¶27 Third, the Department presented sufficient evidence to show that Mother and Father had been unable to remedy the circumstances causing the children's removal, and that there was a substantial likelihood that Mother and Father would not be capable of exercising proper and effective parental care and control in the near future. To be sure, Mother and Father participated in many services. But Mother refused to pursue recommendations for psychiatric care despite repeated diagnoses of mental illness that placed the children at risk of neglect or abuse. And for his part, Father consistently supported Mother's denial of her mental-health issues.

Evidence also established that Father had struck R.H. and that Mother refused to acknowledge the incident. Professional evaluations, performed years apart in the case, established that the parents had made no meaningful progress with respect to Mother's mental health and that they were not likely to make such progress in the foreseeable future.

¶28 Finally, the Department presented sufficient evidence to show that severance of Mother and Father's parental rights served the children's best interests. In considering a child's best interests, the court must determine, based on the totality of the evidence, how the child would benefit from severance or be harmed by continuation of the parent-child relationship. *Maricopa Cty. Juv. Action No. JS-9104*, 183 Ariz. 455, 461 (App. 1995), *abrogated on other grounds by Kent K.*, 210 Ariz. 279; *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Relevant factors include whether the child would be at risk of abuse or neglect if placed in the parent's care, 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, 379, ¶ 30 (App. 2010); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 27 (App. 2011); *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17 (App. 2005). Mother and Father emphasize their bond with the children. But the parent-child bond is but one factor in the best-interests analysis, and it was for the juvenile court to weigh the evidence. *See Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, 351, ¶ 30 (App. 2013). The Department presented evidence that Mother and Father were unable to safely care for the children, that the children's placement had been meeting their special needs for years, and that the children were adoptable. The juvenile court acted within its discretion to conclude that severance was warranted.

CONCLUSION

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

AMY M. WOOD • Clerk of the Court
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