

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SAPPHIRE M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.B., I.B., *Appellees*.

No. 1 CA-JV 17-0532
FILED 6-19-2018

Appeal from the Superior Court in Maricopa County
No. JD530156
The Honorable Colleen L. French, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge Peter B. Swann joined.

H O W E, Judge:

¶1 Saphire M. (“Mother”) appeals the juvenile court’s order terminating her parental rights. Mother argues that the court abused its discretion by finding that terminating her parental rights was in her children’s best interests. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother’s two children, J.B. and I.B., were born in April 2014 and January 2015, respectively.¹ The Department of Child Safety first took the children into custody in July 2016 due to allegations of neglect or failure to protect and the parents’ failure to adhere to the safety plans that had allowed the children to remain in the home. The Department petitioned for dependency later that month.

¶3 Mother denied the dependency allegations, but submitted the issue to the juvenile court for determination on the record, and the court adjudicated the children dependent in September 2016. The Department offered Mother numerous services, including substance-abuse treatment, but she continually tested positive and failed to adequately participate in counseling and make the necessary changes that the Department required for family reunification. The children often exhibited negative behavior after visitation, including increased aggression and difficulty sleeping, which caused visitation to be suspended. Mother also admittedly attended some visits while under the influence. The Department moved to terminate Mother’s parental rights in April 2017 on the grounds of substance abuse and six months’ time in an out-of-home placement pursuant to court order.

¶4 The court held a contested severance hearing in October 2017. The Department case manager testified that terminating Mother’s parental

¹ The children’s father’s parental rights were terminated in July 2017 and he is not a party to this appeal.

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rights was in the children's best interests because it would provide them with the permanency they deserve. The court found that the Department met the statutory grounds of a history of chronic substance abuse under A.R.S. § 8-533(B)(3) and time in an out-of-home placement under A.R.S. § 8-533(B)(8)(b). The court also found that a plan was in place for the children's paternal great aunt to adopt the children and that if the plan could not move forward, the children were nevertheless adoptable. The court noted that the family placement afforded the children an opportunity to maintain relationships with extended family members, that placement was providing a loving and nurturing home environment, and that adoption would provide the children with the added benefit of stability and permanency. The court found that terminating Mother's parental rights was in the children's best interests and terminated the parent-child relationship between Mother and the children. Mother timely appealed.

DISCUSSION

¶5 Mother does not challenge the juvenile court's findings of the statutory grounds. Instead, Mother argues that the court abused its discretion by finding that severance was in the children's best interests because the evidence demonstrated that she had a relationship with the children, acted appropriately during visitation, showed the children affection, and desired to maintain her relationship with the children so that they could return home. Because sufficient evidence supports the court's best interests finding, the court did not abuse its discretion.

¶6 A juvenile court's termination order is reviewed for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). The juvenile court may sever a parent's rights if clear and convincing evidence establishes that at least one of the statutory grounds for termination exists and that a preponderance of the evidence shows that terminating the parent's rights is in the child's best interests. *Ariz. R. P. Juv. Ct.* 66(C); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, 288 ¶¶ 22, 41. We review the termination order and the record before us in the light most favorable to sustaining the court's ruling, affirming, unless we conclude "as a matter of law that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95 ¶ 10 (App. 2009). We will not disturb the order if reasonable evidence in the record supports the factual findings upon which the order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to any factual findings because, as the trier of fact, that court "is in the best position to weigh the evidence,

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observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004). And to the extent that conflicts exist in the evidence, the juvenile court must resolve them. *Jesus M.*, 203 Ariz. at 282 ¶ 12.

¶7 The juvenile court must consider the totality of the circumstances when making a best interests finding. *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 99 ¶ 12 (App. 2016). The best interests inquiry requires the juvenile court to balance the parents’ rights “against the independent and often adverse interests of the child in a safe and stable home life.” *Kent K.*, 210 Ariz. at 286 ¶ 35. This inquiry “focuses primarily upon the interests of the child, as distinct from those of the parent.” *Id.* at 287 ¶ 37. “[A] determination of the child’s best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship.” *In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). “When a current placement meets the child’s needs and the child’s prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child’s best interests.” *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4 ¶ 12 (2016); see also *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50 ¶ 19 (App. 2004) (the best interests requirement may be satisfied by finding credible evidence of an adoptive plan or that the child is adoptable). “Of course, a court need not automatically conclude that severance is in a child’s best interests just because the child is adoptable; there may be other circumstances indicating that severance is not the best option.” *Demetrius L.*, 239 Ariz. at 4 ¶ 14.

¶8 In this case, the juvenile court considered the totality of the circumstances and determined that severance was in the children’s best interests. Mother participated in parent-aide services and visitation, but admittedly attended some visits while under the influence and visitation was suspended when the children exhibited negative behavior after visits. The Department offered Mother drug testing and substance-abuse assessment and treatment, but she consistently tested positive for substances and only sporadically engaged in substance-abuse counseling. Additionally, the children were living with paternal great aunt and uncle who were willing and able to adopt them. The relative placement met all of their needs and provided a loving and nurturing environment with the opportunity to maintain relationships with their extended family. At the severance hearing, the Department case manager testified that terminating Mother’s parental rights would be in the children’s best interests because it would provide them with permanency. We accept the juvenile court’s findings because reasonable evidence within the record supports them. See

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Jesus M., 203 Ariz. at 280 ¶ 4. Thus, the court did not abuse its discretion by terminating Mother's parental rights.

CONCLUSION

¶9 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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