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AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARICELLA F., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, M.F., V.F., D.P., *Appellees*.

No. 1 CA-JV 20-0121
FILED 10-6-2020

Appeal from the Superior Court in Mohave County
No. S8015JD201800007
The Honorable Megan McCoy, Judge *Pro Tempore*

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Plaintiff/Appellant

Arizona Attorney General's Office, Mesa
By Lauren J. Lowe
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge David B. Gass and Judge Michael J. Brown joined.

P E R K I N S, Judge:

¶1 Maricella F. (“Mother”) appeals the trial court’s termination of her parental rights to M.F., V.F., and D.P. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 B.H. is father to one of Mother’s children, S.H. Neither B.H. nor S.H. are parties to this appeal. In February 2018, S.H. came to school with the “overwhelming odor of marijuana on [S.H.]’s clothing, school backpack and other belongings.” She then suffered an asthma attack at school and had to be taken to an emergency room after attempting to use her expired inhaler. Treating physicians informed the Department of Child Services (“DCS”) that S.H.’s exposure to marijuana smoke worsened the asthma attack.

¶3 After this incident, S.H. and the other children in Mother’s home told DCS that Father P.F. (father of M.F., V.F., and D.P., and not a party to this appeal) had committed sexual abuse against S.H. and others and encouraged the children to access pornography. The children also informed DCS that Mother, Father P.F., and Father B.H. all used marijuana, which all parents acknowledged. The children also mentioned Mother and Father B.H. used weapons for intimidation. DCS filed a dependency petition in February, followed by an amended petition in March, alleging neglect based on Mother’s failure to protect the children from sexual assault, substance abuse, exposing the children to domestic violence, and unwillingness to parent.

¶4 DCS required Mother to stop using illegal substances and keep legal substances (such as weapons) out of the children’s reach before it would consider reunification. DCS also required all three parents to refrain from domestic violence and to protect the children. DCS required Mother to engage in counseling for substance abuse, domestic violence, and parenting. DCS also referred her for urinalysis and hair follicle testing.

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¶5 The court found M.F., V.F., and D.P. dependent as to Mother on grounds of neglect due to drug abuse and exposure to domestic violence between Mother and Father B.H. The court also found M.F. and V.F. dependent based on Mother's unwillingness to parent.

¶6 Through 2018, Mother participated in some services, including online counseling for domestic violence and anger management, as well as visitation with the children. Mother complied with DCS's requirement that she receive urinalysis in March 2018 but declined a hair follicle test for religious reasons and refused substance abuse counseling or Arizona Families First. In mid-2018, D.P. returned to Mother's care; DCS attempted to transition M.F. and V.F. back into Mother's care in August 2018.

¶7 During the first overnight visit, Mother and B.H. engaged in domestic violence in front of the children. B.H. gave Mother a black eye and Mother stabbed B.H. in the hand with a knife. DCS removed M.F. and V.F. immediately and removed D.P. within a month.

¶8 DCS then required that Mother complete additional services including "in-person domestic violence counseling . . . a psychological evaluation" and reengage in substance abuse services. Mother completed part of the psychological evaluation and engaged in some counseling but did not reengage in substance abuse services.

¶9 In October 2018, following a psychological consultation by Dr. Robert Mastikian, DCS asked the court to suspend visitation between Mother and children. Dr. Mastikian reported Mother "has a very inappropriate and enmeshed relationship with [M.F.] as she speaks to him as if she [is] speaking to her therapist" and as a result "[M.F.] began self-harming and exhibiting dangerous behaviors towards himself and others in school." M.F. further reported to DCS that Mother told him she has tried to kill herself and intended to try again.

¶10 In December 2018, Mother completed the first portion of a psychological evaluation with Dr. Jennifer Jones. During the evaluation, she disclosed a mutually abusive relationship with Father P.F. that ended in December 2017. She also disclosed an erratic employment history and admitted continuing to use marijuana despite DCS's request that she stop. Dr. Jones noted that Mother's personality assessment was invalidated because Mother presented "a very strong pattern of faking good." Dr. Jones concluded Mother's ability to demonstrate minimally adequate parenting skills in the near future was "poor" due to Mother's description of chronic

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marijuana use as “part of her ‘lifestyle,’ and poor history of stable employment and housing.” Dr. Jones added that if Mother complied with her DCS case plan and the recommendations, it was “possible” she could demonstrate adequate skills.

