IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARCELLINA D., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,
B.J., A.D., A.D., *Appellees*.

No. 1 CA-JV 17-0533
FILED 6-5-2018

Appeal from the Superior Court in Maricopa County
No. JD 30088
The Honorable Bruce R. Cohen, Judge

AFFIRMED

COUNSEL

Law Office of H. Clark Jones, LLC, Mesa
By H. Clark Jones
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Dawn R. Williams
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge David W. Weinzweig joined.

B R O W N, Judge:

¶1 Marcellina D. ("Mother") appeals the superior court's termination of her parental rights, asserting the court erred in finding termination was in the children's best interests. Because reasonable evidence supports the court's finding, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Mother has seven children. Only the three youngest children, B.J. (born 2005), A.D. (born 2008), and A.D. (born 2010), are subject to this appeal.[1] In January 2015, the Department of Child Safety ("DCS") discovered that the children had medical needs that were not being properly addressed. Mother agreed to a 90-day voluntary placement of all the children with DCS during which time she would address her employment issues and the children's medical needs, including obtaining medical insurance. Because Mother failed to address these issues, DCS took custody of all the children due to allegations of "medical neglect, failure to meet parental responsibilities," and "inadequate and unstable housing that was deemed inappropriate."

¶3 In September 2015, the court adjudicated the children dependent and approved DCS's recommended case plan of family reunification. Mother was offered various services, including referrals for psychological evaluations, counseling, parent aide, drug testing, transportation, housing resources, and visitation. For more than two years, Mother made little progress with the reunification services offered to her and, over her objection, the court changed the case plan to severance and adoption. DCS filed a motion for termination based on nine months' and fifteen months' out-of-home placement. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8)(a), (c).

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[1] Paternity as to these three children has not been established.

¶4 After a contested severance hearing, the superior court granted the motion for termination on both grounds, finding in part that none of the issues relating to dysfunctional relationships, instability, and inability to regulate mental health obstacles were "addressed in a fashion that would allow for any or all of the children to be returned to her care." Mother timely appealed.

DISCUSSION

¶5 To terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground has been proven, and it must also find, by a preponderance of the evidence, that termination is in the best interests of the children. Ariz. R.P. Juv. Ct. 66(C); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). Here, Mother challenges only the superior court's best interests finding.

¶6 DCS may meet its burden of establishing that termination is in a child's best interests if it demonstrates that the child will "affirmatively benefit" from the termination or may be "harmed" by the continuation of the parent-child relationship. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004). Thus, the best interests inquiry focuses "primarily upon the interests of the child, as distinct from those of the parent." *Kent K.*, 210 Ariz. at 287, ¶ 37 (holding that a "child's interest in obtaining a loving, stable home, or at the very least avoiding a potentially harmful relationship with a parent, deserves at least as much weight as that . . . of the unfit parent in maintaining parental rights"). Best interests may also be established if the children are adoptable or if an existing placement is meeting the needs of the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19.

¶7 Mother argues DCS failed to prove by a preponderance of the evidence that termination was in the children's best interests. Pointing to the case manager's suggestion that the children may require post-termination therapy, Mother asserts her bond with the children is so strong that the children may suffer harm due to termination of the relationship.

¶8 The superior court recognized that Mother loves her children and a bond exists between them. The court explained that the weekly visits "proceed without incident" but those encounters serve only a portion of the children's interests and are a "far cry from providing a healthy, safe and nurturing environment. [They] need consistency and stability, neither of which was nor now can be provided by Mother." The court found that the three foster families are providing each child with a "loving and nurturing

home environment and the children have been thriving in their care." The court also explained that the children are emotionally stable, which did not exist when they first came into the care of DCS. Finally, the court concluded that each family intends to proceed with adoption and they have taken steps to ensure that "important sibling bonds continue to be nurtured and facilitated."

¶9 The record supports the superior court's analysis and findings. First, the court properly recognized that a strong bond between Mother and the children is not dispositive of the children's best interests. Instead, courts must "evaluate the totality of the circumstances and determine whether severance is in the best interests of the children." *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98-99, ¶ 12 (App. 2016).

¶10 Second, the case manager testified she has concerns that Mother will not be able to properly care for the children because she has not been able to meet their medical needs. Further**,** Mother is "unwilling to admit there's a problem" and does not believe there were "things to change in the first place," as shown by her failure to meaningfully engage in services, meet the children's basic needs, or obtain stable housing in the course of the 31 months the children have been out of her care. Moreover, the children's foster homes are willing and able to adopt them, and if that were to change, the children will remain adoptable.[2]

¶11 Third, Dr. Hunt, who conducted a psychological evaluation of Mother in July 2017, opined that Mother's prognosis was "guarded to poor" that she would be able to "demonstrate appropriate parenting as a result of her acceptance of dysfunctional relationships and irresponsible behaviors." He described Mother's relationship with the children as poor, explaining that Mother "has not established appropriate parenting expectations for her children and continues to exhibit inappropriate and irresponsible parenting behaviors. Some of her children have also accused

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[2] While the case manager was responding to questions posed by the guardian ad litem, the superior court's recording system stopped functioning and a portion of the testimony was lost. Based on the court's suggestion, the guardian ad litem briefly summarized the case manager's testimony, indicating that while Mother has a strong bond with the children, she did not ask to have her "house" (Mother stayed in hotels or a friend's house) checked to accommodate visits. The case manager also testified that the children will remain adoptable if their current placements choose not to adopt them. Mother's counsel stated he had no objection to the summary.

her of excessive and harsh physical discipline." Dr. Hunt also found that given Mother's "overall passive behavior" for the last two years, there is "little to show" she would be motivated to minimally and adequately parent her children in the future.

¶12 Accordingly, we conclude the superior court did not err in finding that termination of her parental rights is in the children's best interests. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (noting that we view the evidence in the light most favorable to sustaining the superior court's decision and we will affirm a termination order that is supported by reasonable evidence).

CONCLUSION

¶13 We affirm the superior court's order terminating Mother's parental rights to the children.

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