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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ASHLEY C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, T.C.,
Appellees.

No. 1 CA-JV 22-0080
FILED 9-29-2022

Appeal from the Superior Court in Maricopa County
No. JD532965
The Honorable Joshua D. Rogers, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Michelle R. Nimmo
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Judge Randall M. Howe and Judge D. Steven Williams joined.

WEINZWEIG, Judge:

¶1 Ashley C. (“Mother”) appeals the termination of her parental rights to her son, Trevor. We affirm.¹

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother appeared at Banner Desert Hospital’s emergency department in October 2019. She was pregnant and distressed, but the medical staff examined her and found nothing wrong. When asked to leave, Mother refused. She was “screaming, crying, and howling” that her mom had kicked her out of the house and she was homeless. The hospital reported the incident to the Department of Child Safety (“DCS”).

¶3 Soon after, Mother left for her native California. There, in November 2019, she gave birth to Trevor. The infant tested positive for marijuana, which Mother used regularly during the pregnancy. Mother became “agitated,” and began “shouting, screaming[,] hallucinating, and accusing hospital staff of hurting and injuring her baby.” She claimed that Trevor’s life was in danger and that her belongings had been stolen. The hospital briefly separated Trevor and Mother for the child’s safety, but returned the child after a few days and discharged both.

¶4 Mother then returned with Trevor to Arizona, where DCS took custody of the child and filed a dependency petition, alleging that Mother could not parent due to substance abuse, mental health issues and neglect. The juvenile court found Trevor dependent, pointing to Mother’s “untreated mental health issues,” her daily use of marijuana, and her inability “to provide the child with necessities.”

¶5 DCS offered Mother reunification services, including a substance abuse assessment, substance abuse treatment and testing, a psychological evaluation, counseling, parent-aide services and visitation. Mother struggled to engage with the services. She was diagnosed with

¹ We use a pseudonym to protect the child’s identity.

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cannabis-use disorder, and was twice closed out of substance abuse treatment while continuing to test positive for marijuana. She also missed nine of fifteen parenting-skills sessions.

¶6 DCS had encouraged Mother to stay in Arizona to work towards reunification, but she soon left for California, leaving Trevor behind. DCS continued working to arrange services for Mother in California, but Mother was even less engaged. She did not participate in substance abuse treatment, counseling, parenting classes or drug testing. Nor would she return to Arizona for in-person visits with Trevor. She attended some virtual visits, but her attendance was inconsistent and she was not always sober.

¶7 DCS asked Mother to attend a psychological evaluation in April 2020, but she refused until October 2020, when the psychologist diagnosed Mother with several mental health disorders: schizotypal personality disorder, major depressive disorder with psychotic features, generalized anxiety disorder, PTSD, and bipolar disorder. The psychologist recommended Mother participate in psychotherapy and parenting classes. DCS arranged them, but Mother refused to attend.

¶8 Still in California, Mother gave birth to a daughter in December 2020. The infant tested positive for marijuana. The California child welfare agency took custody of the child, and a California court found the child dependent. Months later, Mother was diagnosed with bipolar disorder and involuntarily committed to a psychiatric facility. She still refused to attend therapy or take medication.

¶9 DCS then moved to terminate Mother's parental rights to Trevor, alleging the child had been in out-of-home care for fifteen months. The juvenile court held a two-day termination hearing and heard testimony from Mother and her assigned DCS case manager. The case manager testified about the "ongoing concern with [Mother's] mental health," and reported that Mother had not eliminated the safety risks that caused Trevor's removal. Mother testified that she was likely pregnant with a third child, and that she continued her regular use of marijuana.

¶10 The court terminated Mother's parental rights, finding that DCS proved by clear and convincing evidence the fifteen months' out-of-home placement ground and that termination was in Trevor's best interests. The court found that Mother "has not taken any steps to address" her mental health and marijuana abuse and "there is a substantial likelihood

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that Mother will not be capable of exercising proper and effective parental care and control in the near future.”

¶11 Mother timely appealed. We have jurisdiction. *See* A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1).

DISCUSSION

¶12 Parents have a fundamental right to the custody and control of their children, but that right is not absolute. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). The juvenile court may terminate those rights if it finds a statutory ground for termination under A.R.S. § 8-533(B) by clear and convincing evidence, and that termination is in the child’s best interests by a preponderance of the evidence. *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 149-50, ¶ 8 (2018). We will affirm the court’s termination order unless clearly erroneous, accepting the court’s factual findings if reasonable evidence supports them. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3, ¶ 9 (2016).

¶13 The juvenile court did not abuse its discretion. The record has ample evidence showing that Mother could not remedy her mental health issues or cannabis-use disorder. By the time of the termination hearing, Mother had not addressed or acknowledged her mental health issues, and she continued to refuse the bulk of DCS services. Moreover, despite her third potential pregnancy, Mother continued to use cannabis.

¶14 Mother argues the juvenile court erred because she had taken some steps to address her mental health issues and marijuana abuse, but her argument misses the mark. DCS moved for termination on the ground of fifteen months’ time-in-care. *See* A.R.S. § 8-533(B)(8)(c). That ground does not turn on the parent’s *efforts* to repair the circumstances that caused removal; instead, the court must determine whether the parent has *remedied* those circumstances. *See id.* (termination is appropriate when “the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement” for fifteen months); *Matter of Appeal in Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994).

¶15 Mother next contends that termination was not in Trevor’s best interests because it separated him from his sibling. “[T]ermination is in the child’s best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied.” *Alma S.*, 245 Ariz. at 150, ¶ 13. Courts must consider the totality of the circumstances, including the “child’s adoptability and the parent’s rehabilitation.” *Id.* at 148, ¶ 1.

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¶16 The juvenile court did not err. It found that Trevor had “thrived” with his foster family and the family intended to adopt him, which offered “stability and permanency.” The court also recognized that Trevor had lived with his “current placement since he was two weeks old,” “[h]is only knowledge of a mother and father [is] his current placement,” and “he is well bonded to the placement.” Reasonable evidence supports the court’s finding that Trevor will benefit from termination. *See id.* at 152, ¶ 21. In the end, Trevor’s “interest in stability and security must be the court’s primary concern.” *Id.* at 150, ¶ 12 (cleaned up).

CONCLUSION

¶17 We affirm the juvenile court’s termination order.

