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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JAMES N., MARIAH N., *Appellants,*

v.

DEPARTMENT OF CHILD SAFETY, C.N., M.N., *Appellees.*

No. 1 CA-JV 18-0030
FILED 7-31-18

Appeal from the Superior Court in Mohave County
No. L8015JD201507015
The Honorable Derek C. Carlisle, Judge

AFFIRMED

COUNSEL

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By Erika A. Arlington
Counsel for Appellant Father

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant Mother

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Kenton D. Jones joined.

THOMPSON, Judge:

¶1 James N., (father) and Mariah N., (mother) (collectively parents) appeal the juvenile court's decision to terminate their parental rights to C.N. and M.N. (collectively the children) based upon the statutory grounds of neglect or willful abuse or failure to protect a child from willful abuse under Arizona Revised Statutes (A.R.S.) section 8-533(B)(2) (2018)¹; and out-of-home placement under A.R.S. § 8-533(B)(4) (2018). They also argue that the state failed to prove by a preponderance of the evidence that severance was in the children's best interests. For the following reasons, we affirm the juvenile court's decision.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and father were living in Bend, Oregon along with the children until an altercation between mother and father in April 2015, led mother to obtain an order of protection against father and move to Arizona to be closer to her family. Father remained in Oregon. On May 15, 2015, while living in Arizona, the children had to be taken to the hospital by ambulance after ingesting approximately 57 stool softeners. Once at the hospital, mother was told that the children would need to remain for observation. Mother then became upset and belligerent with hospital staff. Additionally, when police were called due to the children ingesting the medication and mother's behavior, they informed mother that the Department of Child Services (DCS) was going to be called. Mother responded that she didn't care if DCS took her children.

¶3 The following week DCS held a team decision making meeting (TDM) which mother attended along with the children. At the meeting DCS suggested an in-home dependency so that the children could

¹ We cite to the current version of any statute unless the statute was amended after the pertinent events and such amendment would affect the result of this appeal.

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stay with mother while she received services. Mother instead suggested the children be taken into custody as she was not able to care for them.

¶4 The children were placed in a foster home and found dependent on May 19, 2015. Shortly after the children were found dependent, mother returned to Oregon, dropped the restraining order against father, and moved in with him. Mother and father remained in Oregon until that fall at which time parents moved to Arizona. After moving to Arizona mother and father began participating in services. However, the DCS case managers repeatedly and consistently found that although parents had completed the required services, their behaviors and parenting skills had not improved or changed. Additionally, while the children were in care it was discovered that they had been the victims of sexual abuse while in their parents' care. The parents were apathetic to the discovery of this information and not helpful in determining who the perpetrator was. At one point mother even pointed the finger at father as the perpetrator. After 24 months in care the case plan was changed from reunification to severance and adoption on the basis of neglect, failure to protect a child from abuse, and time in care.

¶5 The court severed mother's parental rights on all three grounds, and father's parental rights on failure to protect a child from abuse and time in care. Mother and father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2018), 12-120.21(A)(1) (2018), and 12-2101(B) (2018).

DISCUSSION

¶6 A parent's right to custody and control of his own child, while fundamental, is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49 ¶¶ 11-12 (2000). Severance of a parental relationship may be warranted where the state proves one of A.R.S. § 8-533's statutory grounds for termination by "clear and convincing evidence." *Id.*; A.R.S. § 8-863(B) (2018). "Clear and convincing" means the grounds for termination are "highly probable or reasonably certain." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284-85, ¶ 25 (2005). Additionally, the court must also determine what is in the best interests of the child by a preponderance of the evidence. *Id.* at 284, ¶ 22.

¶7 "[W]e will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002). We do not reweigh the evidence,

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but “look only to determine if there is evidence to sustain the court’s ruling.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

I. Statutory Grounds

¶8 Under A.R.S. § 8-533(B)(8)(c) termination of the parent-child relationship is appropriate when the child has been in an out-of-home placement for a period of fifteen months or longer, the agency responsible for the child has made diligent efforts to provide reunification services, the parent has been “unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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.” In determining whether the parent has been able to remedy the circumstances causing placement, we consider the circumstances existing at the time of the severance rather than at the time of the initial dependency petition. *Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468 (App. 1993).

¶9 Reasonable evidence supports the juvenile court’s findings that the children had been in an out-of-home placement for more than fifteen months, that mother and father were unable to remedy the circumstances that caused that placement, and that they will not be able to exercise proper and effective parental care and control in the near future. The children had been in an out of home placement for approximately thirty months when the severance hearing took place. During those thirty months DCS provided both parents with services including, parent aides, parenting classes, anger management classes, supervised visits, and psychological services. Although both parents completed all services provided by DCS, the case managers testified that mother and father did not make the necessary behavioral changes that would allow the children to return to their care. Some of the behaviors DCS had concerns with included parents moving six times in the thirty months the children were in care, parents being apathetic to the children having been sexually abused, mother’s lack of ability to bond with the children, and the parents’ inability to manage the children’s behavior.

¶10 Because we affirm on the fifteen months’ out-of-home placement grounds, we need not consider whether the juvenile court’s findings justified severance based upon neglect, and abuse pursuant to A.R.S. § 8-533(B)(2). *See Michael J.*, 196 Ariz. at 251, ¶ 27.

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II. **Best Interests**

¶11 Mother and father also argue the trial court erred in finding that severance was in the best interest of the children. Severance is in a child's best interests if 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'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, 379-80 ¶¶ 30-33 (App. 2010).

¶12 In this instance the placement is willing to adopt and is meeting the needs of the children. Additionally, the case manager testified that there were great concerns regarding the safety of the children if they were to return to parents' care and that they would benefit from severance so that they could have permanency and stability. We therefore find that the juvenile court did not err in finding that termination of the parent-child relationship was in the best interests of the children.

CONCLUSION

¶13 For the foregoing reasons, we affirm the juvenile court's order terminating mother and father's parental rights.



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