

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DEPARTMENT OF CHILD SAFETY, *Appellant*,

v.

VICTORIA M., JAMES S., A.M., S.M., *Appellees*.

No. 1 CA-JV 19-0128
FILED 10-17-2019

Appeal from the Superior Court in Maricopa County
No. JD33641
The Honorable Randall H. Warner, Judge

AFFIRMED IN PART; REVERSED IN PART

COUNSEL

Arizona Attorney General's Office, Tucson
By Dawn Rachelle Williams
Counsel for Appellant

Denise L. Carroll Esq., Scottsdale
By Denise Lynn Carroll
Counsel for Appellee Victoria M.

John L. Popilek PC, Scottsdale
By John L. Popilek
Counsel for Appellee James S.

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge David D. Weinzwieg and Judge Diane M. Johnsen joined.

H O W E, Judge:

¶1 The Department of Child Safety appeals the juvenile court’s denial of its motion to terminate parental rights based on neglect and wilful abuse under A.R.S. § 8-533(B)(2). For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the juvenile court’s order. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 2 ¶ 2 (2016). James S. (“Father”) and Victoria M. (“Mother”) are the natural parents of A.M., born August 2012, and S.M., born April 2015. A.M. was born with spina bifida and has no feeling below his knees. He was also hydrocephalic, which required the placement of a shunt in his head to drain excess brain fluid. Due to these medical conditions, A.M. has limited mobility, and must crawl or use braces or a wheelchair to move around.

¶3 In December 2016, Mother and Father used methamphetamine, with Father using daily. During this time, Father lived with A.M. and S.M. at his grandfather’s house; Mother was homeless but frequently visited the children. Father described the living conditions of the home as “[n]ot suitable for children.” The house smelled of dog urine, which had soaked into the floor and drywall. To combat the smell, Mother and Father removed the carpeting, leaving only particle board on the floor, except for a tile path from the bedroom to the outside.

¶4 Sometime in December 2016, A.M. scraped his knee. Initially, Mother and Father cleaned and rebandaged A.M.’s knee daily, but often forgot due to their use of methamphetamine. By December 25, 2016, Mother and Father noticed that A.M.’s wound worsened; it had spread to the back of his knee, exposing his bone. That same day, Father checked himself into a mental-health facility, where he stayed for two days. On December 29, 2016, Mother and Father took A.M. – with S.M. in tow – to the hospital.

DCS v. VICTORIA M., et al.
Decision of the Court

A.M. remained in the hospital for approximately one month to treat his wound and head lice.

¶5 At the hospital, Father noticed that S.M. was walking on her tiptoes and inspected the bottoms of her feet, where he saw bumps caused by thorns. Father did not realize before then that the bumps were caused by S.M.'s stepping on thorns in the backyard. S.M. remained in the hospital overnight and was also treated for head lice.

¶6 As a result of A.M.'s injury, Mother and Father pled guilty to felony child abuse under A.R.S. § 13-3623(B)(3). The plea agreements required that Mother and Father have no contact with A.M. without Department approval.

¶7 In January 2017, the Department removed A.M. and S.M. from Mother and Father's care and placed them into separate foster homes. According to the Department's specialist, A.M.'s foster parents are not willing to adopt him. S.M.'s foster parents, however, are willing to adopt her and are willing to facilitate a relationship between the two siblings if they are adopted by different families.

¶8 Father is bipolar and has attention deficit hyperactivity disorder. The Department recommended that Father take his medication for his bipolar disorder consistently. The Department referred Father to TERROS for substance abuse treatment and requested that he participate in random urinalysis testing, parenting classes and parent-aide services, and obtain stable housing and stable income. Father successfully completed TERROS' intensive outpatient program, its standard outpatient program, and its recovery maintenance program, testing negative for drugs from April 2017 to June 2018. Except for testing positive for marijuana in October 2018, Father has been drug-free since April 2017. Father started a new job and, while he lived with his grandfather in the same home A.M. was injured in, he planned to move into a new house during the summer or fall of 2019. Father visits with S.M. on Tuesdays and at church on Sundays and testified that he has bonded with her. Father has not visited with A.M. due to the restrictions of his probation but testified that they have a strong bond.

¶9 The Department recommended that Mother achieve sobriety; participate in drug testing, substance abuse treatment, and a parenting class; obtain stable housing and stable income; and undergo a psychological evaluation. Mother has not seen A.M. since the Department removed him in January 2017. She did not visit S.M. until January 2019. Mother continued to abuse methamphetamine and alcohol until she was arrested in July 2018

DCS v. VICTORIA M., et al.
Decision of the Court

on the felony child abuse charge. Upon Mother's release from jail in October 2018, she went to Lifewell for 45 days to complete in-patient substance abuse treatment. After leaving Lifewell, Mother went to Phoenix Dream Center for approximately one month to continue substance abuse treatment. Since leaving Phoenix Dream Center, Mother has lived with her mother and has remained drug-free. She also began working and attending parenting and domestic violence classes. Mother testified that the children would be able to live with her at her mother's house.

¶10 The Department moved to terminate Mother's and Father's parental rights as to both children based on neglect and wilful abuse under A.R.S. § 8-533(B)(2) and out-of-home placement for more than 15 months under § 8-533(B)(8)(c). The court found that Mother and Father had neglected A.M. but did not wilfully abuse him. The court further found that the Department failed to prove that Mother or Father neglected or wilfully abused S.M. Finally, the court found that termination was not in A.M.'s best interests because A.M. was not in an adoptive home and, if the parents' rights were terminated, A.M. and S.M. would never live together as siblings and would be deprived of a normal sibling relationship. Further, the court reasoned that if Mother and Father continued down their current paths, they were unlikely to neglect the children in the future. Lastly, the court ruled that Mother and Father should have an opportunity to restore their relationship with A.M. because their probation terms restricted contact with him. The Department timely appealed.

DISCUSSION

¶11 The Department argues that the juvenile court applied incorrect legal standards when it found that the parents did not neglect or wilfully abuse S.M. and when it found they did not wilfully abuse A.M. The Department also argues that because the court applied incorrect legal standards, its best-interests analysis is invalid.

1. Statutory Grounds for Termination

¶12 The Department argues that the evidence showed that Mother and Father had neglected S.M. A juvenile court's termination determination is reviewed for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47 ¶ 8 (App. 2004). Because the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts[.]" *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004), we will affirm a termination decision unless the juvenile court abused its discretion by

DCS v. VICTORIA M., et al.
Decision of the Court

making factual findings that are clearly erroneous; “that is, unless there is no reasonable evidence to support them[.]” *Xavier R. v. Joseph R.*, 230 Ariz. 96, 100 ¶ 11 (App. 2012) (quoting *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377 ¶ 2 (App. 1998)). Moreover, we view the evidence and draw all reasonable inferences from it “in favor of supporting the findings of the [juvenile] court.” *Maricopa Cty. Juv. Action J-75482*, 111 Ariz. 588, 591 (1975).

¶13 To establish grounds for terminating the parent-child relationship under A.R.S. § 8-533(B)(2), the Department must prove by clear and convincing evidence that the parent neglected a child. *See Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 17 (App. 2009). Neglect means “[t]he inability or unwillingness of a parent . . . of a child to provide that child with supervision . . . or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare[.]” A.R.S. § 8-201(25)(a).

¶14 The Department argues the evidence showed that S.M. was living in the same deplorable conditions as A.M. and that Mother and Father failed to seek medical treatment for the sores on S.M.’s feet and her head lice. Reasonable evidence supports the court’s finding that S.M. was not neglected. Father testified that he did not notice the injury on S.M.’s feet until December 29 and S.M. was treated at the hospital that same day. While the Department presented evidence nevertheless that Father noticed that S.M. was walking on her tiptoes one day earlier, he testified that he thought S.M. was only playing. Unlike A.M.’s injury, the Department presented no evidence that Mother and Father knew of S.M.’s injury and left it untreated. Further, Father testified that he and Mother were attempting to treat S.M.’s head lice. As a result, reasonable evidence supports the court’s finding that the Department failed to prove that Mother and Father were unable or unwilling to provide S.M. with medical care and its finding that Mother and Father therefore did not neglect S.M.

¶15 Next, the Department argues that because the court found that Mother and Father neglected A.M., it could and should have terminated their parental rights to S.M., even if the court did not find the parents abused or neglected S.M. herself. This Court reviews questions of law de novo. *Orth v. Cole*, 191 Ariz. 291, 292 ¶ 3 (App. 1998).

