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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 01/11/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

DEANNA H.,)
)
 Appellant,) 1 CA-JV 10-0136
)
 v.) **MEMORANDUM DECISION**
) (Not for Publication -
 ARIZONA DEPARTMENT OF ECONOMIC) Ariz.R.P.Juv.Ct.
 SECURITY, MACKENZIE H., KAITLYN) 103(G); ARCAP 28)
 H.,)
)
 Appellees.)
 _____)

Appeal from the Superior Court in Maricopa County

Cause No. JS11331

The Honorable Dawn Bergin, Judge

AFFIRMED

Denise L. Carroll
Attorney for Appellant

Scottsdale

Terry Goddard, Attorney General
by Jane A. Butler, Assistant Attorney General
Attorneys for Appellees

Tucson

I R V I N E, Judge

¶1 Deanna H. ("Mother") appeals the juvenile court's order terminating her parent-child relationship with M. and K. (collectively, the "Children") based on the ground of neglect or

willful abuse.¹ See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2) (Supp. 2010).² For the reasons that follow, we affirm the judgment of the juvenile court.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological mother of the Children, M. and K., who were born in January 2007 and November 2008, respectively. In March of 2007, Father gave two-month-old M. a bath. After the bath, Mother noticed that M.'s arm was "hanging." M. was admitted to the hospital where she was diagnosed with fractures to her arm, ribs and femurs. Because these types of injuries are consistent with child abuse, Child Protective Services ("CPS"), a division of the Arizona Department of Economic Services ("ADES") was called. Mother explained M.'s injuries by stating that Father had "yanked" M.'s arm while she was in the bathtub to keep her from sliding underneath the water.

¶3 K. was taken to a "well-baby" check up approximately two months after she was born. K.'s pediatrician noticed a bump on K.'s head, which Mother claimed was a result of K. hitting her head on the tile floor while she was laying on her stomach. Thereafter, a pediatric neuroradiologist identified both chronic

¹ The Children's father ("Father") also had his parental rights terminated. He is not a party to this appeal.

² Unless otherwise specified, we cite to the current versions of the applicable statutes when no revisions material to this decision have since occurred.

and subacute subdural hematomas on K.'s brain scan. When she was just over two months old, K. underwent a procedure to place subdural shunts in her head to drain the fluid surrounding her brain.

¶14 T., another child of Mother's who is not subject to this appeal, was interviewed at a child-abuse assessment center. T., who was six at the time of the interview, reported that Mother and Father had both spanked her with either their hands or a belt. T. later reported to a CPS case manager that Father had hit her, M. and K. T. stated that she was sad when Father would hit K., who was "just a baby and she doesn't know better." T. also told the case manager that Mother instructed her not to tell anyone about Father's behavior or K.'s injuries.

¶15 On January 23, 2009, M., K. and T. were removed from Mother and Father's custody. On April 29, 2009, ADES filed a petition to terminate Mother's parental rights.³ The juvenile court held a contested severance hearing on ADES's motion to terminate. After taking the matter under advisement, the court granted ADES's motion to terminate Mother's parental rights. The juvenile court found that grounds for severance existed pursuant to A.R.S. § 8-533(B)(2) because there was clear and convincing evidence that Mother knew or reasonably should have known that

³ Although ADES's petition initially included T., ADES later withdrew its petition as to T.

Father was abusing the Children. The juvenile court also found by a preponderance of the evidence that termination would be in the Children's best interests. Mother timely appealed.

DISCUSSION

¶16 The right to custody of one's children is fundamental, but is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). In Arizona, to justify termination of parental rights, a juvenile court must find, by clear and convincing evidence, the existence of at least one statutory basis for termination pursuant to A.R.S. § 8-533. *Id.* at ¶ 12. The court must also find by a preponderance of the evidence that the termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶17 In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[T]he juvenile court was in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). Accordingly, we do not reweigh the evidence but determine only whether there is evidence to sustain the juvenile court's ruling. *Maricopa County Juv. Action No. JV-*

132905, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "[W]e will affirm a severance order unless it is clearly erroneous," and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶18 The juvenile court found that Mother knew or reasonably should have known that Father was abusing the Children and that Mother had failed to protect them. The court further found that severance was in the Children's best interests. Mother does not dispute either of these findings.⁴ Because there is a statutory basis to justify severance which is not challenged, A.R.S. § 8-533(B)(2), we need not consider any other statutory basis. See

⁴ Although Mother's opening brief states "that the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(2)," her brief does not advance any argument as to why the juvenile court erred in severing her parental rights pursuant to that statutory ground. Because Mother does not advance an argument as to why the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(2), we do not address her assertion. See ARCAP 13(a)(6) (opening briefs must present "[a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on"); *Watahomigie v. Ariz. Bd. of Water Quality Appeals*, 181 Ariz. 20, 26, 887 P.2d 550, 556 (App. 1994) ("[W]e will not consider issues not properly briefed."). Instead, Mother's brief focuses solely on the "rushed" proceedings and alleged failure of ADES to provide her with appropriate services. We address those arguments.

Michael J., 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.⁵ Mother argues, however, that the juvenile court erred because it allowed ADES to rush to severance and failed to provide reasonable services.

¶19 There is no statutory requirement that ADES provide reunification services when, as here, termination is based on abuse or neglect, pursuant to A.R.S. § 8-533(B)(2). See A.R.S. § 8-533(B), (D). Section 8-533(D) provides that when "considering the grounds for termination prescribed in subsection B, paragraph 8 or 11 of this section, the court shall consider the availability of reunification services to the parent and the participation of the parent in these services." If the legislature intended to include the requirement for reunification services in subsection (B)(2), or any other subsection, it would have done so. See *In re Martin M.*, 223 Ariz. 244, 246, ¶ 8, 221 P.3d 1058, 1060 (App. 2009). Although evidence about services offered to a parent and the parent's participation may be relevant in determining whether the severance is in the child's best interests, it is not required by A.R.S. § 8-533(B)(2).

⁵ Even if we were to review the juvenile court's finding that Mother neglected or willfully abused the Children, the ruling is supported by clear and convincing evidence. The court issued a detailed, thirteen-page minute entry and there is ample evidence in the record to support its findings and conclusions. Mother herself testified that she was in denial about Father's abuse of M. and K. and that she suspected Father had intentionally caused injuries to both M. and K.

¶10 Mother next contends that the severance was rushed. The Children were removed from Mother's custody on January 23, 2009. On April 29, 2009, ADES filed a petition to sever Mother's parental rights. The severance hearing began in October 2009, and the last day of the hearings was on March 25, 2010. Although the time from the Children's removal to the filing of ADES's petition to sever was a little over three months, this was not the first ADES involvement. M. and T. had been removed from Mother's custody previously in July of 2007.⁶ Family preservation services were offered to Mother and Father at the time M. and T. were returned to their care. Given the totality of the circumstances including ADES's prior involvement due to child abuse, the severity of K. and M.'s injuries, and Mother's denial of Father's role in those injuries, we conclude that the severance hearings did not proceed in an unfairly rushed fashion.

⁶ M. and T. were placed with their grandparents after fractures to M.'s arm, ribs and femurs were discovered.

CONCLUSION

¶11 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights as to the Children.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge