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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



DIVISION ONE
FILED: 07/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

KORA A.,) 1 CA-JV 11-0016
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P Juv.
SECURITY, GINA R., ANDREW R.,) Ct.; Rule 28 ARCAP)
LEONARD R. Jr., MADISON R.,)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Navajo County

Cause No. JD20080117

The Honorable Michala M. Ruechel, Judge

AFFIRMED

Thomas C. Horne, Attorney General Tucson
By Michelle R. Nimmo, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

John A. Banker Show Low
Attorney for Appellant

O R O Z C O, Judge

¶1 Kora A. (Mother) appeals the juvenile court's termination of her parental rights to Gina, Andrew, Leonard Jr., and Madison (collectively Children).

FACTS AND PROCEDURAL HISTORY

¶12 In November 2008, Mother lived with Children in Winslow. While at home, Mother was alerted that her nephew, K.A.,¹ who lived with Mother's sister in Winslow, was inside the house.² Mother testified that K.A. was not allowed in her home because he had previously made physical threats against Andrew and Leonard. After Mother learned K.A. was in Gina's bedroom, she opened the bedroom door, and saw K.A. push Gina away. Mother observed blood running down Gina's leg.³

¶13 Mother did not immediately call police or seek medical treatment for Gina. Instead, she questioned Gina about what had happened and went to confront K.A.'s mother (Jennifer). Jennifer asked Mother to refrain from calling the police and urged her to

¹ K.A. had previously assaulted Gina and each of the other Children, yet Mother testified that she did not know of the previous assaults until November 2008. However Gina and Madison stated that they had each told Mother of a previous occasion in which K.A. assaulted them.

² Mother gave multiple accounts of how she realized that K.A. was in her home. These include that Mother was outside, unaware that Gina was at the house; she was at home, while Gina was outside with Madison and K.A.; Mother's boyfriend, Anthony L., told her that K.A. was inside the home while she was outside; and that she was asleep when one of her other nephews told her through the bedroom door that K.A. was inside the home.

³ At the severance hearing, Mother testified that she did not see blood on Gina's inner thigh, but instead what she saw was red on the back of Gina's hand, and she was told that it was red nail polish.

handle the events within the family. Mother agreed and returned home with Gina.

¶14 Two days later, Mother took Gina and Madison to a hospital in Flagstaff. Law enforcement officials were contacted and subsequently interviewed Gina and Madison. The Arizona Department of Economic Security (ADES) filed a dependency petition for Children in November 2008.⁴ The petition sought to remove Children based on Mother's failure to protect and her failure to report the assault in a timely manner. In March 2009, the juvenile court found Children dependent as to Mother and developed a family reunification case plan.

¶15 In July 2010, the court granted ADES's request to change the case plan to severance and adoption, setting an initial termination hearing for August 2010. ADES's motion for termination alleged neglect and after being offered numerous services while Children were in out-of-home placement for over fifteen months, Mother had been unable to remedy the circumstances that caused the out-of-home placement.

¶16 At the severance trial, the juvenile court heard evidence as to each child's substantial and special needs. ADES case manager Berg (Berg) testified that Mother was never able to

⁴ The juvenile court found that before the Children were removed, Child Protective Services had received nine allegations of abuse or neglect against Mother but that most of the allegations were unsubstantiated.

"reach a point where she could identify what the problems truly were and then express [] motivation to make the changes necessary to go forward" Due to this failure, Berg testified that the services ADES offered Mother were rendered useless because without recognition that a problem exists, the client feels the services are unnecessary and a waste of time.

¶17 Mother participated in psychological evaluations in November 2009 and again in September 2010 by Dr. Thal (Thal). Thal opined that Mother's judgment was "deeply flawed" and her insight into Children's needs was "quite limited," and at that point, the goal for Children, because of their past experiences, was not to provide them "with a wonderful life," but to protect them from reabuse, revictimization, and prevent Children's emotional and behavioral disorders from worsening to the point of incapacitation, while trying to "salvage what we can" with the Children.⁵

¶18 In June of 2010, Mother participated in a psychiatric consult with A. Eltomi, M.D. Dr. Eltomi reported Mother had limited insight into her "whole problem" and was unable to perceive how she had "failed to protect her children," and that Mother's "insight and judgment" were limited.

⁵ Thal stated Mother was deficient in her parental judgment, detached and passive as a parent, had limited abilities of introspection, was rigid in her thinking and dismissive of others and facts with which she disagreed.

¶9 In October of 2010, Dr. Bluth (Bluth), a clinical psychologist, evaluated Children and Mother for the purpose of making a bonding and best interest assessment. Bluth characterized Children's attachment to Mother as an "anxious attachment" and concluded the Children were "anxious and insecure" in their relationship with Mother and believed they were in foster care as a result of their own behavior. Bluth stated Children needed capable, consistent and sensitive caregivers. He further found Mother's knowledge of Children's special needs was deficient and that Mother was unable to "identify clearly what [Children's special] needs were and how she would meet [those needs]." Bluth also reported that a child in Mother's care would be "at risk" for neglect, stating that "[M]other is in no way able to give [permanency and stability] to the children," and concurred with Thal's recommendation of severance and adoption.

¶10 After the hearing, the juvenile court issued an order terminating Mother's parental rights to Children. The court found that Mother had neglected Children, they were cared for in an out-of-home placement for more than fifteen months, ADES had made diligent efforts to provide reunification services, Mother had been offered a number of services but was unable to remedy the circumstances causing out-of-home placement, and that there was a substantial likelihood Mother would not be able to exercise

proper and effective care and control of Children in the near future. The court also found that the best interest of Children would be served by termination of Mother's parental rights.

¶11 Mother timely appealed the court's order of termination. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 8-235 (2007).

DISCUSSION

¶12 In reviewing a juvenile court's termination order, we view the evidence "in the light most favorable to sustaining the [juvenile] court's decision." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). On review of a severance of parental rights, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and will we affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dept. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

Neglect

¶13 On appeal, Mother claims that ADES's burden was to show that at the time of trial, she was a neglectful parent, pursuant to A.R.S. § 8-533.B.2. We disagree.

¶14 A court may terminate parental rights if it finds that "the parent has neglected or willfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." A.R.S. § 8-533.B.2. (Supp. 2010).⁶ "The court may terminate the parental rights of a parent if the court finds by clear and convincing evidence one or more of the grounds prescribed in § 8-533." A.R.S. § 8-863.B. (2007). Evidence is clear and convincing when it makes the proposition to be proved "highly probable or reasonably certain." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284-85, ¶ 25, 110 P.3d 1013, 1018-19 (2005) (internal quotation marks and citation omitted). "The most reliable indication of a statute's meaning is its language, and when the language is clear and unequivocal, it is determinative of the statute's construction." *Loftus v. Ariz. State Univ. Pub. Safety Pers. