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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SAMANTHA R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, P.F., *Appellees*.

No. 1 CA-JV 21-0273
FILED 3-01-2022
AMENDED PER ORDER FILED 3-01-2022

Appeal from the Superior Court in Maricopa County
No. JD39088,
JS20824
The Honorable Robert Ian Brooks, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Phoenix
By Emily M. Stokes
Counsel for Appellees

MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge David D. Weinzwieg and Judge Jennifer M. Perkins joined.

FURUYA, Judge:

¶1 Samantha R. (“Mother”) appeals from the juvenile court’s order terminating her parental rights to her child, P.F. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In early 2020, the Department of Child Safety (“DCS”) received reports of escalating domestic violence between Mother and Grayson F. (“Father”).¹ On one occasion, Father abused one-month-old P.F. until she was covered in bruises, but Mother sought no medical help and remained with Father. DCS therefore petitioned for a dependency based on neglect and provided Mother intensive in-home services. Father and Mother ended their relationship, and the court eventually terminated Father’s parental rights.

¶3 Mother engaged in the in-home services, which addressed how domestic violence affects children, how to identify and stop a pattern of toxic relationships, and how to identify appropriate caregivers. In addition to domestic-violence education, the providers helped Mother with housing and financial resources, and Mother participated in individual counseling. In mid-2020, Mother told her in-home social worker that she regularly trusted certain individuals to care for P.F., namely, her new boyfriend Cameron—whom she had known for four months—and a friend named Jacob—whom she had known for three months. Mother told the social worker she did not see any “red flags” in her relationship with Cameron. About a month later, however, Mother explained that she had broken up with Cameron because she had learned some “disturbing news” about him and realized she had missed some “red flags.”

¹ Father is not a party to this appeal.

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¶4 In October 2020, DCS helped Mother arrange childcare and reported that she successfully completed her services. Later that month, the court dismissed the dependency.

¶5 Around this time, Mother began dating Matthew, and one week later, invited him to live with her and P.F. because he had been “kicked out” of his place and was about to be homeless. A few weeks after that, Mother pulled P.F. out of daycare, claiming it had become too expensive, though P.F.’s maternal grandfather had offered to help pay for it. Although Mother barely knew Matthew and had observed him kiss one-year-old P.F. on the mouth, she thereafter relied on him to watch the child while she worked full time.

¶6 Around late December 2020, P.F. underwent surgery at Phoenix Children’s Hospital to repair a severe tear in her hymen. Mother told hospital staff that Matthew had been watching P.F. when he noticed blood in her diaper.

¶7 Doctors determined P.F.’s injury was “highly concerning for sexual abuse” and “acute penetrating trauma,” so DCS and police interviewed Mother. Mother told them she did not know how P.F. was injured but suggested the child may have fallen or jumped up and down on a plastic toy. During the interview, Mother appeared cheerful and asked several times about Matthew’s whereabouts and wellbeing. Officers later recovered a bed sheet from the home that had blood stains on it.

¶8 DCS then held a meeting with Mother, at which Mother told DCS she did not believe P.F. had been sexually abused, that the child had probably injured herself by falling out of a crib, and that Matthew was still living with her despite what had happened. DCS took custody of P.F., placed her in foster care, and petitioned for a dependency. The next day, Matthew was arrested for sexual conduct with a minor.

¶9 The day after Matthew’s arrest, Mother told police that although P.F.’s injury looked like “a tear a female would get when giving birth,” she did not believe that Matthew had harmed the child. DCS subsequently provided Mother with a psychological evaluation, individual counseling, and a parent aide with visitation.

¶10 Meanwhile, Mother exchanged messages with Matthew, and though she expressed some skepticism about his claim of innocence, she repeatedly told him she loved and missed him. At one point, Matthew claimed he had accidentally injured P.F. during a bath while cleaning her “down there” in a rough manner. Mother responded by saying she forgave

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and loved him. Matthew soon after ended the relationship. In February 2021, police interviewed Mother again and asked if she thought Matthew's most recent explanation accounted for P.F.'s injuries. Mother told them the explanation "kind of made sense," though she acknowledged she did not know what happened.

¶11 In January 2021, Mother completed a psychological evaluation. Mother told the evaluating psychologist that Matthew was accused of sexually abusing P.F., but she was still "waiting for evidence . . . that proves he is guilty." The psychologist diagnosed Mother with post-traumatic stress disorder and major depressive disorder, concluding she had "codependent characteristics, insecure traits, inferiority, and naivete[,] which contribute[d] to her poor relationship choices." She opined Mother's "insight and judgment remain poor and therefore render her incapable of recognizing safety threats to her child, including safety threats that are posed by her significant others." She recommended Mother complete her services and obtain a psychiatric evaluation. At the termination hearing, DCS had this referral in process. Mother also successfully completed the parent-aide service, though the parent aide noted some concerns, including that Mother did not seem to recognize the potential threats posed by strangers. In March, Mother began counseling and finally acknowledged Matthew had sexually abused P.F. She also disclosed she had received counseling for most of her life for anxiety and depression.

