IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JUAN A., LYDIA A.,
Appellants,

v.

DEPARTMENT OF CHILD SAFETY, G.A., M.A., S.A., L.A.,
Appellees.

No. 1 CA-JV 19-0105
FILED 10-29-2019

Appeal from the Superior Court in Maricopa County
No. JD28803
No. JS19177
The Honorable Jeanne M. Garcia, Judge

AFFIRMED

COUNSEL

Law Office of H. Clark Jones, LLC, Mesa
By H. Clark Jones
Counsel for Appellant Mother

Denise L. Carroll, Scottsdale
Counsel for Appellant Father

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

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Paul J. McMurdie joined.

P E R K I N S, Judge:

¶1 Juan A. ("Father") and Lydia A. ("Mother") (collectively "Parents") appeal the juvenile court's order terminating their parental rights to children G.A., M.A., S.A., and L.A. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Mother have eight children, the older four of which are not subject to these termination proceedings. Between 2004 and 2014, the Department of Child Safety ("DCS") made fifteen reports concerning this family. In July 2014, DCS filed a dependency petition for all eight children on multiple grounds including the lack of safe, secure, and sanitary housing, and the entire family's poor mental and behavioral health.

¶3 The juvenile court ordered the removal of all eight children based on Parents' neglect, unfit housing conditions, and failure to meet their own and their children's mental and behavioral needs. The children were found dependent in November 2014.

¶4 To alleviate DCS's concerns, Parents needed to "participate in parent aide services, psychological evaluations, [and] parenting classes." DCS also required Parents to "demonstrate the ability to obtain and maintain a safe, clean, stable home." Finally, Parents had to attend all Child and Family Team meetings ("CFTs") and behavioral health appointments; "understand the need for [Parents'] mental health to be managed;" and engage with recommended mental health services.

¶5 In late 2016, DCS returned the oldest four children, then ages eleven to sixteen, to Parents' care for an extended visit and officially reunified them a month later. Parents at that time regularly engaged with behavioral health services provided for those children.

¶6 Father completed individual counseling for his mental health. Mother failed to consistently attend her counseling sessions and was closed out of service for lack of contact three times. Those sessions that Mother completed did not result in changed behavior. Both Parents frequently failed to attend CFTs. DCS case manager Chelsea Jarman testified at trial about the Parents' general unwillingness to address DCS's concerns. Jarman also noted Mother's pattern of refusing to engage in mental health services.

¶7 In addition to counseling, DCS made three Parent Aide referrals to assist Parents in developing "appropriate parenting skills," and learning how to provide "adequate supervision of their children." DCS closed out these services unsuccessfully, at least one due to a lack of change in Parents' behavior.

¶8 Dr. Al Silberman performed a bonding assessment/best interests evaluation in 2017 and rated Parents' ability to care successfully for all eight children as "poor." Dr. Silberman's primary concern was that "the [younger] children will be at risk for neglect, even though the parents seem to be loving toward them," and Parents would likely be "overwhelmed." Dr. Roger Martig performed a psychological evaluation in which he found the prognosis for demonstrating adequate parenting skills to be "fair." This prognosis was contingent on the Parents "following through with the visits with the children," interacting with the children, and exhibiting "consistency" and "dependability."

¶9 In August 2017, DCS filed a petition to terminate parental rights to the younger four children on the grounds of fifteen months of out-of-home placement. The contested termination adjudication took place in December 2018 and January 2019.

¶10 Jarman testified that if the younger children were reunited, Parents would be responsible for six children with significant behavioral health needs. Two of the older children require behavioral support, one of whom has been hospitalized for behavioral concerns and frequently argues with Mother, reducing Parents' ability to supervise younger children. Father testified that he had learned to ask for assistance from emergency services when necessary and referred to his action during a mental health incident with an older child. Jarman noted, however, that Father's health frequently limits him to the couch, at times prohibiting him from actively supervising the children.

