IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANA G., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, G.G., *Appellees*.

No. 1 CA-JV 17-0491
FILED 3-13-2018

Appeal from the Superior Court in Maricopa County
No. JD32323
The Honorable M. Scott McCoy, Judge

AFFIRMED

COUNSEL

John L. Popilek PC, Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Sandra L. Nahigian
Counsel for Appellee Department of Child Safety

Maricopa County Office of the Legal Advocate, Phoenix
By Aimee D. Youngblood
Guardian Ad Litem for Appellee G.G.

MEMORANDUM DECISION

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

T H O M P S O N, Presiding Judge:

¶1 Ana G. (Mother) appeals the juvenile court's decision to terminate her parental rights to G.G. on the ground that she suffers from a mental deficiency that renders her unable to discharge her parental responsibilities toward G.G. who has significant medical needs. *See* Ariz. Rev. Stat. (A.R.S.) § 8–533(B)(3) (2014). For the following reasons, we affirm the juvenile court's decision.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of G.G., who was born September 11, 2014. DCS first had contact with Mother and G.G. in December 2015, after receiving a report concerning G.G.'s development and functioning, and Mother's cognitive and physical abilities.

¶3 At the time DCS became involved, Mother was unemployed, and she and G.G. lived with Mother's aunt (Great Aunt) and cousin, in a home with eight children, five adults, and numerous animals. G.G. had low weight, could not roll over or crawl, and something appeared to be wrong with her legs. DCS referred G.G. to a physical therapist, a nutritionist, an orthopedist, and for diagnostic blood tests. G.G. was also referred to services through the Arizona Early Intervention Program (AZEIP), and the Division of Developmental Disabilities (DDD).

¶4 While Mother was concerned for G.G., Mother was also unable to process information timely and needed information repeated to her multiple times. DCS received reports that when Mother took G.G. to doctors' appointments, Mother did not understand information the doctors conveyed, or how to follow-up, and failed to relay the information to relatives who could help. Mother did not take G.G. to the orthopedic specialist, and had gone to the wrong city when she tried to take G.G. to get her blood drawn.

¶5 DCS took G.G. into temporary custody and filed an out-of-home dependency petition in March 2016. The petition alleged that Mother

was unable or unwilling to provide proper parental care due to mental deficiency, among other things. G.G. was placed in a licensed DDD and medically fragile foster home.

¶6 Mother denied the dependency allegations, but submitted the matter to the court for determination. The juvenile court found G.G. dependent and set a case plan of family reunification with concurrent case plans of severance and adoption and permanent guardianship. The juvenile court ordered DCS to provide Mother parent aide services, an expedited psychological evaluation, individual counseling, parenting education services—"Raising Special Kids[,]" referral for Cradles to Crayons (C2C) clinical intake, and transportation. The court also ordered a C2C community coordinator to investigate skills training for Mother in light of Mother's particular needs and capabilities. C2C evaluated Mother for child-parent psychotherapy (counseling), but the service was not appropriate for Mother. C2C instead found Mother was appropriate for trauma therapy, but Mother declined to participate in that service.

¶7 G.G. was ultimately diagnosed with a rare form of dwarfism and post-traumatic stress disorder. It was also determined that G.G. would need lifelong medical care.

¶8 Mother was psychologically evaluated in September 2016 to assess her capacity to parent. Mother reportedly had vacant eye contact, poorly enunciated speech pattern, disorientation to time and place, lack of attention, and delayed verbal recall. She tested with an IQ of 59, with significant deficiencies that would affect her ability to parent.

¶9 Mother was diagnosed with "Intellectual Disability, mild to moderate" and "Neglect of Child, secondary to mental deficiency." The psychologist also confirmed limitations in adaptive functioning. The evaluation concluded that Mother was "unlikely" to "make considerable gains in the foreseeable future or discharge parental responsibilities independently," and would need assistance to provide residential and financial stability to meet G.G.'s needs and protect G.G. from neglect. Nonetheless, the evaluation found Mother could be "taught to assist in [G.G.'s] care as a secondary caregiver." The evaluation made no recommendation regarding services for adaptive functioning.

