IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VANESSA M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, M.M., J.M., R.M., *Appellees*.

No. 1 CA-JV 21-0007
FILED 11-30-2021

Appeal from the Superior Court in Maricopa County
No. JD35601
The Honorable David O. Cunanan, Judge

AFFIRMED

COUNSEL

IBF Law Group, PLLC, Phoenix
By Sheree D. Wright
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Emily M. Stokes
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge D. Steven Williams delivered the decision of the Court, in which Judge David B. Gass and Judge James B. Morse Jr. joined.

W I L L I A M S, Judge:

¶1 Vanessa M. ("Mother") appeals the superior court's order terminating her parental rights to three of her four children. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and Eric P. ("Father")[1] are the parents of three children, M.M., J.M., and R.M., all born between 2016 and 2018. Mother has an older child, J.A.M., born in 2010, with a different father.

¶3 In 2018, before R.M. was born, the Arizona Department of Child Safety ("DCS") initiated an in-home dependency for the three older children based upon reports of domestic violence, Father's substance abuse, and Mother's failure to protect the children from Father. DCS offered Mother family-preservation services and implemented a safety plan that prohibited Father from being unsupervised with the children. The following month, DCS moved to remove the children after Mother failed to fully participate in services and violated the safety plan by allowing Father to be unsupervised with one of the children.

¶4 Once removed, DCS took the two youngest children at that time (M.M. and J.M.) to the hospital where one was diagnosed with pneumonia and the other with an upper respiratory infection. Mother did not contest the allegations in DCS's dependency petition. The superior court awarded DCS custody of the children, set a case plan of family reunification, and ordered DCS provide Mother with a variety of services, including "domestic violence classes, parenting classes, a psychological evaluation, and a parent aide."

¶5 Later in 2018, Mother gave birth to R.M. DCS filed a second dependency petition, this time for R.M., alleging Mother was "unable to

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[1] Father's parental rights were also terminated, but he is not a party to this appeal.

perform the essential parental responsibilities to adequately care for the vulnerable newborn baby" based upon the open dependency for her other children. The superior court found the newborn dependent, set a case plan of family reunification, and, in addition to continuing previously offered services, also provided Mother with therapeutic visitation and transportation as needed and requested.

¶6 In December 2018, Mother moved for an emergency hearing alleging DCS refused to facilitate Mother's visitations with her children and Mother's attendance at the children's medical appointments. After a hearing, the court ordered DCS promptly provide the visitation records so the court could determine the make-up visits owed to Mother. Mother later made up those visits.

¶7 Mother engaged in some services, with varied success. After months of parent-aide services, Mother was closed out unsuccessfully because she failed to enhance her parenting capacities. DCS also offered Mother therapeutic visitations which she initially refused to participate in because she believed they were only for J.M. However, Mother later participated and completed the therapeutic visits after DCS told her the therapeutic visits were for all of the children. At the completion of her therapeutic visits, DCS offered Mother a second parent-aide, but again Mother closed out unsuccessfully for failing to enhance her parenting capacities.

¶8 DCS ultimately moved to terminate Mother's parental rights to M.M., J.M., and R.M. based upon the children's placement out-of-home for more than fifteen months and Mother's failure to remedy the circumstances that caused the out-of-home placement. DCS alleged a substantial likelihood existed Mother would be incapable of exercising proper and effective parental care and control of the children in the near future and that termination of Mother's parental rights was in the children's best interests. As to Mother's oldest child, J.A.M., at DCS's request, the superior court dismissed the termination, reinstating the case plan of family reunification.

¶9 The superior court held a four-day termination trial as to M.M., J.M., and R.M. At trial, the DCS case worker testified Mother violated the safety plan by allowing Father to "have the children without being supervised," and though Mother completed domestic-violence counseling, she continued to engage in a domestic-violence relationship with Father. Regarding the parent-aide services DCS offered Mother, the case worker testified Mother "failed to abide by many of the guidelines," stating Mother

"neglected and ignored [J.M.,], left [J.M.] in her car seat throughout the visit several times . . . [and] spent a lot of time of her phone." Lastly, when questioned, the case worker agreed Mother had predominantly been only worried about J.A.M.'s welfare, would rarely inquire about her younger children, and would typically provide more items for J.A.M. and at times nothing for the younger children.

¶10 Mother testified she believed the case manager was racist because the case manager did not respond when accused of racism. Mother further testified she was no longer in a relationship with Father, "love[d] all [her] children equally," and believed she was able to provide for her children.

¶11 Using a DCS prepared order, the superior court found M.M., J.M., and R.M. were in an out-of-home placement for a cumulative period of fifteen months or longer, DCS provided Mother with a variety of services, and Mother had "been unable to remedy the circumstances that cause[d] the children to be in an out-of-home placement." The court also found, in part, there was "a substantial likelihood that . . . [M]other will not be capable of exercising proper and effective parental care and control in the near future" as she had "not made behavioral changes necessary to parent" them. The court terminated Mother's parental rights based upon the fifteen months in an out-of-home placement ground, under A.R.S. § 8-533(B)(8)(c), and in the children's best interests.

