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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ASHLEY A., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.P.M., B.M., S.A., *Appellees*.¹

No. 1 CA-JV 17-0523
FILED 7-31-2018

Appeal from the Superior Court in Maricopa County
No. JS518479
The Honorable Janice Crawford, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

¹ The caption has been amended to help identify minor appellees with the same initials.

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 Ashley A. (“Mother”) appeals the juvenile court’s order terminating her parental rights to B.P.M., B.M., and S.A. (collectively, “Children”) on several grounds, including chronic substance abuse under A.R.S. § 8-533(B)(3). Mother argues on appeal that the court made insufficient findings of fact supporting its determination that the grounds for severance had been met. We hold that the court made sufficiently specific findings under A.R.S. § 8-533(B)(3) to show both that the statutory ground for severance had been met, and that severance is in the Children’s best interests. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of B.P.M., born in 2011, B.M., born in 2012, and S.A., born in 2016.² In 2013, the Department of Child Safety (“Department”) received allegations of substance abuse in Mother’s home. A case worker for the Department visited Mother’s residence. Mother reported that she used controlled substances every other day, but she denied addiction. Upon viewing the home, the case worker reported his concerns, including sharp objects in the yard within reach of B.P.M. and B.M., a red fireplace in the middle of the living room that, if used, could “blow up the home,” and the fact that all caregivers were “actively using illegal substances, engage[d] in illegal drug sales and criminal activity (including gang involvement), and the condition of the home is unsafe for the children.” B.P.M. and B.M. were removed from the home and placed with their maternal grandmother. Mother tested positive for methamphetamines and tetrahydrocannabinol the day B.P.M. and B.M. were removed. Mother participated in the recommended services and was reunified with B.P.M. and B.M.

² P.M. is the father of B.P.M., John Doe is the father of B.M, and G.W. is the father of S.A. Each father’s rights were severed in these proceedings and none are a party to this appeal.

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¶3 In March 2016, the Department received a report stating concerns about Mother's substance abuse. The Department tested newborn S.A.'s meconium and determined that she was born substance-exposed to marijuana and methamphetamine. The Department removed the Children from the home and placed them with a kinship placement.

¶4 In May 2017, the Department moved to terminate Mother's parental rights, alleging, among other grounds, chronic abuse of dangerous drugs under A.R.S. § 8-533(B)(3) and length of time-in-care under A.R.S. § 8-533(B)(8)(c). The court held the severance trial in October 2017 and Mother did not attend.

¶5 At trial, the case manager testified as to the following facts. Mother's health assessment indicated that she first began using marijuana at age 13 and by age 16, she was using methamphetamine. Mother has given birth to three substance-exposed children, including B. M., S.A., and a third child born during this case.³ Due to Mother's substance abuse, she experienced a history of homelessness and unemployment. And her drug abuse prevented her from meeting the Children's basic needs.

¶6 The Department provided Mother with several services, including drug testing, supervised visits, and parenting classes. Mother began drug testing in April 2016, and her participation was "on the higher end of sporadic." Mother did not participate in drug testing from June 2016 to September 2016. Although Mother drug tested in September 2016, the results were positive for methamphetamine. Mother did not test again until May 2017, during which she again tested positive.

¶7 The Department presented evidence that Mother attended and completed supervised parenting visits and transitioned to a full parent aide in June 2016. Mother thereafter began missing multiple visits, and she stopped attending sessions altogether by October 2016. Although the Department provided Mother with resources to enroll and successfully complete parenting classes, she did not engage.

¶8 At the close of the trial, the court made its findings of fact and conclusions of law on the record. The court held that the Department had proven the statutory grounds for severance by clear and convincing evidence, and that severance is in Children's best interests by a preponderance of the evidence. Mother appeals.

³ During trial, the Department requested that the third child, J.A., be adjudicated dependent. J.A. is not subject to this appeal.

DISCUSSION

¶9 Mother argues that the court's order terminating her parental rights is invalid under A.R.S. § 8-533(B)(3) because the court did not make the required findings of fact.⁴ We disagree.

¶10 To justify severance of the parent-child relationship, the court must find that one statutory ground under A.R.S. § 8-533 has been met by clear and convincing evidence, and that severance is in the child's best interests by a preponderance of the evidence. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). In terminating the parent-child relationship, the court shall provide its findings "in the form of a signed order or set forth in a signed minute entry." Ariz. R.P. Juv. Ct. ("Rule") 66(F). We will accept the court's findings if they are contained in the record and are supported by reasonable evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We will affirm the severance unless the findings are clearly erroneous. *Id.* We review the evidence in the light most favorable to upholding the court's determination. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 20 (App. 2009).

¶11 Severance under A.R.S. § 8-533(B)(3) requires proof that: (1) the parent has a history of chronic abuse of controlled substances or alcohol; (2) the parent is unable to discharge his or her parental responsibilities because of chronic abuse of controlled substances or alcohol; and (3) there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15 (App. 2010).

