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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE TERMINATION OF PARENTAL RIGHTS AS TO P.V.

No. 1 CA-JV 23-0061
FILED 9-14-2023

Appeal from the Superior Court in Maricopa County
No. JD41262
The Honorable Gregory Como, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Phoenix
By Bailey Leo
Counsel for Appellee Department of Child Safety

David W. Bell, Mesa
Counsel for Appellee P.V.

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which
Presiding Judge Jennifer B. Campbell and Judge Anni Hill Foster joined.

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C A T T A N I, Judge:

¶1 Brittany V. (“Mother”) appeals the superior court’s ruling terminating her parental rights as to her son (“Child”).¹ For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Child was born in August 2021, substance exposed and several weeks premature. Mother tested positive for a fentanyl metabolite when admitted to the hospital for the birth. Just over a week later, hospital staff observed Mother behaving erratically while visiting Child, who remained hospitalized. Security personnel found a “significant amount” of fentanyl pills in Mother’s bag, and Mother (who initially denied possessing or using the drugs) later admitted to a Department of Child Safety (“DCS”) case worker that she was under the influence of fentanyl while visiting Child.

¶3 When Child was discharged from the hospital, DCS took custody, placed him with his maternal grandmother (“Grandmother”), and implemented a safety plan. The safety plan required that Mother’s visits with Child be supervised (including by Grandmother) but did not otherwise limit visitation. The superior court later found Child dependent as to Mother based on neglect due to Mother’s substance abuse. DCS offered Mother an array of reunification services including supervised visitation, as well as substance abuse testing and treatment.

¶4 DCS referred Mother for twice-weekly random drug testing, to which she regularly failed to submit. During the first several months of the case, Mother only submitted to testing three times; she tested positive for amphetamine once, methamphetamine twice, and fentanyl all three times.

¶5 DCS also referred Mother for substance abuse assessment and treatment at the beginning of the dependency and offered to re-refer her thereafter. Mother declined to participate with the referred provider (or any of the other substance abuse centers recommended by DCS), stating she would find her own treatment program. Although Mother engaged with a peer-support group, she did not enter treatment or stop her drug use. In fact, she was charged with and convicted of felony possession of narcotic

¹ Child’s father’s parental rights were also terminated, but he is not a party to this appeal.

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drugs (fentanyl) in the fall of 2022. Mother eventually completed a week-long detox program in early December 2022, but she tested positive for a fentanyl metabolite less than three weeks later, then stopped submitting to testing altogether.

¶6 Meanwhile, DCS organized regular supervised visitation between Mother and Child. Initially, DCS set twice-weekly case-aide-supervised in-person visitation and permitted unlimited additional visits, provided Grandmother or another responsible adult supervised. In late 2021, Grandmother returned to her home in Nevada with Child. DCS continued to provide in-person visitation for Mother in Arizona thereafter, having Grandmother bring Child to Arizona for several visits over multiple days. Mother was also able to visit Child in Nevada under Grandmother's supervision. Additionally, DCS facilitated long-distance visitation by video conference.

¶7 In spring 2022, however, Grandmother reported that Mother brought drugs with her when visiting Child and that the visits were going poorly. Additionally, Mother dropped out of contact for several months. After Grandmother moved back to Arizona with Child in 2022, Mother resumed visitation, but she used drugs during an in-person visit at Grandmother's home in July 2022. After that, DCS restricted Mother's in-person contact with child to visits facilitated or approved by DCS. Grandmother eventually moved back to Nevada, although she again agreed to bring Child to Arizona for in-person visitation at least monthly.

¶8 In July 2022, DCS moved to terminate Mother's parental rights on the statutory grounds of chronic substance abuse and six months' time in care. *See* A.R.S. § 8-533(B)(3), (8)(b). Mother initially pleaded no contest to the allegations, but the court later set aside her no contest plea at Mother's request and without objection from DCS.

¶9 Mother and her DCS case manager testified at the resulting termination adjudication hearing in February 2023. Mother acknowledged a long history of abusing substances including heroin, methamphetamine, and more recently fentanyl. She testified that she had multiple "bouts of sobriety" over the years, but confirmed that she had been unable to stay sober for the long term with the programs she tried before the dependency. Mother testified that she would change her behavior, noting that both the terms of her probation and her desire to remain in Child's life provided extra motivation for her to meaningfully engage in drug testing and treatment.

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¶10 Mother expressed her frustration with limited in-person visitation while Child lived out of state. She acknowledged that DCS had set up regular video calls for her with Child, but she explained those calls were not effective given Child's young age. Mother characterized her in-person visits as "very sporadic" despite repeated requests to DCS for more contact. She recounted traveling to Nevada to visit Child "at least a dozen" times without assistance from DCS. And she claimed that DCS never brought Child to Arizona for visitation and that Grandmother had brought him only "a time or two."

