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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MELISSA R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, T.R., A.R., *Appellees*.

No. 1 CA-JV 18-0083
FILED 7-12-2018

Appeal from the Superior Court in Yavapai County
No. P1300JD201600050
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, P.C., Anthem
By Florence M. Bruemmer
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee DCS

MEMORANDUM DECISION

Presiding Judge James B. Morse Jr. delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

M O R S E, Judge:

¶1 Melissa R. ("Mother") appeals the juvenile court's termination of her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Damon R. ("Father") are the biological parents of T.R. and A.R., born October 21, 2014, and January 5, 2017, respectively.

¶3 On July 28, 2016, the Department of Child Safety (the "Department") took temporary custody of T.R. after Father was arrested for driving under the influence of drugs while Mother, who was then pregnant, and T.R. were in the car. At the time of the arrest, Mother and Father both told police that Father was using methamphetamine. Mother told officers that she, T.R., and Father were living out of the vehicle, which was filthy with trash, unrefrigerated milk, and moldy food. T.R.'s car seat was secured by a tow strap. Mother stated that T.R. had epilepsy and claimed that the child was receiving medicine as prescribed but police observed that T.R.'s liquid medication was old and the bottle was dried out.

¶4 On August 1, 2016, the Department initiated dependency proceedings for T.R. against both parents on grounds of neglect. Mother and Father denied the allegations but submitted the issue of dependency to the juvenile court. The juvenile court established a case plan of reunification concurrent with severance and adoption and ordered Mother and Father to participate in reunification services.

¶5 On August 5, 2016, the juvenile court adjudicated T.R. dependent as to Father, and then as to Mother on November 8, 2016.

¶6 In January 2017, Mother gave birth to A.R. and the Department took physical custody of A.R. on January 6, 2017. The Department reported that Mother told hospital staff that she was unsure about her living arrangements and that she was not prepared to leave the hospital with A.R. Mother informed the hospital staff that she did not have

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a car seat for the child and had only a pair of socks for him to wear. The staff reported concerns to the Department about Mother's ability to care for A.R., as Mother was unable to read a clock, order meals, follow directions, or change or burp A.R. and did not understand how to feed him.

¶7 On January 11, 2017, the Department filed a dependency petition for A.R. on grounds of neglect. The Department noted concerns about Mother's ability to care for A.R. because of mental deficiency. Mother denied the allegations but submitted the issue of dependency to the juvenile court. The juvenile court established a case plan of reunification concurrent with severance and adoption.

¶8 On January 17, 2017, the juvenile court adjudicated A.R. dependent as to Mother and Father.

¶9 On December 7, 2017, the Department moved for termination of Mother and Father's parental rights to T.R. and A.R. Both parents contested the severance but submitted the matter to the juvenile court based upon stipulated documents for the February 2018 severance trial.

¶10 On February 26, 2018, the juvenile court severed Mother's parental rights to T.R. and A.R. based upon the statutory grounds of neglect, mental illness, and mental deficiency. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2) and (3). Father's parental rights were severed based upon neglect, pursuant to A.R.S. § 8-533(B)(2), and mental illness, pursuant to A.R.S. § 8-533(B)(3). Both parents' rights as to T.R. were also severed based upon time-in-care. A.R.S. § 8-533(B)(8). The juvenile court also found severance to be in the children's best interests. A.R.S. § 8-533(B).

¶11 Mother timely appealed.¹ We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A).

DISCUSSION

I. STANDARD OF REVIEW

¶12 We view the evidence "in a light most favorable to affirming the trial court's findings." *Maricopa Cty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106 (1994). We will uphold the juvenile court's findings of fact unless they are unsupported by reasonable evidence, and we will affirm a

¹ Father is not a party to this appeal.

severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

II. THE SUPERIOR COURT PROPERLY TERMINATED MOTHER'S PARENTAL RIGHTS

A. Neglect

¶13 A juvenile court's termination of the parent-child relationship is justified if the juvenile court finds, by clear and convincing evidence, at least one of the statutory grounds set forth in A.R.S. § 8-533, and that termination is in the best interests of the child. A.R.S. § 8-533(B); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000).