¶11 According to Jarman, as of the date of the trial, Father and Mother had lived in four different residences in three years and had only lived in their current apartment for five to six months. Jarman testified that the current home is clean. Father does not work due to osteoarthritis and chronic back pain and, as the court noted, Mother is "the sole breadwinner" for the family. She has never held a job longer than six months throughout the dependency. Despite Parent Aide assistance, Father did not complete a Social Security Disability benefits application.

¶12 Jarman further testified that she remained concerned about Parents' ability to meet the children's behavioral and mental health needs. Despite being on notice from the initial case plan that Parents needed to attend CFTs, both parents "struggle[ed] to show for all of the appointments." Parents' lack of consistent attendance at family therapy resulted in behavioral problems with some of the younger children. During family therapy, Parents displayed "some improvement in terms of appropriate responses" to the emotional needs of their children. Jarman estimated that Parents attended roughly half the sessions before reuniting with their older children, but "almost completely" ceased attendance thereafter. Ultimately, Parents "did not participate in the [family therapy] service consistently." Further, she testified that Parents did not enroll the older children in school for approximately a month after school began as "[t]he parents reported that they didn't know how to enroll the children in school."

¶13 The juvenile court terminated parental rights to G.A., M.A., S.A., and L.A. in March 2019. Father and Mother timely appeal.

DISCUSSION

¶14 We review the termination of parental rights for an abuse of discretion. *Sandra R. v. Dep't of Child Safety*, 246 Ariz. 180, 183, ¶ 6 (App. 2019) (review granted Aug. 27, 2019). As the trier of fact, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Oscar F. v. Dep't of Child Safety*, 235 Ariz. 266, 269, ¶ 13 (App. 2014) (quoting *Ariz. Dep't Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004)). Accordingly, we will not reweigh the evidence on review. *Oscar F.*, 235 Ariz. at ¶ 13. "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745, 747–48. "[S]uch a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due

process." *Id.* at 769. This court will uphold the trial court's findings of fact "if supported by adequate evidence in the record." *Christy C. v. Ariz. Dep't Econ. Sec.*, 214 Ariz. 445, 452, ¶ 19 (App. 2007) (quoting *State v. Smith*, 123 Ariz. 243, 247 (1979)).

I. Statutory Ground

¶15 As applicable here, to terminate the parent-child relationship, the juvenile court must find at least one statutory ground under A.R.S. § 8-533(B) by clear and convincing evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). The juvenile court may terminate parental rights under the fifteen-month out-of-home placement ground under A.R.S. § 8-533(B)(8)(c) if DCS proves by clear and convincing evidence (1) the child has been in court-ordered out-of-home placement for at least fifteen months; (2) DCS made a diligent effort to provide appropriate reunification services; but despite that effort, (3) the parent has been unable to remedy the circumstance causing the child to be in court-ordered out-of-home care; and (4) 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. *Donald W. v. Dep't of Child Safety*, 247 Ariz. 9, 17, ¶ 25 (App. 2019). The relevant circumstances are those existing at the time of the severance that prevent a parent from adequately providing for his or her children. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007).

¶16 Parents only challenge the juvenile court's findings that they have been unable to remedy the circumstances precipitating the children's removal and that they would not be able to remedy the circumstances in the near future. Parents do not dispute that the four younger children had been in out-of-home placement more than fifteen months at the time of the severance, or that DCS made diligent efforts to provide appropriate reunification services.

A. Failure to Remedy Circumstances

¶17 DCS alleged a variety of specific facts amounting to two categorical circumstances causing out-of-home placement: a lack of safe and secure housing, and Parents' inability to provide minimally adequate care for their children.

1. Lack of Safe and Secure Housing

¶18 DCS required Parents to provide safe and secure housing for their children. Throughout the dependency, Parents continued to have unexplained housing changes, changes in employment, and unverifiable

income sources. Father is unemployed and was unable, even with the assistance of a Family Aide, to apply for Social Security disability benefits. The record thus contains reasonable evidence to support the court's finding that Parents have failed to provide safe and secure housing.

