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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CHEYENNA W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, F.W., *Appellees*.

No. 1 CA-JV 18-0207
FILED 10-25-2018

Appeal from the Superior Court in Yavapai County
No. P1300 JD201600063
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, Tucson
By Michelle R. Nimmo
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

P E R K I N S, Judge:

¶1 Cheyenna W. ("Mother") appeals the juvenile court's order severing her parental rights to her daughter F.W. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 On September 17, 2016, the Department of Child Safety ("DCS") removed F.W. from Mother's care after police arrested Mother for child endangerment and possession of drug paraphernalia; Mother later pled guilty to these charges. Police initially responded to a report that F.W. was living in a car, but when they arrived at Mother's house they found marijuana and related paraphernalia, liquor bottles, knives, and sharp tools all within a child's reach. As many as seven adults lived in Mother's house, with two more living in a car out front. There were three or four mattresses in the living room and a tent in the backyard strewn with used condoms and liquor bottles. In the bathroom were several dirty litter boxes and the house smelled strongly of cat urine and feces.

¶3 DCS filed a dependency petition on the grounds that Mother neglected F.W. due to her incarceration, substance abuse, and unfit home. DCS also had concerns that Mother continued a relationship with an ex-boyfriend who had allegedly committed domestic violence on Mother in front of F.W. Mother has never identified any father, and no man has come forward as F.W.'s father.

¶4 In the dependency, DCS provided Mother with: supervised visitation; a "family involvement service center specialist;" parenting classes; domestic violence classes; a psychological evaluation; and random drug testing. Mother did well with most of her services, actively engaging in counseling and, with a few exceptions, providing clean urine and hair samples.

¶5 Dr. Ray Lemberg, a licensed psychologist, examined Mother on November 18, 2016. Lemberg determined that Mother has "dysthymia as well as social anxiety." He suggested DCS provide Mother with

parenting and substance abuse classes, urinalysis, a psychiatric consultation, and individual psychotherapy. Lemberg noted that Mother's chances of reunifying with F.W. would "depend on her ability to recognize the deplorable living situation and take responsibility for it, as well as to be able to create a psychosocial stability in terms of a basic clean domicile and financial stability to support her child."

¶6 Mother moved into an apartment around February 2017, but DCS had continued concerns because Mother's new roommate was a masseuse who ran her business out of the new apartment, "thus bringing strangers into the home." DCS stated that to reunify with F.W., Mother needed to set boundaries and rules "of who exactly is allowed in her apartment and permitted to be around" F.W. In April 2017 the Guardian ad Litem reported that Mother had still not remedied these issues.

¶7 Following a court order, DCS moved in August 2017 to terminate Mother's relationship with F.W. on the grounds of neglect, history of drug abuse, and nine months' time in care. The court ordered mediation, after which DCS agreed to withdraw its motion. Mother reported that she had gotten a job; her DCS caseworker would later testify that "[Mother] was on track other than a house."

¶8 Sometime after DCS withdrew the termination motion, the caseworker visited the house from which F.W. was removed, and found Mother sleeping there at a time when Mother should have been at work. Around the same time, F.W. also made some comments to her placement that she had been to that house during her unsupervised visits with Mother. Although the caseworker recognized that the house "was a little bit better" than it had been when DCS removed F.W., it was still littered with beer bottles and cigarette butts and still smelled of cat urine and feces.

¶9 DCS changed the case plan from reunification to termination on January 17, 2018; shortly thereafter it moved to change F.W.'s physical custody to her maternal great aunt and uncle. After a hearing on the matters, the court denied DCS's motion to change physical custody, but ordered it to file a termination motion. DCS again moved to terminate Mother's parental rights, this time on the grounds of neglect and 15 months' time in care.

¶10 Mother moved into another apartment and DCS believed she was making progress, to the point that the caseworker thought DCS may have been able to change the case plan back to reunification. On March 22, 2018, the caseworker went to Mother's apartment about an hour before a

supervised visit was to occur. The caseworker found that Mother still had many of the same issues she had at the house: beer cans and cigarette butts littered the front of the apartment and there were safety issues within. Mother believed she could remedy everything before the visit, but as the two worked to fix the safety issues a young man unknown to the caseworker appeared from one of the bedrooms and quickly walked out of the apartment; upon inspection, the bedroom smelled of burnt marijuana.

¶11 Mother explained to the caseworker that the man and his girlfriend were her new roommates and provided their names to the caseworker, but Mother never provided enough information for DCS to run background checks on them. Around this time, Mother also allowed her allegedly abusive ex-boyfriend to drop her off at visits with F.W.

¶12 The court conducted a trial on April 30, 2018. At trial, the caseworker opined that, although Mother "tried as hard as she could for as long as she could," she was simply unable to provide F.W. with a home free of dangerous conditions and people. The caseworker also stated that she thought termination would be in F.W.'s best interests and that DCS had identified adoptive placements, including a family placement.

¶13 The court granted DCS's motion in an under advisement ruling on May 25, terminating Mother's rights as to F.W. for neglect and 15 months' time in care. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2), (B)(8)(c). Mother timely appealed.

DISCUSSION

¶14 A parent's right in the care, custody, and management of her children is fundamental, but not absolute. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 97–98, ¶ 7 (App. 2016). To "justify the termination of the parent-child relationship," Arizona courts employ a two-step inquiry. A.R.S. § 8-533(B) (2018); *Alma S. v. Dep't of Child Safety*, 799 Ariz. Adv. Rep. 27, ¶ 8 (September 14, 2018). In a contested termination proceeding, the court first determines whether the state has proved one of the statutory grounds for termination by clear and convincing evidence. A.R.S. § 8-537(A), (B) (2018); *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 8. Once the juvenile court has found one of the grounds for termination, "the court shall also consider the best interests of the child." A.R.S. § 8-533(B); *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 8. The finding of parental unfitness "substantially reduces" the parent's interest in the right to custody and care of the child, and thus, "we can presume that the interests of the parent and child diverge" because of that finding. *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005).