¶14 The juvenile court must consider evidence of the circumstances existing at the time of severance. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007). Pursuant to A.R.S. § 8-533(B)(2), a parent's rights may be terminated if "the parent has neglected or willfully abused a child. This 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." *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 59, ¶ 11 (App. 2015). Neglect or neglected is defined as follows:

The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.

A.R.S. § 8-201(25)(a).

¶15 In this case, the juvenile court found clear and convincing evidence that Mother had "neglected a child or failed to protect a child from neglect, so as to cause an unreasonable risk of harm to a child's health and/or welfare."

¶16 Mother argues that the juvenile court erred in terminating her parental rights under A.R.S. § 8-533(B)(2) because the Department did not prove that she "failed to remedy this situation." Mother claims that, at the time of the severance trial, she was "neither unable nor unwilling to meet

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the needs of the [c]hildren," and "had a stable home and the ability to provide food and clothing" with "the support of [] family to assist in providing for the [c]hildren."

¶17 On this record, we cannot find that the juvenile court erred in terminating Mother's rights on grounds of neglect. Beyond a desire to parent, a parent must demonstrate the ability to carry out parental duties. *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 580 (App. 1994). Parental responsibilities include providing adequate food, shelter, and medical care, as well as physical care, emotional security, parental guidance, and control. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 19 (App. 2009).

¶18 The evidence shows that Mother was unable to minimally parent and meet the needs of her children throughout the dependency, even with support and services provided by the Department. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 33-34 (App. 1999) (the Department must make a reasonable effort to preserve the family and provide other reunification services which offer a reasonable probability of success). By the time of the February 2018 severance trial, Mother was still unable to adequately parent the children and the children were unable to reside with her. Mother was then living with the children's paternal grandparents in a stable home, but the grandfather's criminal background precluded T.R. and A.R. from living in the home. Further, the Department case manager testified that Mother was still not able to provide the requisite "constant 24/7 supervision" of the children, even though the grandparents were able to be present at the home at all times.

¶19 Moreover, Mother still did not understand why T.R. and A.R. were in out-of-home placement, as demonstrated by her written statement submitted for the severance trial, "I do not know why they were taken from me to begin with as I did not do any thing [sic] wrong." The failure or inability to recognize the risk of harm to one's child caused by the environment a child is placed in can be evidence of the risk of future neglect. *See Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 287, ¶ 22 (App. 2011) (noting that a failure to understand past abuse can be considered as evidence of risk of future harm).

¶20 The evidence showed that Mother was having difficulty attending and transporting the children to medical appointments and was struggling financially to provide food for them. The children were both diagnosed with the same genetic disorder requiring complicated medical appointments and care. Additionally, T.R. was diagnosed with epilepsy

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and had developmental delays and special needs. The guardian ad litem ("GAL") for the children opined that the children's genetic disorder was an important consideration; "the children are vulnerable due to their age and special needs, which require the parents to manage complicated medical appointments and care." The GAL noted that T.R.'s special needs required her to be "supervis[ed] at all times" and A.R. had been diagnosed with the same disorder, although he was "not symptomatic yet." This "perfect storm," the GAL said, rendered Mother unable to "be alone with the children due to her limitations." Additionally, the Department case manager testified that the children's medical conditions required stable, constant supervision and care, which Mother was unable to provide, even with the support provided by living with the grandparents.

¶21 The juvenile court considered the evidence in its entirety and found that "[t]hroughout this case, the parents have not been able to provide for the children's proper care, housing and supervision." Further, Mother had "not been able to get to a point where [she] could safely have unsupervised time with the children," and, despite Mother's living with the paternal grandparents, the children still would not be able to live with her. Further, the juvenile court found that Father's mental illness prevented him from discharging his parental responsibilities and there were reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.

