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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAISY T., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, I.W., T.K., *Appellees*.

No. 1 CA-JV 17-0443
FILED 8-21-2018

Appeal from the Superior Court in Yavapai County
No. P1300JD201500090
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, P.C., Anthem
By Florence M. Bruemmer
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Kent E. Cattani joined.

P E R K I N S, Judge:

¶1 Daisy T. (“Mother”) appeals the juvenile court’s order terminating her parental rights to two of her children, I.W., born in August 2003, and T.K., born in December 2008 (the “Children”). For the reasons stated below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother became pregnant with I.W. in 2003, at age 16, and moved to Pennsylvania. Sometime thereafter, she returned to Arizona and gave birth to T.K. in 2008. In 2010, Mother left the Children with their maternal grandmother and moved back to Pennsylvania. I.W. reported that during this time the grandmother’s boyfriend sexually abused her. Mother later returned to Arizona, and the Children lived with her and stopped having contact with the grandmother’s boyfriend. In 2014, Mother pled guilty to charges of aggravated assault and disorderly conduct related to a domestic violence incident; the superior court sentenced her to one day of jail and three years’ supervised probation.

¶3 Law enforcement officials notified the Department of Child Safety (“DCS”) in November 2015 when they arrested Mother for violating the terms of her probation. At that time, Mother and the Children lived in a small trailer. A DCS inspection found the trailer was filthy; the Children slept on mats near the bed; there was a sexual device on the bed; and there were no doors on the bathroom or any private area to dress. Mother’s boyfriend, whom she called “Jay,” stayed over at the trailer several nights a week. The superior court subsequently revoked Mother’s probation for attempted aggravated assault on a peace officer, and a number of other violations, and ordered her jailed. DCS removed the Children and filed a dependency petition, alleging that Mother was neglecting the Children due to her incarceration and substance abuse. A month later, the juvenile court found that the Children were dependent as to Mother.

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¶4 After Mother left jail in early 2016, she rented a house next door to her ex-boyfriend Brandon, and later made plans to buy that house. The Children were afraid of Brandon because they had witnessed him yell at and hit Mother and throw a crib with a crying toddler in it. Mother became very upset when DCS disapproved of her decision to move next door to Brandon and she told the Children that if they did not change their mind about Brandon it would prolong the dependency. Eventually, the juvenile court told Mother that she would need to find another place to live.

¶5 In April 2016, a DCS specialist met with Mother to review a 1997 police report showing that Jay had hit a 16-month-old, causing bruising and a torn rectum. Jay pled guilty to child abuse for that incident and also had various drug offenses on his record. Mother later stated that she confronted Jay about the police report and that she would no longer have a relationship with him. However, Mother became pregnant with his child around July 2016. Mother also relapsed in her sobriety and abused illicit substances several times in May through August of 2016. Mother had positive drug tests in July and August 2016; she then had diluted specimens in the spring of 2017, but voluntarily followed up with a negative hair follicle test shortly thereafter. Mother thus demonstrated ten months of sobriety by the time of her trial.

¶6 In August 2016, psychologist Stephen Gill examined Mother. He noted a strong bond between her and the Children, but also stated that her history, including mental illness, drug and alcohol abuse, childhood trauma, and experience with domestic violence, “make[s] it difficult for her to effectively parent her children and exercise good judgment.” Dr. Gill stated that there was a “high” potential risk to the Children as a result of her choices to associate with Jay.

¶7 In October 2016, DCS requested a concurrent plan for both reunification and severance/adoption. Soon afterwards, DCS called Mother because it had heard she was pregnant. Mother admitted her pregnancy and that Jay was the father. DCS instructed her that Jay should not have contact with the Children. In November 2016, DCS inspected and approved a trailer in which Mother was living.

¶8 In December 2016 Mother reported to a counsellor that she was “still broken up from Jay.” But on January 24, 2017, Mother said her “boyfriend” Jay was helping her financially and she was “detoxing from him slowly.”