¶12 Mother timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶13 Parental rights are fundamental, but not absolute. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 97, ¶ 7 (App. 2016). A court may terminate a parent's right in the care, custody, and management of their children "if it finds clear and convincing evidence of one of the statutory grounds for severance, and also finds by a preponderance of the evidence that severance is in the best interests of the children." *Id.* at 98, ¶ 7.

¶14 We review a termination order for abuse of discretion, accepting the court's factual findings unless clearly erroneous, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004), and view the evidence in the light most favorable to sustaining the court's ruling, *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008). Because the superior court "is in the best position to weigh the evidence, observe the

parties, judge the credibility of witnesses, and resolve disputed facts," we will affirm an order terminating parental rights if reasonable evidence supports the order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004)).

¶15 Fifteen months in an out-of-home placement is one statutory ground authorizing termination. A.R.S. § 8-533(B)(8)(c). The superior court may terminate a parent-child relationship under that ground if DCS has made a diligent effort to provide appropriate reunification services and:

> The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to [A.R.S.] § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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).

¶16 Mother challenges the superior court's termination of her parental rights to her three youngest children, arguing the court erred in finding (1) DCS made a diligent effort to provide appropriate reunification services, (2) a substantial likelihood exists Mother will not be capable of exercising proper and effective parental care and control of the children in the near future, and (3) terminating Mother's parental rights was in the children's best interest.

¶17 As a preliminary matter, DCS argues Mother waived her claims on appeal because her Opening Brief fails to comply with Rule 13(a) of the Arizona Rules of Civil Appellate Procedure ("ARCAP") because, among other things, "her brief does not contain a table of contents, a table of citations, or statements of the case, facts, or issues." Although Mother failed to comply with ARCAP 13(a), in the exercise our discretion, we address the merits of Mother's appeal.

¶18 Mother concedes her three youngest children have been in an out-of-home placement for a cumulative period of fifteen months or longer pursuant to court order. Our task, therefore, is to determine if the record contains reasonable evidence to show (1) DCS made a diligent effort to provide appropriate reunification services to Mother, (2) a substantial likelihood exists that Mother would not be capable of providing proper and

effective parental care and control in the near future, and (3) termination of Mother's parental rights was in the children's best interests. *See* A.R.S. § 8-533(B)(8)(c).

¶19 Mother's argument that DCS failed to provide her with diligent reunification services is not persuasive. Although DCS must provide Mother with "the time and opportunity to participate in programs designed to help her become an effective parent," DCS need not provide every conceivable service or ensure Mother participates in each service it offers. *See Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). The record shows DCS provided Mother with services including domestic-violence counseling, therapeutic visitations, and two parent-aide referrals. Though evidence shows Mother experienced issues with visitations, evidence also shows DCS resolved those issues. Mother has shown no error.

¶20 Similarly, the court did not err in finding it substantially likely Mother will not be capable of providing proper and effective parental care and control in the near future. Mother twice failed to improve her diminished parenting capacities after months of parent-aide services. And, although conflicting evidence also existed, reasonable evidence established Father historically engaged in domestic violence and Mother continued in that domestic violence relationship. Mother's domestic violence relationship with Father was one of the main concerns from the outset. Although Mother points to the fact that DCS petitioned to dismiss the dependency action for Mother's oldest child, J.A.M., as evidence she is fit to parent her other children, her argument is not persuasive. Record evidence supports the superior court's finding that Mother favored her oldest child and neglected her other children. Again, Mother has shown no error.

¶21 Lastly, we reject Mother's argument the superior court erred in finding that terminating Mother's parental rights was in the children's best interests. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150, ¶ 13 (2018). Here, the court found that termination was in the children's best interests because the children were considered adoptable and adoptive placements had been identified for M.M. and J.M. The court also found R.M.'s placement met R.M.'s needs and termination "would further the plan of adoption, which would provide the children with permanency and stability." *See Mary Lou C.*, 207 Ariz. at 50, ¶ 19 (providing the best interests requirement may be met if "the petitioner proves that a current adoptive

plan exists for the child, or even that the child is adoptable"); *see also Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5 (App. 1998) (noting a court "may properly consider in favor of severance" factors that include "the immediate availability of an adoptive placement" and "whether an existing placement is meeting the needs of the child"). Because reasonable evidence supports the court's findings, the court did not err in concluding that termination was in the children's best interests.

CONCLUSION

¶22 For the foregoing reasons, we affirm the superior court's order terminating Mother's parental rights to M.M., J.M., and R.M.

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