¶22 The Department noted Mother's "significant history of mental health instability" and diagnoses of disorders and traumatic brain injury and stated that Mother had "demonstrated an inability to perform simple parenting tasks such as diapering, interacting with, and providing snacks for T.R." Further, the Department reported that Mother's behavior around A.R. had been "extremely erratic as observed by health care professionals, the [D]epartment, and the foster family." Mother, it said, had "displayed many concerning behaviors with [A.R.] to include an inability to diaper him, hold him, and soothe him."

¶23 The juvenile court was presented with three psychological reports based upon evaluations of Mother. Mother was diagnosed with Major Neurocognitive Disorder due to Traumatic Brain Injury and scored within the impaired range on the measure of full scale IQ. One report offered a guarded prognosis that Mother might be able to demonstrate minimally adequate parenting skills but Mother still needed to demonstrate the ability to safely and minimally parent her children and provide stable housing and economic security for them. In sum, Mother was able to function in routine daily activities only in a rudimentary way and was

unaware of the extent of her own limitations. Mother lacked "the intellectual ability and judgement [sic] to adequately problem solve should there be any needs of the children that are beyond basic and outside of her routine. For example, [M]other cannot be expected to handle a medical emergency or to know how to help [T.R.] with her developmental needs."

¶24 Because we accept the juvenile court's findings of fact unless clearly erroneous, the juvenile court did not err in finding clear and convincing evidence to sever Mother's parental rights under A.R.S. § 8-533(B)(2). Accordingly, we need not consider whether the juvenile court's findings justified severance on the other grounds. *Michael J.*, 196 Ariz. at 251, ¶ 27.

B. Best Interests

¶25 To justify severance, the superior court must also find, by a preponderance of the evidence, that severance is in the best interests of the children. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). This finding requires the juvenile court to consider the totality of the circumstances. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 99, ¶ 12 (App. 2016). The juvenile court must balance the parent's 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. The 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." *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5.

¶26 "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 *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (finding that the best interests requirement may be satisfied if there is credible evidence of an adoptive plan or 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.

¶27 The juvenile court considered and carefully weighed the evidence and found, based upon the totality of the circumstances, severance to be in T.R. and A.R.'s best interests, as it would "further the case plan of

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adoption and the children will have permanency and stability." Further, the juvenile court found that the children were adoptable, and the children's placement with a prospective adoptive family was the least restrictive placement meeting all of the children's needs, including T.R.'s special needs.

¶28 The Department emphasized that the children's current placement was satisfying the children's "high needs and ensur[ing] that both children are getting the help that they need and deserve." In its November 22, 2017 report, the Department noted that Mother had been unable "to make the identified behavioral changes during the 16 month dependency for [T.R.] and the 10 month dependency for [A.R]."

¶29 The children's placement was willing to adopt them and was providing "a safe and secure home for these children, and can continue to meet their basic and extensive needs." Additionally, [T.R.'s] seizure activity had reduced since being in out-of-home placement with the foster family. The foster family was "a good match" with "exceptional [skills] in terms of meeting the [children's] needs" and "doing an excellent job providing support with the health issues."

¶30 The children's GAL opined that "placing these children with their parents would be detrimental to them and reunification is simply not feasible." The GAL also stated that "[t]ermination of parental rights will provide these children with the care they need[] and current placement is able to meet their needs." Further, the GAL opined that "termination of parental rights would provide the children with the permanency and care they need."

¶31 Upon full consideration of the case, evidence, and testimony before it, the juvenile court found that the evidence weighed in favor of severance. Because a preponderance of the evidence within the record supports the juvenile court's finding that severance of Mother's parental rights is in T.R. and A.R.'s best interests, we affirm the juvenile court's best interests finding and order of termination.

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CONCLUSION

¶32 For the abovementioned reasons, we affirm the termination of Mother's parental rights.



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