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¶9 On January 9, 2017, Dr. James Thal, a psychologist, performed a Bonding/Best Interest Assessment for DCS. He concluded the Children seemed comfortable with their foster parents, and also with Mother, although T.K. exhibited some regressive behavior when she was with Mother. Dr. Thal noted that Mother said she was “puzzled” by the Children’s fear of Brandon, since he had never mistreated them. Dr. Thal concluded that “the children’s best interests are served by a safe, nurturing, and secure environment. [The foster parents] appear to meet that standard, while [Mother] does not.” Dr. Thal cited Mother’s “longstanding” decision-making issues, unstable behavior, and involvement in destructive relationships for this conclusion.

¶10 Also in January, T.K. told a forensic interviewer that on more than one occasion while Mother was asleep, Jay rubbed her tummy over her clothes and hugged her while she pretended to be sleeping, and it made her feel uncomfortable. Upon hearing of T.K.’s reports involving Jay, Mother admitted to her case worker that this was “strange behavior.” A few days later, she told a counsellor that “her daughter” had reported a “night terror” that had caused DCS to suspect “possible grooming” by Jay. She acknowledged that she had “talked with her daughter about why she is saying things to her CASA because it ‘[i]s effecting [sic] our case.’” At a February 24, 2017, meeting with the counsellor, Mother blamed T.K. for her not being able to see the Children and said, “[T.K.] needs to just shut up!” The counsellor noted, “[Mother] accepts very little to no responsibility for her children’s fears and discounts them.” Mother also told her caseworker that she was open to Jay having visitation with her unborn female child, that Mother would stay friends with him, and that he would be coming to Mother’s home “and hang out on the couch,” where he would have access to the Children.

¶11 In April 2017, shortly after Mother’s baby was born, Mother appeared at a mediation, leaving the baby with Jay. She did not allow DCS to see the baby that day. DCS then removed the baby from Mother’s care and alleged that baby was also a dependent child.

¶12 At the time of trial in June 2017, the evidence showed that Mother had been drug-free for around ten months, was employed, and lived in appropriate housing. Mother’s DCS case worker and sobriety sponsor each testified that Mother told them she was not in a romantic relationship and had not been for months. In addition, the case manager testified Mother “recently” had been “more than compliant” with DCS requests, and that Mother had attended parenting classes, submitted to

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psychological and bonding evaluations, completed the group therapy program, and missed very few, if any, visits with the Children.

¶13 At trial, Dr. Thal testified that Mother exceeds minimally adequate parenting standards, meaning “basic caregiving abilities.” Nevertheless, Dr. Thal also testified that Mother is not able to provide a safe and stable environment for the Children and that he did not believe she would be able to do so in the near future.

¶14 In addition to his August 2016 assessment, Dr. Gill performed a psychological assessment of Mother in May 2017. At trial, Dr. Gill testified that Mother is not and has not ever been a minimally adequate parent. He also testified that he has “questions about whether she can continue or can provide the kind of stability that those two kids have with a foster family,” though he declined to specifically answer whether it would be prudent to return the Children to Mother’s custody. Dr. Gill also testified that, although Mother’s difficult upbringing may render her unable to recognize what is acceptable for her children, such deficiency could theoretically be remedied through services but had not been remedied at the time of trial.

¶15 The juvenile court terminated Mother’s parent-child relationships with the Children based on the grounds of neglect and fifteen-months’ time in care. *See* Ariz. Rev. Stat. (“A.R.S.”) §§ 8-533(B)(2), -533(B)(8)(c).

DISCUSSION

¶16 The juvenile court may sever parental rights if there is clear and convincing evidence of a statutory ground for severance, as well as a preponderance of evidence that severance is in the best interests of the child. *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 98, ¶ 7 (App. 2016). Clear and convincing evidence means “evidence that makes the proposition to be proved ‘highly probable or reasonably certain.’” *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 2 (App. 2009) (quoting *Kent K. v. Bobby M.*, 210 Ariz. 279, 284–85, ¶ 25 (2005)).

¶17 We will uphold the juvenile court’s order severing parental rights unless its factual findings are clearly erroneous, meaning there is no reasonable evidence to support them. *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2 (App. 1998). Because the juvenile court is in the best position to weigh evidence, observe parties, judge the credibility of witnesses, and resolve disputed facts, we view the evidence in the light most favorable to sustaining the court’s decision. *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

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¶18 On appeal, Mother challenges her termination on both the neglect and time in care grounds, as well as the best interests determination. Because evidence supports the time in care ground for severance, we do not consider the neglect ground.