¶10 G.G.'s guardian ad litem requested the court order a psychological evaluation of Great Aunt to determine her willingness to protect and care for G.G. The psychologist diagnosed Great Aunt, with, among other things, major depressive disorder, borderline intellectual

functioning and acculturation (Mexico to U.S. parenting) difficulty. The psychologist opined that there is "an increased likelihood that a child under [Great Aunt's care] may be at significant risk for future neglect." The evaluation concluded that, like Mother, Great Aunt lacked the ability to independently parent G.G.

¶11 DCS had also previously disapproved Great Aunt and her husband as caregivers because they failed background checks. DCS determined other family members were inadequate caregivers because they had not taken sufficient action to protect G.G. from neglect while G.G. lived in the shared home. Mother submitted no motions requesting a guardianship or other intermediate position.

¶12 Upon DCS's motion, the juvenile court held a contested hearing to sever Mother's parental rights on September 26, 2017. DCS's petition requested severance only on the mental deficiency ground. At the hearing the court permitted Mother's attorney, but not Mother's guardian ad litem, to question the case manager, after an objection was raised to questioning by both. The court found, by clear and convincing evidence, pursuant to A.R.S. § 8-533(B)(3), Mother "is unable to discharge her parental responsibilities because of a mental deficiency and there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." The court further found DCS had made reasonable efforts to provide Mother with rehabilitative services. The court then ordered the termination of Mother's parental rights.

¶13 Mother timely appealed to this court. We have jurisdiction pursuant to A.R.S. §§ 8–235(A) (2014), 12–120.21(A)(1) (2018), and –2101(B) (2018).

DISCUSSION

¶14 Mother argues DCS (1) failed to provide sufficient reunification (rehabilitative) services, and (2) the court erred in preventing her guardian ad litem from examining witnesses. For the sufficiency of services claim, Mother specifically argues DCS failed to offer her services to address her adaptive functioning, or provide her a case aide trained to work with low functioning parents.[1] She also alleges DCS did not adequately explore the option of secondary parenting. Mother does not challenge the

[1] DCS argues Mother "arguably" waived the issue of a lack of services with respect to adaptive functioning. We do not agree.

court's best interest finding. We address only Mother's stated contentions, in turn.

¶15 A parent's right to custody and control of his or her own child while fundamental, is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248–49, ¶¶ 11-12 (2000). Severance of a parental relationship may be warranted where the state proves one of A.R.S. § 8–533's statutory grounds for termination by clear and convincing evidence. *Id.*; A.R.S. § 8–863(B) (2014). Clear and convincing means the grounds for termination are "highly probable or reasonably certain." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284–85, ¶ 25 (2005).

¶16 To terminate parental rights under A.R.S. § 8–533(B)(3), a court must find, as the court in the immediate case did, "[t]hat the parent is unable to discharge parental responsibilities because of mental illness [or] mental deficiency" and that reasonable grounds exist "to believe that the condition will continue for a prolonged indeterminate period." DCS is also required to prove, by clear and convincing evidence, it had made reasonable efforts to provide the parent rehabilitative services or that such an effort would be futile. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 193, ¶ 42 (App. 1999).

¶17 "We will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. V. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002). We do not reweigh the evidence, but "look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

¶18 The record supports Mother's claim that she was never provided with rehabilitative services to address her adaptive functioning issues. We also note the settled proposition that DCS is not required to provide a parent "every conceivable service," and that the psychologist who evaluated Mother made no recommendation regarding services for adaptive functioning. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235, ¶ 15 (App. 2011) (quotation and citation omitted). This is not to say that DCS is not ordinarily required to provide parents rehabilitative services that are meaningfully essential to remedy the reason(s) a child was removed to the state's custody. Parents who are differently situated by their disability status should be provided services tailored to address their disability needs. *See, e.g.*, *In re Elizabeth R.*, 35 Cal. App. 4th 1774, 1790 (1995) ("[A] developmentally disabled natural parent is entitled to services which

are responsive to the family's special needs in light of the parent's particular disabilities.").