¶12 Here, the court issued a signed order terminating Mother's parental rights using language incorporating its findings "as set forth on the record." While the court should have articulated its factual findings concerning severance of Mother's parental rights in the signed order in accordance with Rule 66(F)(2)(a) and A.R.S. § 8-538(A), we accept the

⁴ We do not address Mother's argument that the court did not make significant findings of fact under § 8-533(B)(8)(c), -533(B)(8)(b), and -533(B)(8)(a). See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) ("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.").

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court's findings as presented at trial.⁵ See *Marco C. v. Sean C.*, 218 Ariz. 216, 220 n.3, ¶ 12 (App. 2008) (concluding that "[w]e may generally infer findings of fact necessary to sustain a court's order"). The court's findings, as made at trial, are as follows:

As to grounds for mother of chronic abuse of dangerous drugs, mother has a self-reported history of using substances. She began using marijuana at the age of 13, methamphetamine at age 16. Mother has been positive during this case for methamphetamine. Mother gave birth to a total of three children who were substance exposed. When this dependency began, mother gave birth to [S.A.] on March 6th. [S.A.] was substance exposed. Prior to that mother had a previous dependency in which the substance exposed newborn was [B.M.] During this case mother gave birth to [J.A.] [J.A.] was also substance exposed. Mother does have a history of chronic substance abuse.

Mother's chronic substance abuse results in an inability to discharge her parental responsibilities. She's exposed three children in-utero to dangerous substances. Mother has not maintained or demonstrated an ability to maintain stable housing or employment. There is a reasonable belief that the chronic drug abuse will continue. Mother completed TERROS after her -- when the first dependency was dismissed in 2013. Nevertheless, she began using substances again, as demonstrated by the two additional children born substance exposed. During this dependency mother has not successfully completed any substance abuse treatment. It is very significant that she had such a significant relapse without any period of sobriety after the first dependency.

I do find the Department has made reasonable efforts to reunify the family. Based on the findings set forth on the record, I do find that the ground for termination of the parent/child relationship based on chronic abuse of

⁵ Mother failed to object to the juvenile court's order and therefore, she has waived her opportunity to challenge the absence of findings of fact and conclusions of law in accordance with Rule 66(F)(2)(a) and A.R.S. § 8-538(A). See *Logan B. v. Dep't of Child Safety*, 791 Ariz. Adv. Rep. 37, ¶¶ 24-31 (May 24, 2018) (Brown, J., dissenting).

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dangerous drugs has been proven as to mother by clear and convincing evidence.

¶13 Reasonable evidence on the record supports the court's severance of Mother's parental rights under A.R.S. § 8-533(B)(3). The Department presented sufficient evidence supporting each of the elements for severance under the statute. Mother has a history of abusing controlled substances. She has been using controlled substances from a young age, she gave birth to substance-exposed children, and she continued using controlled substances after the first dependency and during the severance trial. Mother's use of controlled substances has prevented her from discharging her parental responsibilities effectively — she has been unemployed and homeless, preventing her from providing the Children with a safe and stable home. The Department provided Mother with several services, including drug testing, supervised visits, and parenting classes. However, Mother's attendance was sporadic, and she failed to successfully close out of the services. Her inability to engage in services shows that there is a substantial likelihood that the abuse will continue for a prolonged or indeterminate period.

¶14 Additionally, like the statutory grounds, the court made its best-interests findings on the record. To establish that severance is in the child's best interests, the court must find either that the child would benefit from severance or be harmed by continuation of the parent-child relationship. *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).

¶15 The court made the following findings at the severance trial concerning the Children's best interests:

As to the children's best interest[s], all of the children are placed with relatives. They are all adoptive placements. [B.M.] and [B.P.M.] are placed together. The relatives are willing to maintain a relationship for these two children with the paternal relatives. It is an adoptive placement. They are meeting all of the children's needs. They are adoptable

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children. These children need a safe, stable home, free of substance abuse, free of lack of fear or abandonment.

....

As to [S.A.]. [S.A.] is placed with paternal aunt and uncle. [S.A.] has been placed with this placement since birth. It is an adoptive placement. The child [S.A.] has no special needs and is an adoptable child. [S.A.] needs a stable home, free of substance abuse. [S.A.] has been in care her entire life.

¶16 The record supports the court's findings. The Department presented sufficient evidence showing that severance is in the Children's best interests. The Department case worker testified that S.A. is placed with her maternal aunt and uncle, while B.P. and B.P.M. are placed with their maternal relatives. Children's physical, social, educational, psychological, and emotional needs are being met, they are adoptable, and they would be at risk for abuse or neglect if placed in Mother's care.

¶17 Accordingly, we hold that the court articulated its findings of fact on the record supporting severance of Mother's parental rights to the Children under A.R.S. § 8-533(B)(3) and that reasonable evidence on the record supports the juvenile court's findings.

CONCLUSION

¶18 For the foregoing reasons, we affirm.



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