IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VICTORIA S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, X.S., M.D., D.D., E.D., C.S., *Appellees*.

No. 1 CA-JV 18-0182
FILED 12-20-2018

Appeal from the Superior Court in Maricopa County
No. JD31778
The Honorable Pamela Svoboda, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge David D. Weinzweig joined.

S W A N N, Judge:

¶1 This is an appeal from an order severing parental rights. We affirm because reasonable evidence supports the severance order.

FACTS AND PROCEDURAL HISTORY

¶2 Victoria S. ("Mother") is the biological parent of minor children X.S., M.D., D.D., E.D., and C.S. (collectively, "the Children").[1]

¶3 In August 2015, after the youngest of the Children was born substance-exposed to marijuana's active ingredient, tetrahydrocannabinol ("THC"), the Department of Child Safety offered Mother in-home family preservation services. Mother failed to fully engage in the services—she missed numerous urinalysis appointments, tested positive for THC on several occasions, and repeatedly failed to complete intakes for substance-abuse treatment. Further, she remained unemployed, lived in subsidized housing registered to marijuana-using family members, and failed to ensure that the Children received appropriate medical attention.

¶4 The Department removed the Children from Mother's care in February 2016 and moved for severance in August 2017. The severance trial took place in April 2018.

¶5 During the period between the Children's removal and the severance trial, the Department offered Mother urinalysis, hair-follicle analysis, substance-abuse treatment, individual counseling, parent-aide services, supervised visits with the Children, and psychological, psychiatric, and best-interests evaluations. Mother refused to participate in hair-follicle tests, missed most of her urinalysis appointments, and often tested positive for THC when she did provide urine samples. In 2016, she acknowledged marijuana use in a psychological evaluation that resulted in several mental-health diagnoses. In 2017, she claimed sobriety. Though

[1] The Children's fathers, whose rights were severed, are not parties to this appeal.

her claim was not supported by her drug-testing history, it resulted in no-action recommendations from psychiatric and substance-abuse treatment providers. She did complete individual counseling, though on a delayed schedule, and she participated in some parent-aide and visitation appointments. She threatened to hit the Children with a belt during one visit in late 2017.

¶6 Mother also participated in a September 2017 best-interests evaluation. The psychologist who conducted the evaluation observed that the Children's placements appeared stable and appropriate. He concluded that Mother did not appreciate either the impact of her marijuana use or the Children's special needs. M.D. is autistic, all of the Children were given post-removal case management services, and most were also given Individualized Education Programs ("IEPs"), psychiatric services, counseling, and Department of Developmental Disabilities ("DDD") services.

¶7 Mother obtained a medical marijuana card for the first time in October 2017. She testified that she used marijuana to manage depression, menstrual pain, back pain, sciatica, and post-traumatic stress disorder. She initially testified that she smoked marijuana nightly, used a vape pen throughout the day, and sometimes used edible marijuana products. A few days later, however, she testified that she had stopped smoking. She testified that if the Children were returned to her, she would keep edible marijuana products in a safety box, would not smoke marijuana in the Children's presence, and would discourage them from using marijuana until they were eighteen years old. She denied that marijuana is a drug.

¶8 Mother testified that she was employed during parts of the removal period, but she also acknowledged that she had provided only one paystub to the Department. She testified that she had continued to live in the marijuana-using family members' home until early 2018, when she began to "house hop" between hotels and others' homes. She stated that she lacked funds to provide a stable home for the Children, but had diligently applied for housing-assistance programs and had unsuccessfully asked the Department to provide a housing voucher. She further stated that the Department never invited her to attend the Children's medical appointments or school functions.

¶9 Mother acknowledged that M.D.'s autism, and all of the Children's speech delays and aggression issues, had improved since their removal. She later denied, however, that the Children had speech delays. And though she was able to describe M.D.'s behaviors, she was unable to

define autism or identify different levels or types of autism. She had previously refused to give M.D. medication prescribed to manage his autism, and at the time of trial continued to believe that autism is untreatable. She expressed suspicion of traditional medical drugs and objected to the Children receiving most such drugs. She expressed a minimal understanding of the significance of IEPs and the attendant need for parental engagement, and she was unable to define DDD services.