¶16 “Evidence sufficient to justify the termination of the parent-child relationship shall include . . . [t]hat the parent has neglected or wilfully abused a child.” A.R.S. § 8-533(B)(2) (emphasis added). “If a parent abuses or neglects their child, the court may terminate that parent’s rights to their other children on this basis, even if there is no evidence that the

DCS v. VICTORIA M., et al.
Decision of the Court

other children were abused.” *Sandra R. v. Dep’t of Child Safety*, 246 Ariz. 180, 184 ¶ 13 (App. 2019).

¶17 In denying the Department’s termination motion, the court failed to address the Department’s argument that Mother and Father’s neglect of A.M. established a statutory ground under § 8-533(B)(2) to terminate their parental rights as to S.M. We therefore remand for the court to consider and apply § 8-533(B)(2), as construed by *Sandra R., Linda V. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 76 (App. 2005), and *Seth M. v. Arienne M.*, 245 Ariz. 245 (App. 2018), to the Department’s argument that the parents’ neglect of A.M. established a statutory ground to terminate their relationship with S.M.

¶18 The Department also argues that the court applied incorrect legal standards when it found that Mother and Father did not wilfully abuse A.M. However, when the juvenile court finds that one statutory ground for termination has been met, we need not consider whether its findings justified termination on other grounds. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 251 ¶ 27 (2000). Here, the juvenile court found one statutory ground for termination as to A.M. Therefore, we need not address the Department’s argument about wilful abuse.

2. Best Interests

¶19 The Department argues that the juvenile court’s best-interests analysis is invalid because the analysis is premised on the court’s denial of the Department’s motion to terminate Mother and Father’s parental rights as to S.M. Once the court finds a parent unfit under at least one statutory ground for termination, “the interests of the parent and child diverge,” and the court proceeds to balance the unfit parent’s “interest in the care and custody of his or her child . . . against the independent and often adverse interests of the child in a safe and stable home life.” *Kent K. v. Bobby M.*, 210 Ariz. 279, 286 ¶ 35 (2005). “[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 (1990) (emphasis omitted). Courts “must consider the totality of the circumstances existing at the time of the severance determination, including the child’s adoptability and the parent’s rehabilitation.” *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 148 ¶ 1 (2018). “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.*, 239 Ariz. at 4 ¶ 12.

DCS v. VICTORIA M., et al.
Decision of the Court

Finally, “[t]he existence and effect of a bonded relationship between a biological parent and a child, although a factor to consider, is not dispositive in addressing best interests.” *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 98 ¶ 12 (App. 2016).

¶20 Our reversal of the court’s ruling as to S.M. does not invalidate its best-interests analysis as to A.M. because that analysis was not based solely on the presumption that S.M. would be reunited with Mother and Father. Rather, the court found that “termination as to [A.M.] all but ensures that [A.M.] and [S.M.] will never live together as siblings, regardless of what ultimately happens with [S.M.]” Further, the court’s best-interest analysis cited three additional reasons unrelated to S.M. for denying the Department’s motion to terminate the parents’ rights to A.M. Accordingly, this Court’s remand as to S.M. does not change the juvenile court’s best-interests analysis for A.M.

¶21 The Department also argues that because the court applied incorrect legal standards in denying the Department’s motion to terminate the parent-child relationship with A.M. on the wilful abuse ground, the court failed to consider the extent of Mother and Father’s unfitness when considering A.M.’s best interests. As previously discussed, when one statutory ground is met, this Court need not consider the juvenile court’s rulings regarding other statutory grounds. *See Michael J.*, 196 Ariz. at 251 ¶ 27. Having found one ground for termination as to A.M., the juvenile court presumably considered Mother and Father’s unfitness when it conducted its best-interests analysis. Accordingly, we need not consider whether its best-interests analysis would have been different had it found that the parents wilfully abused A.M. This is particularly so where, as here, the court heard and considered all the evidence the Department presented on the additional statutory ground.

CONCLUSION

¶22 For the foregoing reasons, we affirm the juvenile court's denial of the Department's motion to terminate the parents' rights with respect to A.M., but reverse and remand its ruling denying termination of the parents' rights as to S.M.



AMY M. WOOD • Clerk of the Court
0300r pjl