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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ELIZABETH W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.C., *Appellees*.

No. 1 CA-JV 17-0495
FILED 7-10-2018

Appeal from the Superior Court in Maricopa County
No. JD28417
The Honorable John R. Ditsworth, Judge *Retired*

AFFIRMED

COUNSEL

David W. Bell, Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Lawrence F. Winthrop joined.

C A T T A N I, Judge:

¶1 Elizabeth W. (“Mother”) appeals from the superior court’s ruling terminating her parental rights to her son J.C. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother gave birth to J.C. in January 2013 while she was incarcerated in a Missouri prison for a drug-related offense.¹ Mother temporarily placed J.C. with a local foster family until she was released from prison two months later. She then brought J.C. to Arizona but returned to Missouri to attempt to regain custody of one of her other children, leaving J.C. in Arizona with her mother (“Grandmother”). Ten months later, pregnant with another child, Mother took J.C. back to Missouri, but Grandmother obtained a guardianship order in an Arizona court and brought J.C. back to Arizona. Mother stayed in Missouri with her three other children. Contesting the guardianship, Mother notified the Arizona Department of Child Safety (“DCS”) that Grandmother had an ongoing issue with methamphetamine abuse. Grandmother subsequently tested positive for methamphetamine, and DCS removed J.C. from Grandmother’s care and placed him with a foster family.

¶3 J.C.’s guardian ad litem filed a dependency petition in May 2014, and the superior court found J.C. dependent as to Mother and ordered a case plan of family reunification concurrent with severance and adoption. Because of Mother’s history of methamphetamine abuse, DCS directed her to comply with drug screening and substance abuse counseling services offered in Missouri. DCS arranged in-person visits when Mother was in Arizona, and phone and video calls so that Mother could contact J.C. from Missouri.

¹ J.C.’s father’s parental rights were also severed, but he is not a party to this appeal.

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¶4 Mother visited with J.C. in March 2015, her first contact with him since the dependency began nearly one year earlier. Over the next several months, Mother missed a significant number of her scheduled phone and video calls, and, when Mother did participate in calls, J.C. was often reluctant to speak with her. In early 2016, Mother moved to Arizona for a short period to improve her bond with J.C. Nevertheless, she only participated in approximately half of her scheduled in-person visits during that time, and although the visits generally went well, they caused J.C. intense anxiety afterward. Mother returned to Missouri in May 2016, but did not tell DCS until weeks later.

¶5 In an April 2017 report, child therapist Lydia Roy noted that J.C. was one of the most anxious children she had encountered in her career, and opined that J.C. would need more committed parents than most children. Roy also opined that Mother and J.C. could be reunified gradually over a three-month period, assuming Mother maintained consistent contact with him. Mother received a favorable report from Dr. James Holmes, who offered his view that Mother had a “good” prognosis for being a minimally adequate parent in the near future. But Dr. James Thal subsequently offered only a “guarded” opinion about Mother’s ability to parent in the near future. Although Dr. Thal noted Mother’s apparent success with overcoming methamphetamine addiction, he opined that she presented a risk of relapse, and of being overwhelmed by caring for a fourth child, especially a child like J.C., who required special attention.

¶6 Mother’s inconsistency with visits and calls continued through 2016, and DCS moved to terminate her parental rights to J.C. in September 2016 based on 15-months’ time in care. *See* Ariz. Rev. Stat. (“A.R.S.”) § 8-533(B)(8)(c). Around the time that this case went to a severance trial, a Missouri court returned one of Mother’s children to her care after a contested guardianship. Nevertheless, based on the evidence before it, the superior court severed Mother’s rights to J.C. based on 15-months’ time in care. *See id.* Mother timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶7 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

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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). We will not reweigh conflicting evidence on review. See *Jesus M.*, 203 Ariz. at 282, ¶ 12.

¶8 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."

¶9 Mother contends that the superior court erred by finding that there was a substantial likelihood that she would not be capable of exercising proper parental care in the near future. Mother does not appeal any other element of the severance. Although there was evidence supporting Mother's ability to properly parent, there was also significant evidence supporting the court's findings to the contrary, including Dr. Thal's testimony and therapist Roy's report regarding J.C.'s anxious nature and his need for a stable home environment.

¶10 Although Mother made some progress throughout the three-year case, she did not consistently participate in visits and calls, and she did not provide J.C. with care or support. Because Mother lived in Missouri for most of the dependency, DCS arranged phone calls, video chats, and in-person visits (when she was in Arizona), but she did not participate fully, and J.C. often refused to talk with her. And, although Mother's in-person visits with J.C. generally went well, they were infrequent and often caused J.C. intense anxiety once the visits were over. Mother's pattern of inconsistency continued even after DCS filed its motion to sever her parental rights in September 2016, and, at the severance hearing, Dr. Thal opined that Mother's inconsistent contacts and inability to build a bond with J.C. indicated that Mother would be incapable of giving J.C. the necessary level of care he requires, and that J.C. would be at risk of neglect in Mother's care.

¶11 Mother references Dr. Holmes' "good" prognosis that she would be able to demonstrate minimally adequate parenting skills, and Roy's testimony that J.C. could be slowly transitioned into Mother's care over an intensive three-month period. But Dr. Thal offered a much less favorable opinion that countered Dr. Holmes' prognosis. And, as to

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transitioning J.C. into Mother's care, Roy testified that a successful transition would require that Mother consistently participate in regular visits without disruption, and that the visits would need to be more and more frequent throughout the three-month period. But Mother's inability to consistently participate in visits with J.C. during the three-year dependency suggested that the prospect of a successful transition was poor. Thus, ample evidence supports the court's overall assessment of the factors underlying the severance decision.

¶12 Mother also suggests that the Missouri court decision returning one of her other children to her care should have been given more weight in this matter. But Mother's reunification with a different child in Missouri did not establish that she was also able to adequately parent J.C., particularly given his special emotional needs. *See Pima Cty. Juv. Action No. S-2460*, 162 Ariz. 156, 158–59 (App. 1989); *Maricopa Cty. Juv. Action No. JS-5209 and JS-4963*, 143 Ariz. 178, 187 (App. 1984) (holding that a parent's ability to meet the needs of one or more children does not establish that she is able to parent all of her children, "particularly [those] who have special parenting needs"). Accordingly, despite Mother's success with another child in Missouri, sufficient evidence supported the court's decision to terminate Mother's parental rights to J.C.

CONCLUSION

¶13 For the foregoing reasons, we affirm.



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