¶11 Dr. Jones recommended that Mother complete an outpatient substance abuse treatment program, take random drug screens for at least one year to demonstrate sobriety, engage in individual counseling with a master’s level provider or higher for at least six months, and attend parenting classes.

¶12 Starting in late 2018, Mother began therapeutic visitation with M.F. and trauma therapy. Beginning in January 2019, DCS restarted supervised and community visitation between Mother and children. Mother also engaged in individual counseling services with Southwest Behavioral Center, though she did not provide information as to the level of services received and refused to release that information to DCS.

¶13 In May 2019, DCS suspended visitation, alleging Mother had engaged in erratic behavior including, “attempting to obtain . . . nail polish remover, lighter fluid, etc., but upon being denied these items . . . instead grab[bing] a welding torch,” which M.F. persuaded her to put down. While working at Wal-Mart, Mother saw M.F., accused him of stealing, and had security search him. Security found no stolen items. Mother also threatened the children’s paternal grandparents – their kinship placement – with pepper spray during a visit.

¶14 Mother moved to California to enroll in an outpatient treatment program for substance abuse at the Needles Center for Change. While in California, Mother was charged with possession of metal knuckles and sentenced to probation. During this period, Father P.F. moved in with the kinship placement and agreed to a plan of guardianship of the children by the paternal grandparents. Mother returned to Arizona in November 2019 before she had completed the outpatient program. She moved into a domestic violence shelter but then had to leave in December because of her verbal aggression towards other residents.

¶15 In December 2019, DCS moved to terminate Mother’s relationship to the children, alleging neglect and fifteen months’ time-in-care grounds.

¶16 The court held a termination hearing on March 20, 2020. DCS Case Manager Veronica Simonds testified that Mother was living in a hotel at the time of trial and that she had moved at least ten times over the course

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of the case. Simonds also testified to the incidents of domestic violence and that Mother had several concerning communications with DCS. These included Mother's attempts to intimidate Simonds in court hallways, Mother "cho[osing] to scream instead of speak" on phone calls with Simonds, and Mother sending emails that were "demanding and intimidating and hostile" towards DCS. She testified that Mother persisted in domestic violence and refused to complete the drug treatment and testing recommended by Dr. Jones.

¶17 Mother represented herself at trial and testified on her own behalf. She testified she was an ongoing participant in Narcotics Anonymous. She also testified she was sober and provided TASC results showing that she had completed twenty-eight random urinalysis tests from November 2019 through January 2020.

¶18 At the conclusion of the termination hearing, the court orally granted the motion for termination on grounds of fifteen months' time-in-care and neglect, making findings on the record that Mother's erratic behavior continued to expose the children to "severe abuse" during the dependency. The court noted its concern with "the threats that were alleged by the children and placement, the treatment of [DCS], the inability of [M]other to comply with the case plan, [and] continually making her own case plan and then refusing to share it with [DCS]." The court found Mother had been unable to provide food, clothing, shelter, and medical care due to her job and housing instability. Finally, the court found all the children had been in out-of-home placement for a cumulative period of more than fifteen months. The court issued a minute entry reflecting its decision.

¶19 Mother timely appealed. We stayed the appeal to allow the trial court to issue a final order in compliance with Arizona Rule of Procedure for the Juvenile Court 104(A). Following our stay, DCS submitted and the court signed a written order containing findings of fact and conclusions of law on each of the termination grounds reflecting the comments made on the record by the court.

DISCUSSION

¶20 We review the termination of parental rights for an abuse of discretion. *Titus S. v. Dep't of Child Safety*, 244 Ariz. 365, 369, ¶ 15 (App. 2018). 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)).

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¶21 To terminate the parent-child relationship, the 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 court also must find by a preponderance of the evidence that severance would be in the best interests of the child. A.R.S. § 8-533(B); *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149-50, ¶ 8 (2018).

¶22 Mother challenges both substantive grounds of fifteen months' time-in-care and neglect, as well as the court's finding that termination was in the children's best interests.

I. Statutory Ground

¶23 The juvenile court may terminate parental rights under the fifteen months' 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 fifteen months or longer"; (2) "the parent has been unable to remedy the circumstances" that cause the out-of-home placement; and (3) "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." A.R.S. § 8-533(B)(8)(c). A court must also "consider the availability of reunification services to the parent and the participation of the parent in these services." A.R.S. § 8-533(D).

