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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 07-01-2010
PHILIP G. URRY, CLERK
BY: GH

KELLY D.,) No. 1 CA-JV 09-0175
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MICHAEL D., KARYL S.,) 103(G) Ariz. R.P. Juv. Ct.;
) Rule 28 ARCAP)
Appellees.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD505142

The Honorable Bernard C. Owens, Judge Pro Tempore

AFFIRMED

Virginia Matte Attorney at Law Phoenix
By Virginia S. Matte
Attorney for Appellant

Lopez & Associates PLLC Phoenix
By Bernard P. Lopez
Attorney for Appellees Michael D. and Karyl S.

S W A N N, Judge

¶1 Kelly D. ("Mother") appeals from the juvenile court's denial of her petition to terminate guardianship of her son, J.,

and its order affirming the continued status of Michael D. and Karyl S., J.'s maternal grandfather and step-grandmother, as his guardians. We conclude that the trial court did not abuse its discretion when it found that neither a sufficient change in circumstances nor the best interests of the child warranted termination of the guardianship, and therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 After his maternal grandmother filed a dependency petition citing Mother's significant history of drug abuse problems, J. was found dependent as to Mother on October 12, 2004. On December 13, 2005, the court appointed Michael D. ("Grandfather") and Karyl S. ("Step-Grandmother") as J.'s permanent guardians. J. lived with his guardians in Scottsdale, Arizona.

¶3 On September 22, 2007, Mother entered treatment in Prescott, Arizona, and was successful in her efforts to abstain from alcohol and drugs.¹ Mother regularly attended AA meetings and maintained steady employment, working from 8:00 a.m. to 5:00 p.m.

¶4 After Mother had maintained her sobriety for one year, Grandfather and Step-Grandmother considered returning J. to his

¹ At the time of the evidentiary hearing on the petition to terminate guardianship, Mother had not abused alcohol or drugs for nearly two years.

mother but thought that it was best to wait until J. finished his fourth-grade year.² But because J. insisted on living with his mother, the grandparents allowed him to move to Prescott to live with her in December 2008 -- a semester early.

¶15 While in Prescott, J. did well in school -- eventually placing into the gifted program and the honor roll. Mother attended five to six 12-step meetings per week, and often brought J. along with her. But there were times when J. was left alone after school, with only a neighbor for him to call upon for help. Mother was involved in a healthy, long-term relationship. Her boyfriend took an active role in the family, joining Mother and J. for family "game night." J. also maintained contact with his grandparents by phone several times per week and in person once or twice a month.

¶16 Until April 2009, Step-Grandmother was satisfied and happy that J. was going to resume living with his mother;³ she and her husband planned to terminate the guardianship. But in April, Step-Grandmother grew concerned that Mother was

² The original reunification plan between Mother and J. was set for June 2009. To facilitate this, Grandfather instructed Mother to gather letters in support of a termination of guardianship.

³ At the hearing, Step-Grandmother testified that she was not interested in being a parent; she loved being a grandmother: "I'm 65 years old, and Mike is almost 70, and we raised our kids, and we want to be grandparents, and we want to be able to spoil a grandson, or granddaughters, whatever. We do not want to be parents."

neglecting the home and "unraveling": one weekend Step-Grandmother left a bag containing chips and doughnuts on Mother's table and when she returned two weeks later, the bag was still there. The lack of cleanliness indicated to Step-Grandmother that Mother was regressing.

¶17 In May 2009, J.'s grandparents picked him up to spend a three-week vacation with them in Scottsdale. J. announced to his grandparents that he was not going back to live with his mother. On May 25, 2009, Grandfather called Mother to tell her that J. was not going to return to Prescott. In response, Mother filed a petition to terminate the permanent guardianship, and the court held a two-day evidentiary hearing on the matter.

¶18 On the first day of the hearing, Timothy Auran, the Director of Admissions for Decision Point Center in Prescott, testified on Mother's behalf. He explained that before a parent can have a child returned to her care, "[t]hey need to be off the initial detox and have some time under their belt. . . . [I]n this 12-step program they try not to have you do big changes inside the first nine to 12 months. So . . . someone isn't supposed to go get married or move across the country or something like that. They need some time to work on themselves." He testified that based on his knowledge of Mother and his understanding of where she was in the recovery process, he believed it was appropriate that J. was returned to her care

in December 2008. He also testified that it still was appropriate for J. to be returned to her care. Having done national statistical studies to determine what percentage of people maintain their sobriety based on the period of recovery, he testified that with nearly two years sobriety, Mother's chances were better than average that she would continue to make progress.

¶9 On the second day of the hearing, with the consent of Mother's attorney, J.'s attorney presented the child's viewpoint to the court. The attorney testified, "[H]e wants to remain in Scottsdale with his grandparents. He wants to see his mother on average every other weekend. He wants to have the open telephone contact." The attorney explained that J.'s reasons for remaining in Scottsdale were (1) he likes his school in Scottsdale; (2) he receives more assistance with his homework from his grandparents; (3) he feels more secure with his grandparents; and (4) while his mother is improving, he feels that she is emotional at times and he perceives that her recovery is more of a priority than he is. According to J., sometimes Mother would attend meetings and not return home until 7:00, 7:30 or even 8:30 in the evening.

¶10 Step-Grandmother also testified that in addition to her concerns about Mother's cleanliness, she was afraid that Mother was not taking proper care of J. She was also uneasy

about J. making his own meals. And when she and her husband picked J. up for a visit, there were only two pairs of shorts and a pair of pants that were acceptable. She testified, "Everything else was either too small and unwearable, or they had holes in them. . . . [T]here were holes in the knees, in the bottom. His wardrobe was a mess."

¶11 In a minute entry filed September 28, 2009, the court found that a change of circumstances had not been proven by clear and convincing evidence. The court reasoned as follows:

Mother had significant substance abuse issues, and it is clear she has done a remarkable job of rehabilitating herself. She has been clean for two years, has established employment and an appropriate home, and may well be on the road to marriage. Her recovery has required an intense focus on her own well-being, and that level of focus continues to this day. Her world revolves about her recovery. She attends five to six AA meetings each week; she is quite involved with friends who support each other in their recovery efforts. It is this focus by mother that has brought success in her recovery, but it is also this focus that leads the Court to conclude circumstances have not changed significantly enough to allow mother to parent. What is relevant here is whether mother has advanced to the point where she can focus an appropriate portion of her energies on parenting. Certainly, her recovery is a crucial element as to whether she can parent again, but it is not the sole element. Mother's own descriptions of her life and [J.'s] reports, from the time he lived with mother in late 2008 and the first four-plus months of 2009, make it clear she is still so involved in her own recovery that she is not yet ready to parent [J.].

¶12 The court also found that it was not in J.'s best interest to terminate the guardianship. The court reasoned that

because J. was working with a counselor in Scottsdale, the best opportunity for him to reestablish a healthy relationship with his mother was for J. and his mother to work with his present counselor. The court noted that J. was comfortable living with his grandparents, felt secure in their home, and liked being a priority in their lives. And while J. was proud of his mother's achievements, and had positive feelings toward her new boyfriend, he spent much of his time alone in the spring of 2009 while his mother attended meetings and other recovery-related activities. Finally the court reasoned that because the grandparents want J. someday to be reunited with his mother, it was likely that they would encourage frequent and meaningful contact between mother and son.

¶13 Mother timely appeals and we have jurisdiction pursuant to A.R.S. § 8-235(A) (2007).

DISCUSSION

¶14 "We will affirm a juvenile court's order based on findings of clear and convincing evidence unless no reasonable evidence supports those findings." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). Unless the order is clearly erroneous, we will not reverse. *Id.*

¶15 A.R.S. § 8-873 provides:

A. The child, a parent of the child or any party to the dependency proceeding may file a petition for the revocation of an order granting permanent guardianship

if there is a significant change of circumstances, including:

1. The child's parent is able and willing to properly care for the child.

. . . .

C. The court may revoke the order granting permanent guardianship if the party petitioning for revocation proves a change of circumstances by clear and convincing evidence and the revocation is in the child's best interest.

1. Significant Change in Circumstances

¶16 The record clearly demonstrates and both parties agree that Mother has made great forward progress in maintaining her sobriety for nearly two years. But the record fails to show that Mother has progressed to the point that J. -- and not her recovery -- can be her primary focus. Mother testified that "without AA I wouldn't be sober today. I wouldn't be a good mom. So I am willing to cut back and maybe go to five meetings a week. But AA is a big priority to me. It changed my life." Even her 12-step mentor and neighbor retracted her statement that "[J.] was number one" and explained, "Well, I mean well her program is number one" Because there was substantial evidence that J. was not Mother's primary focus, we discern no error in the trial court's finding that there was not clear and convincing evidence of a sufficiently significant change in circumstances to justify terminating the guardianship at this juncture.

2. Best Interest

¶17 Moreover, J.'s desire to remain in Scottsdale with his grandparents supports the trial court's conclusion that it was not in his best interest to vacate the guardianship. "A finding that the best interests of the child will be served by removal from a custodial relationship may be established by either showing an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship." *Jennifer B.*, 189 Ariz. at 72, 944 P.2d at 557. We discern no detriment to J.'s interests if the grandparents remain his guardians for a period of time. By all accounts, they have provided J. with a stable home environment. Moreover, in Scottsdale, J. is in the care of a counselor, whom he trusts, and he has established relationships among his classmates. While Mother presented evidence of J.'s academic success in Prescott, as well as the potential for positive relationships with Mother, her boyfriend, and his own peers, J. also spent much time alone with minimal supervision. Accordingly, we conclude that the record supports the juvenile court's conclusion that revoking the grandparents' permanent guardianship was not in J.'s best interest.

CONCLUSION

¶18 Finding no abuse of discretion, we affirm.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

DANIEL A. BARKER, Judge