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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

IN RE TERMINATION OF PARENTAL RIGHTS AS TO A.R.

No. 1 CA-JV 23-0046
FILED 6-29-2023

Appeal from the Superior Court in Maricopa County
No. JD510549
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 Autumn Spritzer
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which
Presiding Judge Maria Elena Cruz and Judge Daniel J. Kiley joined.

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M O R S E, Judge:

¶1 Christina J. ("Mother") appeals from the juvenile court's order terminating her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Cory R. ("Father") are the biological parents of A.R. ("Child"), born in January 2019. Father is not a party to this appeal. Before the present case, the court had terminated Mother's parental rights to her other children, C.M.R. and C.R.R., due to chronic substance abuse and time-in-care.

¶3 In August 2021, police received a call about a domestic dispute between Mother and Father. Father allegedly entered Mother's home unannounced and attacked Mother while Mother held Child. Father fled from Mother's home but was later arrested by police and incarcerated. Mother subsequently lost her apartment and began living in various hotels with Child.

¶4 In November 2021, police arrested Mother for possession of fentanyl and methamphetamine. Mother pled guilty to possession of methamphetamine, and the court set a sentencing hearing for June 2022.

¶5 In December 2021, Mother asked a relative to care for Child as Mother was still living in a hotel and could not meet Child's needs. A few weeks later, the Department of Child Safety ("DCS") received a hotline report concerning Mother and Child's living conditions, Mother's substance abuse issues, and Child's possible exposure to abuse. The court ordered DCS to place Child with her great aunt and uncle, who had recently adopted C.R.R. At that time, DCS reported Child had five cavities and untreated eczema on her hands and feet causing Child pain.

¶6 DCS filed a dependency petition alleging Mother neglected Child due to an inability to provide for Child's necessities, substance abuse, and domestic violence. The court set a preliminary protective conference and hearing for January 18, 2022. Mother did not appear at the January hearing, and the court continued the initial dependency hearing to February 2022. Mother contested the dependency, and the court set a pretrial conference for April 2022. Mother did not appear at the pretrial conference, and the court adjudicated Child dependent but approved a case plan for reunification.

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¶7 During the dependency, Mother failed to maintain contact with DCS and engage in substance abuse treatment, parenting programs, or any other services. Similarly, Mother neither contacted Child nor participated in visitation with Child throughout the dependency.

¶8 The court set a report and review hearing for September 2022. At that hearing, the court granted DCS's request to change the case plan from reunification to termination and adoption. DCS then moved to terminate Mother's parental rights as to Child, alleging neglect and inability-to-parent due to chronic substance abuse. Mother contested the termination in October 2022, and the court set a hearing for December 2022. After the October hearing, Mother contacted Child's placement for the first time since DCS removed Child from Mother's care, asking "how [the children] were doing" and stating "she loved them."

¶9 Following the termination hearing, the court found DCS had made reasonable and diligent efforts to provide Mother with reunification services, noting Mother had "not challenged the adequacy of the services provided or offered by [DCS]" during the dependency and termination proceedings. The court also found clear and convincing evidence that Mother neglected Child and was unable to parent Child due to chronic substance abuse. As to best interests, the court found (1) Child is adoptable; and (2) Child's placement intends to adopt Child, is the least restrictive environment required to meet Child's needs, and allows Child to remain with C.R.R. Thus, the court concluded Child "would benefit from termination because it would further the plan of adoption."

¶10 Mother timely appealed. We have jurisdiction under A.R.S. §§ 8-235(A), 12-120.21(A)(1), and 12-2101(A)(1).

DISCUSSION

¶11 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). To terminate a parent's rights, a court must (1) find a statutory ground for termination under A.R.S. § 8-533 by clear and convincing evidence and (2) determine, by a preponderance of the evidence, that termination is in the child's best interests. *Id.* at 249, ¶ 12 (clear and convincing evidence); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 42 (2005) (preponderance of the evidence); see A.R.S. § 8-533(B) (requiring at least one statutory ground and a best-interests finding). Because the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses,

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and resolve disputed facts," we accept the court's findings of fact if reasonable evidence supports them and will affirm an order terminating parental rights unless it is clearly erroneous. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004).

I. Diligent Efforts.

¶12 Mother argues DCS failed to make diligent efforts to reunify Mother with Child. Mother waived this argument by not raising it during the juvenile court's proceedings. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179, ¶ 16 (App. 2014) (holding that when "the court finds that [DCS] has made reasonable efforts to provide such services . . . , a parent who does not object in the juvenile court is precluded from challenging that finding on appeal"). Mother argues her cross-examination of the DCS case manager at the termination hearing preserved the diligent-efforts issue. But the record shows that Mother only inquired about the case manager's efforts to communicate with Mother, not about DCS's efforts to provide Mother with reunification services. Other than this line of questioning during cross-examination, Mother does not argue that she raised diligent efforts as a contested issue at any time before or during the termination hearing. And our review of the record does not reveal any such objections. Nor did Mother testify about the services DCS provided. *Cf. id.* at 178, ¶ 14 (noting that a parent can dispute diligent-efforts evidence "by testifying about the services actually provided"). Mother's cross-examination regarding DCS's efforts to contact her did not preserve the challenge she now raises to the adequacy of the services offered. *See id.* at 178, ¶ 16 ("This process demands that parents voice their concerns about services to the juvenile court in a timely manner."). Thus, Mother waived this issue.

II. Best Interests.

¶13 We view "the record in the light most favorable to upholding the court's best-interests finding." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 152, ¶ 21 (2018). "Our task for factual findings is solely to confirm that there is some reasonable evidence in the record to sustain them." *See Oscar O.*, 209 Ariz. at 336, ¶ 14.

¶14 When determining whether termination is in the child's best interests, "courts must consider the totality of the circumstances existing at the time of the severance determination." *Alma S.*, 245 Ariz. at 148, ¶ 1. Moreover, a court's "primary concern" is the "child's interest in stability and security." *Id.* at 150, ¶ 12 (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 15 (2016)). Termination of the parent-child relationship is in the "child's

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best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Id.* at ¶ 13. A court may find termination would benefit a child if an adoptive placement is immediately available, the child's current placement is meeting the child's needs, and the child is adoptable. *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, 583, ¶ 27 (2021).

¶15 We reject Mother's argument that reasonable evidence does not support the court's best-interests finding. The record shows that Child's placement is meeting Child's needs and is willing to adopt Child. *See Demetrius L.*, 239 Ariz. at 4, ¶ 12 (affirming best-interests finding when the "current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely"). The court also heard evidence that Child is adoptable, healthy, happy, and has bonded with C.R.R. in her placement's care. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 378, ¶ 6 (App. 1998) (maintaining sibling relationships supports a best-interests finding). Because evidence shows Child would benefit from termination, the court did not err in terminating Mother's parental rights.

CONCLUSION

¶16 We affirm.



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