

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SUSAN W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, F.W., I.W., *Appellees*.

No. 1 CA-JV 17-0449
FILED 3-20-2018

Appeal from the Superior Court in Maricopa County
No. JD28860
The Honorable Jo Lynn Gentry, Judge

AFFIRMED

COUNSEL

Czop Law Firm, PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Susan W. (“Mother”) appeals the superior court’s order terminating her parental rights to her children, F.W. and I.W. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 F.W. and I.W. (“the Children”) are the biological children of Susan W. and Eugene W. (“Father”).¹ Five years prior to the Department of Child Safety’s (“DCS”) involvement with this family, Father moved with the Children from Washington to Arizona to live with the mother of Father’s other children. Mother remained in Washington and, despite her concerns that Father was violent, took no legal action to retrieve the Children from Father.

¶3 In July 2014, DCS assumed custody of the Children after the Children witnessed Father beat, threaten to kill, spit on, shove to the ground, and urinate on the mother of Father’s other children. DCS located Mother, and sought to reunify the Children with Mother by providing her reunification services.

¶4 Approximately three years after the case began, Mother, DCS, and the Children’s foster parents discussed the option of Mother relinquishing her parental rights and consenting to the Children’s adoption. The foster parents were interested in permanency for the Children after caring for the them on a temporary basis for almost two years and wanted to adopt the Children. Concerned about the length of time the Children had been in temporary placement, the foster parents informed Mother they would return the Children to DCS if Mother chose not to consent to

¹ Father’s parental rights to the Children have also been severed, but he is not a party to this appeal.

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adoption. DCS presented Mother with the consequences of consenting to the Children's adoption or opting to maintain her parental rights and continue with reunification services.

¶5 Mother did not make a decision after the initial discussions. Later, DCS met with Mother independently to ensure that Mother did not feel threatened by the foster parent's statements, and to let Mother know that DCS would continue to provide reunification services if she chose to continue with the reunification process. DCS encouraged Mother to discuss the situation with her attorney.

¶6 After taking two days to decide, Mother ultimately consented to the adoption. Mother avowed that she had signed the forms "freely and voluntarily and not as a result of any fraud, duress or undue influence (*force or trickery*);" she permitted DCS "to place [the Children] for adoption;" and she knew that as soon as she signed the consent form, she could not "revoke (*cancel or withdraw*) [consent] unless it was obtained by fraud, duress or undue influence" under Arizona Revised Statutes ("A.R.S.") section 8-106.

¶7 After Mother signed the consent forms, DCS moved to have the court terminate Mother's parental rights under A.R.S. § 8-533(B)(7).² Mother failed to appear without good cause at the hearing on DCS's motion to terminate, and the superior court deemed Mother's right to contest the motion's allegations waived. *See* A.R.S. §§ 8-863(C), -537(C); *Ariz. R.P. Juv. Ct.* 66(D)(2); *Brenda D. v. Department of Child Safety*, 243 *Ariz.* 437, 444-45, ¶ 22 (2018). At the hearing, DCS presented Mother's agreement to sever parental rights and evidence that the Children did not wish to reunify or continue a relationship with Mother. The superior court determined that severing Mother's parental rights was in the best interests of the Children and terminated Mother's parental rights under §§ 8-533(B)(7) and -533(B)(8)(c). Mother timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution; A.R.S. § 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶8 The right to custody of one's child is fundamental, but not absolute. *Michael J. v. ADES*, 196 *Ariz.* 246, 248, ¶¶ 11-12 (2000). "Arizona statutes governing the termination of a parent-child relationship require the

² In addition to A.R.S. § 8-533(B)(7), DCS moved to sever pursuant to A.R.S. § 8-533(B)(8)(c) (fifteen months out-of-home placement).

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trial court to make two findings prior to ordering severance of parental rights.” *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, ¶ 1 (2005). First, the court must find one or more of the statutory grounds for termination proven by clear and convincing evidence. A.R.S. § 8-537(B); *Shawanee S. v. ADES*, 234 Ariz. 174, 176–77, ¶ 9 (App. 2014). Then the court must determine by a preponderance of the evidence whether termination of the parent-child relationship is in the best interests of the child. *Id.*

¶9 “The [superior] court, as the trier of fact in a termination proceeding, ‘is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.’” *Jordan C. v. ADES*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (quoting *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004)). This court does not reweigh the evidence and views the evidence and reasonable inferences in the light most favorable to sustaining the superior court’s factual findings. *Jordan C.*, 223 Ariz. at 93, ¶ 18; *Jesus M. v. ADES*, 203 Ariz. 278, 282, ¶ 12 (App. 2002).

¶10 Section 8-533(B)(7) states that a parent-child relationship may be severed if “the parents have relinquished their rights to a child to an agency or have consented to the adoption.”³ Pursuant to § 8-106(D), “consent to adopt is irrevocable unless obtained by fraud, duress or undue influence.”

¶11 Mother contends that while she signed forms consenting to adoption of the Children and severing her legal rights to them, she signed the forms under duress. Setting aside consent of adoption and severance of parental rights requires proof of:

[a] wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition, or ... any wrongful threat of one person by words or other conduct that induces another to enter into a transaction under the influence of such fear as precludes him from exercising free will and judgment, if the threat was intended or should reasonably have been expected to operate as an inducement.

³ So long as sufficient evidence supports any one of the statutory grounds upon which the court orders termination of parental rights, we need not address claims pertaining to other grounds. *Jesus M.*, 203 Ariz. at 280, ¶ 3.

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Navajo County Juv. Action No. JA-691, 171 Ariz. 369, 372 (App. 1991) (alteration in original) (quoting *Anonymous v. Anonymous*, 23 Ariz. App. 50, 51-52 (1975)).

¶12 Mother claims that the foster parents' statement that they would return the Children to DCS if Mother chose not to consent to adoption, and DCS explaining to Mother the consequences of consenting or not consenting, amounted to duress. We reject Mother's claim.

¶13 Mother did not appear at the hearing on DCS's motion to sever. Therefore, there is no evidence in the record to substantiate that the actions of the foster parents or DCS precluded Mother from exercising her free will. Mother had the opportunity to appear and assert that her will was overborne, but chose not to do so. While the foster parents may have forced a difficult decision for Mother, DCS ameliorated the situation by confirming that they would continue reunification services if she so chose and encouraged Mother to seek advice from her attorney before making her decision. Mother took two days to weigh her decision to consent to adoption and sever her parental rights.

¶14 Heightened emotions and a belief that the Children would have to change foster care providers alone does not amount to duress. *See JA-691*, 171 Ariz. at 372. Moreover, Mother's failure to appear at the hearing waives her legal rights and Mother is deemed to have admitted the substantive allegations contained in the petition. A.R.S. §§ 8-863(C), -537(C) ("If a parent does not appear at the . . . termination adjudication hearing, the court . . . may find that the parent has waived the parent's legal rights and is deemed to have admitted the allegations . . . by the failure to appear."). Given the lack of evidence that Mother's will was overborne, the court did not err by finding that Mother was not under duress when she signed the consent to adoption and severance of parental rights forms for the Children.⁴

⁴ Mother does not contest the superior court's finding that severance and adoption are in the Children's best interests.

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CONCLUSION

¶15 Accordingly, we affirm.



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