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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TROY B., DIANNA H., J.T.B., *Appellants*,

v.

DEPARTMENT OF CHILD SAFETY, S.B., J.E.B., *Appellees*.¹

No. 1 CA-JV 18-0011
FILED 8-7-2018

Appeal from the Superior Court in Maricopa County
No. JD28273
The Honorable Lisa Daniel Flores, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant Troy B.

Maricopa County Legal Defender's Office, Phoenix
By Kathryn E. Harris
Counsel for Appellant Dianna H.

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant J.T.B.

¹ The caption has been amended to include the middle initials of two minor children with the same first and last name initials.

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Randall M. Howe and Judge James P. Beene joined.

S W A N N, Judge:

¶1 Dianna H. ("Mother") and Troy B. ("Father") separately appeal the juvenile court's termination of their parental rights to J.T.B., J.E.B., and S.B. based on the statutory grounds of fifteen months' time-in-care under A.R.S. § 8-533(B)(8)(c) and abuse and neglect under § 8-533(B)(2). J.T.B. appeals the court's determination that termination was in his best interests. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father are the biological parents of J.T.B., born November 2002, and J.E.B. born January 2010. They are the adoptive parents of S.B., born March 2005.

¶3 On April 25, 2014, the Department of Child Safety (the "Department") removed the children from their parents' home due to neglect. The Department filed a petition alleging that the home was "filthy and unsafe for humans to reside in," that it contained "animal and human feces throughout," and that it was "infested with maggots, flies and cockroaches." The petition further alleged that the children "sleep on couches that are covered in urine and feces," that Father neglects "the children by failing to keep them clean and safe . . . [and by failing to] tend to their medical and educational needs," and that S.B. has been subject to physical abuse. After removing the children, the Department placed them with their maternal aunt and uncle for about one month.

¶4 In May 2014, the Department resumed custody of the children after their then-placement declined to continue monitoring visits. The Department then placed them with Father's great aunt.

¶5 In August 2014, the Department filed an amended dependency petition. Six months later, the court found the children

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dependent as to both Mother and Father, and ordered that Mother was not to have unsupervised contact with the children.

¶6 In March 2015, the Department's hotline received a call alleging that the children's then-placement, the maternal grandmother, had been hospitalized after she was found "on the side of the road in an 'altered state of mental status.'" The Department case manager then visited the maternal grandmother's home three days in a row, but neither the children nor their grandmother were home. By April 2015, the children went through several placements, a few of which included the parents' family members. On April 22, the Department moved to take custody of the children. When the children had not been located for several months, the court issued an order noting that "[i]t is beyond this Court's comprehension that these children have been missing from foster care more than six months. They were taken from State custody. They are too young to have run away on their own."

¶7 The Department located the children on December 3, 2016. Two months later, the Department moved to terminate the parents' rights to the children under §§ 8-533(B)(8)(c) and 8-533(B)(2). The matter proceeded to a termination hearing at which the Department provided the following evidence.

¶8 The children went missing for approximately 20 months—from April 2015 to December 2016. Law enforcement located the children after an extensive investigation. Father was present at the time the children were found. Contrary to the parents' contentions, the children were in their care and control for the 20 months. Heather Jarrell, Mother's sister, testified that she had seen Mother with the children several times while they were missing.

¶9 Mother and Father had neglected the children's physical, medical, hygienic, and educational needs. J.T.B. stated in a forensic interview that he and his brothers were "practically deprived" of their lives and could not live a "real life" for nearly two years. J.T.B. adopted a parent-like role in place of Mother and Father.

¶10 The Department presented evidence that Mother and Father had neglected the children's physical needs. An investigation into the children's living conditions revealed that the home had no running water or electricity. The children used buckets to go to the restroom and were unable to shower. S.B. stated that "it's been a long time" since Mother gave him a shower. When found, the children were described as "unkempt,"

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“dirty,” and two of the boys had “long, matted” hair. J.T.B., in particular, had a “malodor” emanating from his body. The children were also unable to go outside during the day, and instead, the parents took them out at night, hiding them in their car’s trunk.

¶11 Victoria Cannizzaro, a Department case manager, testified that J.T.B. was underweight for his age and had vitamin deficiencies when he was returned to the Department’s care. Dr. Thal, a clinical psychologist, testified that though S.B. was not underweight, he exhibited a tendency to hoard food, he was inclined to overeat, and such tendencies are “reflective of neglect.” In a forensic interview, J.T.B. stated that he and his brothers did not eat three meals per day and ate “whatever we could.”