¶19 To terminate Mother's rights under the fifteen-month time in care ground, DCS must show that (1) DCS made a diligent effort to provide reunification services, (2) the Children were in an out-of-home placement for fifteen months or longer, (3) Mother was unable to remedy the circumstances that caused the Children to be in an out of home placement, and (4) there is a substantial likelihood that Mother will not be capable of exercising proper and effective parental care and control in the near future. A.R.S. § 8-533(B)(8)(c).

¶20 Mother does not dispute that DCS made a diligent effort to provide reunification services or that the Children were in an out of home placement for the statutory time period. Thus, we only address Mother's ability to remedy the circumstances that caused the out of home placement and the likelihood that she will be capable of proper and effective parenting in the near future.

I. Adequacy of the Juvenile Court Findings

¶21 The juvenile court explicitly concluded that Mother "has been unable to remedy the circumstances that cause the children to be in an out-of-home placement" and that there is a "substantial likelihood that Mother will not be capable of exercising proper and effective parental care and control in the near future." In that section of its order, the court did not make any specific factual findings supporting its decision to sever Mother's rights based on that ground. In an earlier section of the order addressing the neglect ground, however, the court found Mother neglected the Children or failed to protect them from neglect by engaging in a relationship with Jay even though she knew he had abused a child in the past. The court further found that Mother became pregnant by Jay despite reporting to DCS that she was no longer in a relationship with him, noting that "[w]hile Mother claims she is not in a relationship with a man currently, her past history in choosing partners exposes her children to neglect."

¶22 Although Mother does not challenge the specificity of the court's findings in support of the time in care ground, we recently held that a severance ruling must contain, at a minimum, "at least one sufficiently specific finding to support each of the court's conclusions of law." *Logan B.*

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v. Dep't of Child Safety, 791 Ariz. Adv. Rep. 37, ___, ¶ 15 (App. May 24, 2018) (citing *Ruben M. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 236, 240, 241, ¶¶ 22, 25–26 (App. 2012)). As the *Logan B.* court explained, the requirement for written factual findings is important not only to aid appellate review, but also to ensure the juvenile court considers the issues carefully and is able to articulate not only the end result but also the process by which it reached that result. *Logan B.*, 791 Ariz. Adv. Rep. at ___, ¶ 18.

¶23 Here, the court found that Mother was in a relationship with Jay, “who she knew to have a history of sexual abuse allegations.” Although the specific wording of this finding is unsupported by the record, Jay does have a history of child abuse, and T.K. alleged inappropriate conduct that can be characterized as sexual grooming. Although not precisely stated, the court’s finding contains “the essential and determinative facts on which the conclusion was reached.” *Logan B.*, 791 Ariz. Adv. Rep. at ___, ¶ 15. Similarly, the court found that “Mother has engaged in relationships with men whom the children have reported as having abused them.” Although the record contains no evidence that either man abused the Children, it indicates prior child abuse by both Brandon and Jay.

¶24 Thus, despite the court’s sparse time in care findings, the findings the court made in support of its neglect determination, along with other evidence in the record, are sufficient bases upon which to affirm the severance ruling based on time in care.

II. Time in Care

A. Inability to Remedy the Circumstances

¶25 For the juvenile court to terminate Mother’s rights on the fifteen-month time in care ground, DCS must prove by clear and convincing evidence that Mother has been unable to remedy the circumstances that caused the Children to be in an out-of-home placement. A.R.S. § 8-533(B)(2)(c); *Dominique M.*, 240 Ariz. at 98, ¶ 7. In reaching its decision, the court considers “those circumstances existing at the time of the severance.” *Marina P. v. Ariz. Dep't. of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007) (citation omitted).

¶26 The court originally found the Children dependent based on an allegation that Mother had neglected them due to their deplorable living conditions and her drug abuse and incarceration. By the time of the severance trial, Mother established ten months of sobriety and had moved into appropriate housing.