¶10 The case manager confirmed that the Children had improved significantly since they were removed from Mother's care and began receiving services. She expressed concern that Mother was unable to identify and meet the Children's needs, and that she would discontinue their medication were they placed in her care. She testified that Mother never requested to attend the Children's medical appointments, that Mother was invited to the Children's annual IEP meetings, and that the Department may offer housing vouchers only when reunification is imminent and housing is the only outstanding issue. She testified that the Children were in stable adoptive placements that met their needs and were willing to maintain the Children's relationships with each other.

¶11 The court severed Mother's parental rights to the Children under A.R.S. § 8-533(B)(8)(c). Mother appeals.

DISCUSSION

¶12 Mother contends that the Department failed to present sufficient evidence to support the severance order.

¶13 To sever a parent-child relationship, the juvenile court must find by clear and convincing evidence at least one of the grounds set forth in A.R.S. § 8-533(B), and the court must find by a preponderance of the evidence that severance is in the child's best interests. *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). We accept the court's findings of fact unless they are not supported by any reasonable evidence, and we will 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).

¶14 Severance under § 8-533(B)(8)(c) requires proof that a child has been in out-of-home placement for a cumulative total period of at least 15 months, the Department has made a diligent effort to provide appropriate reunification services, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and a substantial likelihood exists that the parent will not be capable of

exercising proper and effective parental care and control in the near future. The circumstances that cause the child to be in an out-of-home placement are those "'existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007) (citation omitted).

¶15 Reasonable evidence supports severance of Mother's parental rights under § 8-533(B)(8)(c). First, the record shows that the Children were in out-of-home placements for more than 15 months, during (and also before) which time the Department offered Mother many appropriate reunification services.

¶16 Mother contends that the services were insufficient because she was neither provided a housing voucher nor given opportunities to become educated about the Children's special needs. Citing *Shawanee S. v. Arizona Department of Economic Security*, 234 Ariz. 174 (App. 2014), the Department responds that Mother waived those arguments by not raising them in the juvenile-court proceedings. *Shawanee S.* recognized, however, that "a parent dissatisfied with the services actually being provided can raise the issue with the juvenile court" by, "at a termination hearing, . . . disput[ing] evidence that [the Department] claims shows a diligent effort to provide appropriate reunification services, including by testifying about the services actually provided." *Id.* at 178, ¶ 14. Here, the juvenile court heard testimony at the severance hearing that the Department never provided a housing voucher or invited Mother to the Children's medical appointments. Accordingly, we decline to find waiver. We hold, however, that the case manager's testimony reasonably supports the conclusion that Mother was not entitled to a housing voucher.[2] Further, the case manager testified that she apprised Mother why the Children were prescribed medication. The Department is not required to provide every conceivable service. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). The record here is sufficient to show that the Department diligently endeavored to provide appropriate services.

¶17 The record also is sufficient to show that Mother had been unable to remedy the circumstances that caused the Children to be in out-of-home placements, and that it was substantially likely she would be

[2] Mother asserts on appeal that the Department refused to provide the housing voucher based on her marijuana use despite her possession of a medical marijuana card. But no evidence established that Mother's ineligibility was based on her drug use.

incapable of exercising proper and effective parental care and control in the near future. Evidence established that Mother was unable to gain insight into the Children's special needs and likely remained unwilling or unable to meet those needs. Evidence also established that Mother lacked insight into the impact of her marijuana use on her ability to parent, and that she remained unable to secure consistent employment or a stable home. We emphasize that the significance of Mother's marijuana use related not to whether she held a medical marijuana card, but to its detrimental effect on her ability to exercise proper and effective parental care and control.

¶18 We further hold that reasonable evidence supports the determination that severance served the Children's best interests. In considering a child's best interests, the juvenile court must determine whether, based on the totality of the evidence, the child would benefit from severance or be harmed by continuation of the parent-child relationship. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150–51, ¶ 13 (2018). 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. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 383, ¶ 30 (App. 2010); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 27 (App. 2011); *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17 (App. 2005). Here, Mother's failure to demonstrate an understanding of and ability to meet the Children's special needs, and her failure to recognize the impact of her marijuana use, created a risk that they would be abused or neglected in her care. Further, evidence established that the Children's needs were being met by their adoptive placements.

CONCLUSION

¶19 Reasonable evidence supports the juvenile court's severance order. We therefore affirm.

AMY M. WOOD • Clerk of the Court
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