IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TIA M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.H-K, Z.H-K, *Appellee*.

No. 1 CA-JV 19-0180
FILED 12-12-2019

Appeal from the Superior Court in Maricopa County
No. JD34484
The Honorable Sara J. Agne, Judge

AFFIRMED

COUNSEL

John L. Popilek, P.C, Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
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 Tia M. ("Mother") appeals the juvenile court's order terminating her parental relationship with J.H.-K. and Z.H.-K. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of J.H.-K, born in June 2016, and Z.H.-K., born in October 2017. She was in a relationship with Kenned H.-K. ("Father"), who is not a party to this appeal. The two had a history of domestic violence and substance abuse, which ultimately led to a Department of Child Safety ("DCS") investigation in June 2017.

¶3 A DCS case worker reported that Mother admitted to using THC and that Mother alleged Father may have been using methamphetamine. The investigator reported that domestic violence in the home had been getting worse, and that J.H.-K. was living in unsafe and unsanitary conditions. The report also stated that Mother had tried to end her relationship with Father before, but she did not want to parent alone. After the investigation, DCS filed a dependency petition for J.H-K. in June 2017, citing Mother's unwillingness or inability to remove the child from exposure to Father's domestic violence, Mother's drug use, and Mother's unsafe home.

¶4 The following month, Mother participated in an intake for substance-abuse treatment. She went on to complete standard outpatient treatment as recommended by DCS. She also began participating in domestic-violence counseling.

¶5 DCS referred Mother for a psychological evaluation. The psychologist gave a "guarded" prognosis that Mother would be able to demonstrate minimally adequate parenting skills in the foreseeable future if she: completed all DCS requirements and all recommendations in the psychologist's report; obtained stable employment and housing; and maintained documented sobriety for at least twelve months.

¶6 The juvenile court found J.H-K dependent as to Mother in February 2018. After Z.H.-K.'s birth, DCS took her into custody and amended the dependency petition to include Z.H.-K while Mother continued substance-abuse treatment and domestic-violence counseling. The court found Z.H.-K dependent as to Mother in June 2018.

¶7 At some point in early 2018, Mother stopped attending counseling with her first parent aide and was closed out of the service for lack of participation. She began her second round of counseling that May, but was once again closed out for the same reasons. Mother's second parent aide reported that Mother missed most of her scheduled visits and skill sessions, and that she struggled to handle both children during the visits she did attend.

¶8 In early 2019, DCS learned that Mother's insurance would cover her counseling. Mother told the DCS case manager that her insurance had already twice denied coverage for additional counseling and that she would not try again (although the case manager testified that Mother never provided proof of the denials). The case manager offered to meet with Mother to help her navigate the self-referral process, but Mother did not do so. The case manager testified that, if Mother was actually being denied coverage, there were actions DCS could take. However, Mother would have had to come in and discuss these options with DCS.

¶9 DCS moved to terminate Mother's parental rights on the abuse and six- and nine- month time in care grounds, and later amended its motion to include the fifteen-month time in care ground as to J.H.-K. After a severance trial held March 26, 2019, the juvenile court granted the severance on the six- and nine-month time in care grounds as to both children, and on the fifteen-month time in care ground as to J.H.-K. The juvenile court also found that severance was in the best interests of the children, a finding supported by the trial evidence and not challenged by Mother on appeal. Mother timely appealed.

DISCUSSION

¶10 Mother challenges the juvenile court's finding that DCS made diligent efforts to provide Mother with appropriate reunification services. She also argues the juvenile court lacked substantial evidence to terminate her parental rights under the six-, nine-, and fifteen-month time in care grounds.

¶11 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 269, ¶ 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. Reunification Services

¶12 To terminate parental rights under the time in care grounds, the juvenile court must find DCS "has made a diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8).

¶13 Mother argues the juvenile court erred in finding DCS made reasonable and diligent efforts to reunify the family. She contends that DCS's efforts presented her with an impossible choice between paying for her own counseling or obtaining stable housing. The record belies this contention.

¶14 The juvenile court found DCS provided Mother with substance abuse treatment and testing; parent aid and visitation; psychological evaluation; and individual counseling for domestic violence. While Mother claimed that her insurance twice denied her coverage for additional counseling, the case manager testified that DCS had options available to help her pay for the counseling. However, the case manager testified that Mother was unwilling to meet with her for help navigating the self-referral process. We will not disturb the juvenile court's weighing of conflicting evidence or credibility determinations. *See Oscar F.*, 235 Ariz. at 269, ¶ 13. Reasonable evidence supported the juvenile court's finding that DCS made sufficient efforts to provide reunification services.

II. Six- and Nine-Month Time in Care Grounds

¶15 The juvenile court may terminate parental rights under the six- or nine-month time in care ground if it finds that: (1) "[t]he child has been in an out-of-home placement for a cumulative total period of nine months or longer [or six months or longer if the child is under three years old]," and (2) "the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." A.R.S. § 8-533(B)(8)(a)–(b).

¶16 Mother challenges only that she has substantially neglected or willfully refused to remedy the circumstances that caused her children to be in out-of-court placement. The juvenile court found that Mother's two previous parent aide services "closed out unsuccessfully due to Mother's general lack of engagement and repeated cancellations." The court noted that, while Mother was supposed to complete eleven visits with her children and eleven skill sessions, she had only completed two visits and three skill sessions. "Even as trial approached," the court found, "Mother would tend to cancel visits as she did not want to manage the Children in a community setting like a library." The court also noted Mother's refusal to participate in additional counseling. The record supports these findings, and the juvenile court did not abuse its discretion in finding DCS met its burden for the six- and nine-month time in care grounds. Because we affirm the severance under the six- and nine- month time in care grounds, we need not address the fifteen-month grounds.

CONCLUSION

¶17 We affirm.

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