¶12 S.B.’s hand was visibly injured when the Department located him. S.B. explained during a forensic interview that the injury resulted when he and his brother were roasting marshmallows and both his pants and shirt caught on fire. In an attempt to remove his pants, he burned his hand. Rather than seek medical attention for the burn, the parents treated the injury with peroxide.

¶13 Dr. Tamboli performed a dental exam on J.E.B. and determined that he had eight cavities. Further, she found that two of J.E.B.’s teeth were “unrestorable,” and four teeth required crowns. As for J.T.B.’s dental condition, when a case manager asked J.T.B. what was “going good for him,” he responded that his teeth were getting whiter and that he had not been able to brush as much as he liked to when he was with his parents.

¶14 Mother and Father did not allow the children to attend school for 20 months. Dr. Thal testified that S.B. required special assistance because he has some “very definite deficits.” S.B. scored poorly on “virtually all” the measures given to him and his academic performance was below what one would expect of a child his age. S.B. scored in the first percentile in both math and a word recognition test, and he scored in the second percentile in spelling. J.T.B. stated to Dr. Thal that “he had not been in school during that entire time that he was in hiding” and that he had not received “any instruction, such as home schooling.” J.T.B.’s test results were consistent with that description with respect to mathematics – his score was “surprisingly low.” Dr. Thal further opined that the best explanation for the low scores was “being out of school for that large chunk of time.” Like his brothers, J.E.B. is delayed educationally as well.

¶15 Dr. Thal opined that J.T.B. has denied “any maltreatment by his family . . . [and] he clearly aligns himself with his parents and indicated

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he believes DCS intervention has been unwarranted.” Dr. Thal further stated that J.T.B. is “very loyal to his parents, perhaps more so than most kids are expected to be. I would attribute that to the circumstances.” J.T.B. stated to Dr. Thal that he wishes that “[he and his brothers were] back in [their] house.”

¶16 J.T.B. expressed both a high level of concern for his siblings and that he was against adoption. Aaron Wolfley, J.T.B. and J.E.B.’s therapist, testified that, for the first few months, J.T.B.’s foremost concerns were for his younger siblings, whether they were being fed, were sick, were scared, and were “okay.” He noted that J.T.B. took on what appeared to be more of a parent-like role “with the level of concern that he was expressing for his siblings.” J.T.B. only began focusing on himself during treatment when the Department allowed phone calls between him and his brothers.

¶17 Wolfley further testified that ongoing therapy sessions with J.T.B. have given J.T.B. newfound self-confidence, “more open” body language, the ability to make eye contact, and that he has developed his own fashion style. When asked what he attributes J.T.B.’s newfound self-confidence to, Wolfley responded that it is rooted in J.T.B.’s “basic needs [being] met, having that stability, consistency, safety, care in his placement, being able to have somewhere he’s coming to each week . . . to discuss whatever it is that he wants to process.”

¶18 The court asked Cannizzaro how J.T.B.’s life would be different if termination were granted. Cannizzaro responded that J.T.B. “would have the ability to have a normal life” whether it is with his current placement or another placement. The court then asked how J.T.B.’s life would be different if the termination were denied. Cannizzaro responded that “[h]e would be deprived of all the things that he currently has” and that he would stay in his current placement if that is where he wanted to stay.

¶19 As to the children’s adoptability, a high-needs case manager testified that each of the children is adoptable. The high-needs case manager also testified that J.E.B. is bonded with his current placement, the placement meets his needs, and that the placement is willing to adopt him. As for S.B. and J.T.B., reports show that they are with placements who are meeting their needs. S.B.’s placement described him as a “beautiful child” and he seems comfortable with them. Ongoing discussions concern a plan to try to place either two of the boys together or all of them together.

¶20 In a detailed 26-page order, the court found that the Department had proven the statutory grounds for termination under both §§ 8-533(B)(8)(c) and 8-533(B)(2) by clear and convincing evidence, and that termination was in the children's best interests by a preponderance of the evidence. Mother, Father, and J.T.B. appeal.

DISCUSSION

I. REASONABLE EVIDENCE SUPPORTS THE COURT'S FINDINGS THAT TERMINATION OF MOTHER AND FATHER'S PARENTAL RIGHTS WAS WARRANTED UNDER A.R.S. § 8-533(B)(2).

¶21 Both Mother and Father contend that they were unaware of the children's whereabouts during the 20 months they were missing, and even during that period, insufficient evidence showed that the children were neglected.

¶22 To justify termination 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 must find that termination 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). We accept the court's findings unless they are not supported by reasonable evidence, and affirm the severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We view 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).