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¶27 In support of its contention that Mother had not remedied the circumstances requiring the Children to be taken into care, DCS argues that, despite nearly two years of services, including mental health services, Mother remained unable to recognize the Children's "need for emotional security, let alone demonstrate the ability to provide them with it." In particular, DCS argues that Mother does not appreciate the Children's fears and discomfort with her past boyfriends.

¶28 During the dependency, Mother repeatedly demonstrated a lack of understanding or concern regarding the Children's fears and discomfort: she chose to reside next door to Brandon, an abusive ex-boyfriend the Children feared; months later she continued to express the view that their fear of Brandon was irrational or unfounded; in an effort to bring the dependency to a close, she told the Children to change their minds about their fear; she blamed her daughter for telling the truth about Jay's inappropriate touching; and, despite knowing he made her daughter uncomfortable, she intended to have Jay continue to come to the house to visit with the baby. As DCS argues, the evidence in the record supports the conclusion that Mother "remained unable to place the children's emotional needs above her dysfunctional relationship with Jay, a convicted child abuser." Indeed, as late as two months before the severance trial, she left her newborn in Jay's care despite DCS's warnings that he posed a risk to children.

¶29 There is reasonable evidence in the record to support the court's conclusion that Mother has failed to remedy the relevant circumstances.

B. Ability to Parent in the Near Future

¶30 The juvenile court must also find by clear and convincing evidence that there is a substantial likelihood Mother will not be able to exercise proper and effective parental care and control in the near future. A.R.S. 8-533(B)(8)(c). "It is not a parent's burden to prove she will be capable of parenting effectively in the near future, but [DCS]'s burden to prove there is a substantial likelihood she will not." *Jordan C.*, 223 Ariz. at 97, ¶ 33.

¶31 Dr. Gill, who interviewed Mother twice, including one month before trial, could not give a prediction on whether Mother would make harmful parenting choices in the future, but testified at trial that Mother was not then a minimally adequate parent. He also stated that it was possible for Mother to remedy her deficits through the services provided by DCS, but testified she had not done so by the time of trial. Dr. Thal stated

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that Mother was already a minimally adequate parent, but he did not believe that Mother would be able to provide a safe and stable environment for the Children in the near future.

¶32 The DCS case manager recommended severance based on Mother's "poor decision-making" and the case manager's observations of Mother since the case began, stating it was "reasonable to presume" that Mother would not be able to provide a safe and secure environment for the Children in the near future.

¶33 There is evidence in the record, including the progress report notes indicating Mother's improvement in the months immediately preceding trial, that she would be able to parent in the near future. Thus, the record includes conflicting evidence on this point. We may not re-weigh the evidence presented to the juvenile court, and are not in the best position to do so—the juvenile court observed two days of live testimony at the severance trial, and was thus in the best position to evaluate the credibility of the witnesses and the resulting reliability of their testimony. *See In Re Appeal of Maricopa Cty. Juv. Action. No. JV-132905*, 186 Ariz. 607, 609 (App. 1996). There is reasonable evidence to support the juvenile court's conclusion that Mother was unable to exercise proper and effective parental care and control in the near future.

III. Best Interests

¶34 Once the court has found one of the grounds for severance by clear and convincing evidence, it must then "also consider the best interests of the child." A.R.S. § 8-533(B); *Kent K.*, 210 Ariz. at 284, ¶ 22. Severance is in a child's best interests if it would provide an affirmative benefit or eliminate a detriment that would otherwise persist. *Dominique M.*, 240 Ariz. at 98, ¶ 8.

¶35 Since being in foster care, the Children have progressed emotionally and physically. They have done well in school and are involved in community and family events with their foster parents. The foster parents have consistently made positive decisions about what is in the best interests of the Children, which cannot be said of Mother. Dr. Thal also opined that the Children's interests were best served by a safe, nurturing, and secure environment, which the foster parents could offer, but Mother could not. This is sufficient evidence for the court to find by a preponderance of the evidence that severance is in the best interests of the Children.

CONCLUSION

¶36 For the foregoing reasons we affirm the juvenile court's order severing Mother's parental rights to her Children.



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