

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CECELIA R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, O.G., D.G., *Appellees*.

No. 1 CA-JV 18-0053
FILED 7-31-2018

Appeal from the Superior Court in Maricopa County
No. JD527937
The Honorable Arthur T. Anderson, Judge

AFFIRMED

COUNSEL

Denise L. Carroll, Scottsdale
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Laura J. Huff
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Judge James P. Beene and Judge James B. Morse Jr. joined.

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T H U M M A, Chief Judge:

¶1 Cecelia R. (Mother) challenges the superior court's order terminating her parental rights to her biological children D.G. and O.G. Because Mother has shown no error, the order is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 D.G. was born in 2009 and O.G. was born in 2011.² In August 2014, the Department of Child Safety (DCS) took the children into custody and filed a dependency petition alleging, as to Mother, substance abuse (including methamphetamine, morphine and codeine), physical abuse and neglect. That same month, the court found the children dependent as to Mother and adopted a case plan of family reunification. The dependency then remained open for three and a half years.

¶3 DCS provided numerous services to Mother, including drug testing, counseling, a psychological evaluation, a bonding assessment, parent-aide services and supervised visits. Although Mother completed a bonding assessment, psychological evaluation, domestic violence program and counseling, her participation in other services was "very sporadic." Mother attended about half of her supervised visits and was unsuccessfully closed out of TASC eleven times, TERROS eight times and parent-aide services twice.

¶4 In March 2017, at the request of DCS, the superior court changed the case plan to severance and adoption. The motion to terminate Mother's parental rights alleged statutory grounds of substance abuse and nine- and fifteen-months time-in-care. *See Ariz. Rev. Stat. (A.R.S.) §§ 8-533(B)(3);(B)(8)(a) & (c)(2018).*³ At a two-day December 2017 termination adjudication hearing, the court heard testimony from three witnesses (including Mother), received exhibits and heard argument.

¹ This court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

² The fathers' parental rights have been terminated and they are not parties to this appeal.

³ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

¶5 After taking the matter under advisement, in a February 2018 ruling, the superior court granted the motion to terminate. The court found DCS proved nine- and fifteen-months time-in-care by clear and convincing evidence, but had not proved substance abuse as a statutory ground. The court also found DCS proved by a preponderance of the evidence that termination was in the children's best interests, noting O.G. was in an adoptive familial placement and that D.G. was adoptable and doing well.

¶6 This court has jurisdiction over Mother's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Ariz. R.P. Juv. Ct. 103 and 104.

DISCUSSION

¶7 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49 ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights as long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶8 Mother does not challenge the findings on the statutory grounds for termination. Instead, Mother argues the superior court erred in finding termination of her parental rights was in the children's best interests. More specifically, Mother argues "DCS failed to prove by a preponderance of the evidence that the children would accrue an affirmative benefit from her parental rights being severed or be harmed by continuing the relationship."

¶9 Mother is required to show that the superior court abused its discretion in finding that termination was in the children's best interests or that no reasonable evidence supports that factual finding. *See Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549 ¶ 7 (App. 2010). As Mother notes, the best interests assessment required the court to find "either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the [parental] relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356 ¶ 18 (App. 1998) (citation omitted). Best interests may be shown if a child is adoptable or that the existing placement

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is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50 ¶ 19 (App. 2004).

¶10 Mother argues the children would suffer a considerable detriment if the relationship is terminated. Mother points to testimony by psychologist Dr. Al Silberman that his bonding assessment showed that the connection between Mother and the children "was very self-evident." Mother notes the DCS case manager testified there is "no question" that Mother and the children want to be together. Mother also argues she could properly parent the children, noting she participated in counseling and domestic violence services, and testimony by the case manager that "[t]he visits go well."

¶11 The trial evidence considered by the superior court, however, also shows that termination was in the children's best interests. By the time of the trial, the children had been in care for more than three years. The DCS case manager testified that termination of parental rights was in the children's best interests, noting the length of time they had been in care, that they "deserve permanency" and that they were "ready for consistency" and "ready for structure. They thrive off of it, and they've shown they do quite well when they're provided with those things." The case manager noted that O.G. requires "significant around-the-clock supervision" for his special needs. The case manager testified that she does not believe Mother can take care of the children's needs because of a lack of consistency. The case manager also testified that the children are both doing well in their placements. O.G. is in an adoptive placement and, although D.G. is not in an adoptive placement, she has "no concerns" D.G. will find a permanent home. Along with the case manager, Dr. Silberman's evaluation was that severance was in the best interests of the children, given Mother's "emotional difficulties," her relationship with an individual that involved domestic violence and her lack of stability.

¶12 Mother's appeal, in substance, argues that the superior court should have weighed the conflicting trial evidence differently. But it is for the superior court at trial, not this court on appeal, "'to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.'" *Jordan C.*, 223 Ariz. at 93 ¶ 18 (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004)). On this record, Mother has failed to show the court abused its discretion in concluding that termination was in the best interests of the children or that no reasonable evidence supports that factual finding. See *Matthew L.*, 223 Ariz. at 549 ¶ 7. Accordingly, Mother has failed to show error in that court's best interests finding.

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CONCLUSION

¶13 The superior court's order terminating Mother's parental rights to the children is affirmed.



AMY M. WOOD • Clerk of the Court
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