¶12 One month later, DCS moved to terminate Mother's parental rights based on abuse and neglect. In May 2021, Mother progressed to trauma therapy. That summer, the court held a combined dependency and termination hearing. By that time, Mother's trauma therapist had worked on building rapport and increasing Mother's stabilization skills so she could handle the trauma-processing phase to come. However, Mother had not addressed P.F.'s sexual assault or the ways in which Mother's relationships affect P.F., and her counselor testified that trauma therapy can be a slow process.

¶13 The court denied DCS's motion on abuse-grounds but terminated Mother's parental rights based on neglect. Mother timely appealed. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 8-235(A) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶14 Mother argues insufficient evidence supports the court's findings she neglected P.F., and that termination is in P.F.'s best interests.

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¶15 A parent’s right to custody and control of her own child, while fundamental, is not absolute. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 248–49, ¶¶ 11–12 (2000). Termination of a parental relationship may be warranted where the state proves at least one statutory ground under A.R.S. § 8-533 by “clear and convincing evidence.” *Id.* “Clear and convincing” means the grounds for termination are “highly probable or reasonably certain.” *Kent K. v. Bobby M.*, 210 Ariz. 279, 284–85, ¶ 25 (2005). The court must also find termination is in the child’s best interest by a preponderance of the evidence. *Id.* at 282, 284, 288, ¶¶ 8, 22, 42.

¶16 “[W]e will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We do not reweigh evidence on appeal, but “look only to determine if there is evidence to sustain the court’s ruling.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

¶17 The juvenile court may terminate a parent’s rights upon clear and convincing evidence that “the parent has neglected or willfully abused a child.” A.R.S. § 8-533(B)(2); *Michael J.*, 196 Ariz. at 248–49, ¶¶ 11–12. Neglect is defined as a parent’s “inability or unwillingness” to provide a child with supervision when “that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.” *See* A.R.S. § 8-201(25).

¶18 Mother argues the court’s neglect finding should not stand because the court declined to terminate her rights under the abuse ground and, in so doing, found she did not know or have reason to know of Matthew’s “impending abuse.” But Mother misstates the court’s order, which found she did not know of “ongoing abuse by either” Father or Matthew. *See* A.R.S. § 8-533(B)(2) (“[A]buse includes . . . situations in which the parent knew or reasonably should have known that a person was abusing . . . a child.”). Regardless, Mother seems to suggest that because she was not aware of *ongoing* abuse by either man, she could not have foreseen that she was jeopardizing P.F.’s health and welfare. We reject this argument because reasonable evidence in this record demonstrates Mother should have known that P.F. was in danger of abuse.

¶19 Despite years of prior counseling for anxiety and depression, Mother failed to properly supervise P.F. during her relationship with Father. The parents engaged in aggressive domestic violence on numerous occasions in P.F.’s presence. During one of these incidents, Father drove

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while intoxicated with P.F. unrestrained in the vehicle. Another time, Father abused P.F. until she was covered in bruises. Moreover, Mother noticed Father's behavior becoming increasingly aggressive in the six months before the in-home dependency but took no protective action.

¶20 Mother showed no progress in her selection of caregivers, despite the services offered by DCS to improve this blind spot. She trusted near-strangers to watch her child. After dating Matthew for a week, she welcomed him into her home and trusted him to watch her child, ignoring red flags of abuse and defending Matthew, not her infant, when presented with troubling evidence of sexual abuse. She likewise relied on Cameron to watch her child only months after they met, later conceding she missed some red flags about him as well.

¶21 And, aside from the severe physical injuries inflicted on P.F. by two men trusted by Mother to care for the infant, the record also showed that Mother demonstrated an inability or unwillingness "to provide [P.F. with] appropriate supervision . . . on numerous occasions." The record supports this finding.

¶22 Despite clear evidence Matthew had abused her daughter, Mother continued living with him, and after his arrest, maintained a relationship with him. For several weeks, Mother denied Matthew had abused P.F. and maintained the abuse was an accident. Ultimately, Matthew ended their relationship, not Mother, leading the court to find that throughout the dependency, "Mother has demonstrated diminished judgment and insight."

¶23 Within such context, we conclude reasonable evidence supports the court's determination of neglect—that Mother is unable or unwilling to provide appropriate supervision to P.F. and that P.F. "will be at extreme risk of abuse if left solely in Mother's care and control."

¶24 Mother further asserts the court failed to consider her successful participation in services and her strong bond with P.F. while determining whether termination would be in P.F.'s best interests.

¶25 In addition to finding a statutory ground for termination, the juvenile court must also determine whether termination is in a child's best interests by a preponderance of the evidence. *See Kent K.*, 210 Ariz. at 284, ¶ 22. 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

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of the child in a safe and stable home life.” *Id.* at 286, ¶ 35. “[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 Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). 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. DCS*, 245 Ariz. 146, 148, ¶ 1 (2018).

¶26 Here, the court expressly considered Mother’s successful participation in services and her significant bond with P.F. Nonetheless, the court found these facts did not outweigh “the abuse that [P.F.] has suffered at the hands of two different men while under the legal supervision of [] Mother,” Mother’s diminished judgment and insight, and the continuing risk of harm to P.F. if placed in Mother’s care. Additionally, the court found P.F. was in an adoptive placement that was meeting her needs. Reasonable evidence supports these findings.

CONCLUSION

¶27 We affirm.



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