2. Inability to Provide Minimally Adequate Care

¶19 DCS also required Parents to have the ability to provide minimally adequate care. Here, Parents had to manage their mental health and learn to control the behavior of their children. Parents were on notice that they needed to participate in DCS referred services to demonstrate their ability to provide minimally adequate care. This included attendance at CFTs, counseling appointments, and family therapy to address child behavioral issues. Despite this, Mother was unsuccessfully closed out of three counseling referrals through DCS (in addition to one self-referral). The doctors who performed best interests and psychological evaluations both indicated that Parents' ability to provide minimally adequate care was contingent on their consistent participation in DCS services. Parents nonetheless failed to participate consistently, and their level of involvement decreased dramatically following reunification with their older children. Again, the record contains reasonable evidence to support the court's finding that Parents had not become capable of providing minimally adequate care.

¶20 Father also argues that the return of his older four children "seems to negate the Department's contention that he is an unfit parent." This Court has consistently held that "a parent's ability 'to meet the needs of one or more of [the] children . . . does not establish that [the parent] is able to parent all of [the] children.'" *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 98, ¶ 35 (App. 2009) (quoting *Pima Cty. Juv. Action No. S-2460*, 162 Ariz. 156, 158–59 (App. 1989)). Furthermore, DCS's rationale in returning the older children – their greater independence – is not present here for the younger children.

B. Future Ability to Exercise Proper and Effective Parental Care and Control

¶21 DCS has the burden of demonstrating by clear and convincing evidence that Parents will be unable to effectively exercise proper and effective parental care and control in the near future. *See Jordan C.*, 223 Ariz. at 98, ¶ 33. Parents contend DCS failed to meet this burden.

¶22 "The mere passage of time, without more, is not a ground for terminating the parent's rights under § 8-533(B)(8)(c)." *Id.* at ¶ 36. That said,

"[l]eaving the window of opportunity for remediation open indefinitely is not necessary," and "at some point the [Parents are] required to make a good faith effort to reunite the family." *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994) (quoting *Maricopa Cty. Juv. Action No. JS-4283*, 133 Ariz. 598, 601 (App. 1982)). Here, DCS offered Parents a full panoply of services over fifty-three months. Despite this, Parents failed to participate consistently in services and, as a result, failed to sufficiently improve their exercise of parental care and control. The court had reasonable evidence to find that DCS satisfied the third prong of § 8-533(B)(8)(c).

¶23 In sum, sufficient evidence supported the juvenile court's conclusion that DCS met its burden to establish the statutory ground alleged for termination of parental rights by clear and convincing evidence.

II. Best Interests

¶24 To sever a parental relationship, in addition to finding that statutory grounds for termination are present, a court must find by a preponderance of the evidence that severance would be in the best interest of the child. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149–50, ¶ 8 (2018). Once a court has found at least one statutory ground to terminate, it may "presume that the interests of the parent and child diverge." *Kent K.*, 210 Ariz. at 286, ¶ 35. We thus focus our inquiry at this stage on "the interests of the child as distinct from those of the parent." *Id.* at 285, ¶ 31. The "child's interest in stability and security" is the touchstone of our inquiry. *See id.* at 286, ¶ 34. Termination of parental rights is in the child's best interests "if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S.*, 245 Ariz. at 150, ¶ 13. Courts must consider the totality of the circumstances existing at the time of the severance. *Id.*

¶25 Here, the juvenile court weighed the bond between the Parents and children, the children's love of each other, and the measure of Parents' improvement found in the record, against termination. The court noted that Parents have had fifty-three months since court-ordered removal to remediate their circumstances and considered the negative behavioral impacts that the extended dependency and termination process has had on the children, as well as the children's positive adoption prospects. The juvenile court therefore did not abuse its discretion in finding that DCS met its evidentiary burden to establish that termination of parental rights was in the children's best interest.

CONCLUSION

¶26 We affirm.