¶15 We review termination proceedings for an abuse of discretion. *Titus S. v. Dep't of Child Safety*, 244 Ariz. 365, ___, ¶ 15 (App. 2018). The juvenile court abuses its discretion if its findings of fact are clearly erroneous "or upon a determination that, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof." *Id.* We view the evidence and the reasonable inferences therefrom in the light most favorable to sustaining the court's decision, and we will not reweigh the evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

I. Statutory Grounds for Severance

¶16 The juvenile court is justified in terminating the parent-child relationship if it finds that the "child has been in an out-of-home placement for a cumulative total period of fifteen months or longer," that "the parent has been unable to remedy the circumstances" that caused the out-of-home placement, that DCS "has made a diligent effort to provide appropriate reunification services," and that, despite those services, "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." § 8-533(B)(8)(c). In making this determination, the court must consider "the circumstances existing at the time of the severance rather than the initial dependency petition." *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 60, ¶ 17 (App. 2015) (quotation omitted).

¶17 On appeal, Mother does not dispute that F.W. has been in an out-of-home placement for at least fifteen months or that DCS has made diligent efforts to provide appropriate services. Instead, Mother contends insufficient evidence supports the juvenile court's determinations that Mother was unable to remedy the circumstances precipitating F.W.'s removal, or would be incapable of exercising effective care and control in the near future.

¶18 In its under advisement ruling, the juvenile court found that Mother was unable or unwilling "to provide safe and stable housing where [F.W.] would not be at risk of harm by being exposed to drugs or unsafe individuals." This finding was the foundation for the court's conclusions that Mother had failed to remedy the circumstances that led to the dependency and would be unable to exercise proper and effective care in the near future. Reasonable evidence supports these conclusions.

¶19 When DCS removed F.W., Mother was living with up to nine other people, including an allegedly abusive boyfriend and family

members who were unable to pass DCS background checks. Furthermore, marijuana and associated paraphernalia were readily accessible to F.W. When DCS visited Mother's apartment on March 22, 2018, five weeks before the severance trial and 18 months after F.W. was removed, Mother was living with two people who had not passed DCS background checks. As of the day of trial, Mother had neither ousted them nor provided DCS with enough information to run background checks. At the same visit, at least one room smelled of marijuana. Mother also continued to openly associate with the same allegedly abusive boyfriend she had lived with when DCS removed F.W. Reasonable evidence supports the juvenile court's finding that Mother was unable to protect F.W. from drugs and unsafe people both at the time of F.W.'s removal and at the termination trial.

¶20 Mother directs us to the evidence that she had obtained employment and had mostly negative drug tests, arguing that the juvenile court "simply failed to recognize the progress made by Mother," and that "DCS was fixated on the roommate situation." Although Mother's progress in these areas is commendable, it does not necessarily render her home safe for young children. *See In Re Appeal in Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994) ("Appellant's successful efforts . . ., while commendable, were 'too little, too late' for purposes of this severance action."). The evidence clearly shows that, despite obtaining employment, Mother still shared her home with dubious roommates. It is also clear that, even if Mother herself did not use marijuana, she maintained a home in which marijuana would be present and smoked in front of F.W.

¶21 Because we affirm the juvenile court's ruling on the fifteen months' time in care ground, we decline to address the neglect finding. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) ("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.").

II. Best Interests

¶22 Once the juvenile court finds a parent unfit, "the focus shifts to the interests of the child as distinct from those of the parent." *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 12 (quoting *Kent K.*, 210 Ariz. at 285, ¶ 31). Termination of the parent-child relationship is in the child's best interests where the child would benefit from severance or where the child would be harmed by continuing the relationship. *Id.* at ¶ 13.

¶23 In making this determination, "[c]ourts must consider the totality of the circumstances at the time of the severance determination." *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 13. After considering all the evidence, if the court finds that the child is adoptable it may also rule that the child's adoptability meets the best interests requirement, but it need not do so. *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 13; *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 588, ¶ 11 (App. 2008). Further, while the "focus of the best-interests inquiry is on the child, courts should consider a parent's rehabilitation efforts as part of the best-interests analysis. But what courts must not do . . . is subordinate the interests of the child to those of the parent once a determination of unfitness has been made." *Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 15.

¶24 Here the juvenile court found that termination would be in F.W.'s best interests because F.W. is in an adoptive placement that meets all of her needs and another adoptive placement could be found if need be. Reasonable evidence supports this finding. At trial, Mother's case worker testified that DCS has identified multiple adoptive placements for F.W., one of which is a familial placement. In fact, one of F.W.'s maternal relatives has travelled from another state on multiple occasions in an attempt to bond with, and eventually adopt, F.W. In the meantime, the caseworker testified that F.W.'s current placement meets all of her "physical, social, educational, medical, psychological and emotional needs."

¶25 Relying on this Court's decision in *Alma S. v. Ariz. Dep't of Child Safety*, 244 Ariz. 152 (App. 2017), Mother argues that DCS was required to show both that termination would "remove[] a detriment caused by the parental relationship" and that termination would provide a benefit other than adoptability. We need not reach the merits of this argument because our supreme court has vacated that opinion. *See Alma S.*, 799 Ariz. Adv. Rep. 27, ¶ 23. The juvenile court complied with relevant law in this case.

CONCLUSION

¶26 For the foregoing reasons, we affirm the order terminating Mother's parental rights.

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