¶19 In any event, we accept the juvenile court's finding that DCS had made reasonable efforts to provide Mother with rehabilitative services. First, the psychologist testified that while Mother's adaptive functioning could "possibly" improve, Mother would still need to be under the care and supervision of a primary supporter. Second, the psychologist noted Mother was "unlikely" to "make considerable gains in the foreseeable future[.]" Third, adaptive functioning was only one factor in a larger diagnosis that led the psychologist to conclude that Mother did not have the ability to independently parent or meet G.G.'s special needs for a "prolonged and indeterminate period of time." The juvenile court thus could have reasonably concluded that the provision of adaptive functioning services would have been futile, or would not foreseeably render Mother capable to independently parent G.G.

¶20 Further, the juvenile court's reasonable efforts finding is not undermined by Mother's argument that DCS did not adequately explore the option of secondary parenting. It had been determined that Mother could be a secondary caregiver for G.G. However, even though Mother requested she be permitted to parent G.G. with the support of her family members with whom she shared a home, none of the family members, and particularly Great Aunt, were determined to be suitable options. It was not unreasonable for DCS to be concerned that G.G. would merely be returning to the same situation from which she had been removed. Beyond the relatives she lived with, and whom she relied on to meet her own needs, Mother did not propose anyone else as a possible primary caregiver.

¶21 Mother additionally claims DCS could have explored options such as "guardianship or conditional dependency [that] would have enabled the relationship between Mother and G.G. to continue, without risk to G.G." However, as mentioned above, Mother submitted no motions requesting a guardianship, conditional dependency, or any other intermediate position.

¶22 Accordingly, we find the evidence in the record is sufficient to sustain the juvenile court's reasonable efforts finding and its conclusion that Mother was "unable to discharge her parental responsibilities because of a mental deficiency and there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period."

¶23 We additionally find the court committed no error by not allowing both Mother's guardian ad litem and her counsel to cross-examine the case manager.[2]

¶24 Albeit the Rules of Procedure for the Juvenile Court do not specifically address this issue, those rules provide that juvenile court proceedings "shall proceed in a manner similar to the trial of a civil action before the court sitting without a jury." Ariz. R.P. Juv. Ct. 6. The Arizona Rules of Civil Procedure provides: "[u]nless allowed by the court, only one attorney for each party may examine a witness." Ariz. R. Civ. P. 43(d); *see also* Ariz. R. Evid. 611(a) (noting the "court should exercise reasonable control over the mode and order of examining witnesses"); *Christy A. v. Dep't of Econ. Sec.*, 217 Ariz. 299, 308, ¶ 31 (App. 2007) (stating a trial court has broad discretion in the control and management of the courtroom).

¶25 Mother's trial attorney essentially conceded that it was within the court's discretion to determine whether both counsel and guardian ad litem were permitted to question witnesses. The court then informed the guardian ad litem that she could not proceed with asking questions, but she could pass her questions to Mother's attorney to ask the witness.

¶26 We find the issue was within the court's discretionary authority, and likewise find no error.

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[2] While Mother's appellate briefing asserts her guardian ad litem was barred from examining witnesses, the record shows only two witnesses testified at the severance hearing. Both Mother's attorney and her guardian ad litem were at the hearing. Of the two witnesses, Mother's guardian ad litem was able to cross-examine the psychologist who had examined Mother, after Mother's attorney declined to cross-examine this witness. An objection was raised regarding the guardian ad litem's examination only after Mother's guardian ad litem began to cross-examine the case manager.

CONCLUSION

¶27 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights to G.G.

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