¶24 Mother argues DCS did not meet its burden in demonstrating that she would be unable to remedy the circumstances causing the placement in the near future. Mother points to her participation in some services and asserts she has changed her behavior. But reasonable evidence supports the court's finding that DCS met its burden.

¶25 Mother did engage in individual counseling, domestic violence classes, and some outpatient treatment; and she may have made at least some progress toward overcoming her drug addiction. But throughout the dependency, Mother continued to engage in threatening behavior and domestic violence, rendering her other efforts at rehabilitation, "too little, too late." *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994). Her aggressive and inappropriate behavior towards the placement, children, and others led repeatedly to the suspension of her visitation, as well as her removal from a domestic violence shelter. At the time of the trial, Mother was living in a hotel and gave no indication as to how she planned to take care of the children. Finally, Dr. Jones's evaluation of Mother indicated her prognosis for improvement was "poor." To the extent Mother asks us to value her own

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statements above those of DCS and items contained in the record, “[w]e do not reweigh the evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

¶26 Mother contends DCS did not provide her with appropriate reunification services. Specifically, she notes DCS failed to offer an alternative to hair follicle testing from her head and did not offer master’s level counseling following her evaluation by Dr. Jones. Before moving for termination under any statutory ground, DCS has a constitutional obligation to make reasonable efforts to preserve the family. *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, 191–92, ¶ 32 (App. 1999). Although the state need not offer “‘every conceivable service,’ it must provide a parent with the time and opportunity to participate in programs designed to improve the parent’s ability to care for the child.” *Id.* at 192, ¶ 37 (quoting *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)).

¶27 In this case, DCS referred Mother to domestic violence services, substance abuse assessments, random urinalysis, behavioral health services, counseling, and parenting classes. Mother at times either refused these services or self-referred. Mother chose not to sign a release of information so that DCS could evaluate whether the treatment provided by Southwest Behavioral was at the master’s degree level recommended by Dr. Jones. DCS could not force Mother to participate in additional counseling, and nothing in the record suggests Mother requested additional counseling. Mother’s refusal to participate in hair follicle testing, and DCS’s apparent refusal to provide an alternative, does not negate the evidence that Mother repeatedly engaged in erratic behavior and domestic violence. Reasonable evidence supports the court’s finding that DCS made reasonable efforts to reunify the family.

¶28 The court did not abuse its discretion by finding that DCS established the fifteen months’ time-in-care ground by clear and convincing evidence. Because we affirm the court’s order on that ground, we need not address Mother’s arguments as to neglect. *Mary Lou C. v. Ariz. Dep’t of Econ Sec.*, 207 Ariz. 43, 49, ¶ 14 (App. 2004).

II. Best Interests

¶29 Mother argues that because she was willing and able to parent them and participated in rehabilitative services, the court erred by finding that termination was in the best interests of the children. Because DCS is pursuing a guardianship plan with respect to Father P.F., which is not a permanent plan, Mother contends her rights should not be terminated.

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¶30 After finding a statutory ground establishes parental unfitness, a court must also consider whether termination of the relationship would be in the best interests of the child. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149–50, ¶¶ 8–9 (2018). A court, “should consider a parent’s rehabilitation efforts as part of the best-interests analysis.” *Id.* at 151, ¶ 15. “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.” *Id.* A court may find that termination is in the best interests of the child “based either on a benefit to the child from severance or some harm to the child if severance is denied.” *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016). A court may consider the negative effect of “the continued presence of the . . . statutory grounds for severance,” as part of the best interests inquiry. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 11 (App. 2016).

¶31 The court considered Mother’s attempts at rehabilitation and her willingness to parent. It also considered the effect of Mother’s continued threatening and erratic behavior towards and around the children and concluded “they remain at risk of abuse or neglect despite residing in out-of-home placement,” because of their exposure to Mother. The court noted that failing to sever the relationship would cause them to “linger in care for an indeterminate period.” Mother’s argument that guardianship is “not a truly permanent plan . . . [i]n the event that something should happen to the paternal grandparents” is purely speculative. She cites no authority suggesting DCS must pursue the same plan for each parent in a dependency. Reasonable evidence supports the court’s finding that the children would continue to be at risk of abuse or neglect if it did not terminate Mother’s rights.

CONCLUSION

¶32 We affirm.



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