¶11 The superior court terminated Mother's parental rights, finding both alleged statutory grounds for severance and that severance would be in Child's best interests. Mother timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶12 The superior court is authorized to terminate a parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and resolution of conflicting facts. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶13 Apart from contesting DCS's reunification efforts, Mother does not otherwise challenge the superior court's findings as to statutory grounds for severance based on chronic substance abuse and six months' time in care, and the record supports the court's findings on both bases. See A.R.S. § 8-533(B)(3), (8)(b). The record also supports the superior court's conclusion that DCS satisfied its obligation to make reasonable and diligent efforts to preserve the family by providing appropriate rehabilitative services. See A.R.S. § 8-533(B)(3), (8)(b); *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12 & n.3 (App. 2005). To fulfill the diligent-effort requirement, DCS must provide services with a "reasonable prospect of success" (but not "every conceivable service" or those that would prove futile) to afford the parent the time and opportunity to become, if possible, a safe and effective parent. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37 (App. 1999); *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). DCS is not responsible for ensuring

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that the parent in fact participates in the services provided. *See JS-501904*, 180 Ariz. at 353.

¶14 Mother highlights the importance of visitation to establish and develop a parent-child bond, *see Michael M. v. Ariz. Dep't of Econ. Sec.*, 202 Ariz. 198, 200-01, ¶¶ 8-9, 11 (App. 2002), and she argues that DCS failed to offer sufficient visitation opportunities after Child moved to Nevada. Mother asserts that, despite her repeated requests, DCS did not set in-person visitation frequently enough and that video chats were an inadequate substitute due to Child's youth. She argues that DCS thus did not fulfill its obligation to provide appropriate reunification services.

¶15 The record reflects that, with Grandmother's cooperation, DCS facilitated regular in-person visitation for Mother in Arizona even while Child resided in Nevada. And DCS did not initially limit Mother's ability to see Child as long as Grandmother (or another responsible party) supervised the visitation. Thus, in the first months after Child relocated to Nevada, Mother had in-person visitation in Arizona over several consecutive days on several occasions, on top of additional visits she coordinated with Grandmother in Nevada.

¶16 Thereafter, it was Mother's own conduct that limited her contact with Child. Grandmother expressed reluctance to continue supervising visits after Mother brought drugs with her to visitations, and Mother then dropped out of contact for several months in the spring and summer of 2022. When Mother resurfaced, it was her drug use during visitation that prompted DCS to restrict in-person visits to only those facilitated or approved by DCS. And DCS organized in-person supervised visits for Mother even after the case plan had already changed to severance and adoption. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96, ¶ 30 (App. 2009) (requiring reunification services "during the entire time the plan goal [is] reunification"). Accordingly, the superior court did not err by concluding that DCS made reasonable and diligent efforts to provide Mother with adequate reunification services, including visitation, but that Mother remained unable to assume parental responsibilities.

¶17 Mother also challenges the superior court's finding that severance was in Child's best interests. Termination of parental rights is in a child's best interests if the child would benefit from severance or be harmed by a denial of severance. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150, ¶ 13 (2018). Relevant considerations include the parent's prospects for rehabilitation, as well as the child's prospects for adoption and whether the placement is meeting the child's needs. *Id.* at 148, ¶ 1; *Demetrius L. v.*

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Joshlynn F., 239 Ariz. 1, 3–4, ¶ 12 (2016). Stability and security for the child are primary considerations. *Demetrius L.*, 239 Ariz. at 4, ¶ 15.

¶18 Here, the court found that severance would benefit Child by freeing him for adoption by Grandmother, who had cared for him since his birth and who was meeting his needs. The court further found that denying severance would be detrimental in light of Mother’s ongoing substance abuse, leaving Child in limbo for an extended period.

¶19 Mother contends that Child’s best interests would be better served by maintaining the parent–child relationship and permitting her additional time to engage in treatment and overcome her substance abuse. She suggests that Child is still too young to understand the concept of adoption and that his practical living situation would remain safe and stable with Grandmother even absent severance.

¶20 But the superior court reasonably found that Mother’s drug abuse remained detrimental to her ability to parent—a notion with which Mother broadly agreed. Likewise, the court had ample basis to find that Mother’s drug abuse was likely to continue (and thus prevent safe and effective parenting) for a prolonged period, not least because she continued to test positive even more than a year into the dependency, more than two months into her probation for a drug offense, and just weeks after going through detox.

¶21 Although all parties agreed that Mother was sincere in her desire to achieve long-term sobriety, the record supports the court’s finding that maintaining the parent–child relationship would be detrimental due to Mother’s continued struggles with drug abuse. See *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 98, ¶ 11 (App. 2016). And the record likewise supports the court’s finding that severance would benefit Child by permitting adoption by his long-term caregiver who has provided him a “warm, nurturing family setting.” See *Demetrius L.*, 239 Ariz. at 4, ¶ 12. Accordingly, the superior court did not err by finding severance to be in Child’s best interests.

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CONCLUSION

¶22 We affirm the superior court's ruling terminating Mother's parental rights as to Child.



AMY M. WOOD • Clerk of the Court
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