¶23 We hold that reasonable evidence supports the court's findings that the requirements of § 8-533(B)(2) were met.² Section 8-533(B)(2) provides for termination when a party has neglected or willfully abused a child. "Abuse" includes "serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." *Id.* "Neglect" means the "inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or

² We do not address whether the evidence also supported termination under § 8-533(B)(8)(c). See *Jesus M.*, 203 Ariz. at 280, ¶ 3 ("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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unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a).

¶24 Here, Jarrell testified, contrary to the testimony of the parents, that she had seen the children with the parents several times during the 20 months they were missing, and that Father was with the children when they were found. The court found Jarrell's testimony credible, and the parents' testimony not credible. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004) (a juvenile court is in the best position to judge the credibility of witnesses and to resolve disputed facts).

¶25 The record reveals that in 2014, Mother and Father had deprived the children of a proper, safe, and clean shelter by keeping them in a home that was "filthy and unsafe for humans to reside in," and again, one year later, when the parents removed the children from the Department's care for 20 months to a home without the basic necessities of running water and electricity. When S.B. severely burned his hand, Mother and Father did not seek medical care, but saw fit to address the injury themselves by treating the wound with peroxide.

¶26 The parents also endangered their children's wellbeing by not providing them with regular and sufficient meals. J.T.B. was found "underweight for his age" and as having vitamin deficiencies, while S.B. developed a tendency to hoard food. The parents further denied their children over two years' worth of education and, more often than not, confined them to their home. Accordingly, we find that reasonable evidence supports the juvenile court's determination to terminate parents' parental rights under A.R.S. § 8-533(B)(2).

II. REASONABLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT TERMINATION OF MOTHER AND FATHER'S PARENTAL RIGHTS WAS IN THE BEST INTERESTS OF J.T.B., J.E.B., AND S.B.

¶27 Mother and Father argue that the court erred by determining that termination was in the children's best interests, and J.T.B. separately contends that the court erred by determining that termination was in his best interests. We find otherwise.

¶28 We hold that reasonable evidence supports the juvenile court's determination that termination of Mother and Father's parental rights served J.E.B. and S.B.'s best interests. To establish that termination is in the child's best interests, the court must find either that the child would benefit from termination or be harmed by continuation of the parent-child relationship. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 383, ¶ 30

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(App. 2010). 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. *Id.*; *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 26 (App. 2011); *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17 (App. 2005).

¶29 The court found that J.E.B. is adoptable, termination will free him from parents who have caused him great harm, and without termination, he would suffer the "detriment of lack of permanency for an unknown period of time." As for S.B., the court accepted Dr. Thal's and the case manager's testimonies that S.B. is adoptable. The court also determined that J.E.B. would, in the same manner stated for S.B., benefit from termination of the parent-child relationship and incur a detriment if it were to continue. The record supports the court's findings concerning J.E.B. and S.B. The Department presented evidence of the children's adoptability, that their existing placements are meeting their needs, and that a termination of the parent-child relationship would benefit J.E.B. and S.B. by enabling them to have a stable home, proper care, and an education.

¶30 We further hold that reasonable evidence supports the juvenile court's determination that termination of Mother and Father's parental rights served J.T.B.'s best interests. The court found that J.T.B. would benefit from adoption, that he is adoptable, and that he would benefit from termination in the same ways as his brothers. The record supports the court's conclusion. Although Dr. Thal's report indicated that J.T.B. is "very loyal" to his parents and Wolfley's testimony showed that J.T.B. still experiences a deep sense of obligation toward his brothers, Wolfley also testified that J.T.B. has developed self-confidence, openness, and self-expression due to the stability, consistency, safety, and care in his current placement. Further, testimony presented indicated that J.T.B. is adoptable, he is with a placement, and his needs are being met.

¶31 J.T.B. argues that although the court determined that termination of parental rights "would be in the child's best interest and that J.T.B. is adoptable, other circumstances were presented that demonstrate that severance is not the best option." J.T.B. seemingly refers to the circumstances such as the loyalty he has toward his parents, the absence of an adoptive placement and J.T.B.'s unwillingness to consent to an adoption. However, the Department need not show that it has a specific adoption plan before terminating a parent's rights. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352 (App. 1994). Rather, the availability of an immediate adoptive placement is but one of the relevant factors that the court may

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consider in determining whether or not termination is in the child's best interests. *Raymond F.*, 224 Ariz. at 383, ¶ 30. Further, while it is true that J.T.B. must consent to an adoption under A.R.S. § 8-106(A)(3), this statute applies, by its own language, to adoption matters. See A.R.S. § 8-106(A) (listing the requirements for consent to an adoption). Given that this appeal involves termination of parental rights, and not an adoption, § 8-106(A) is not applicable.

CONCLUSION

¶32 For the foregoing reasons, we affirm.



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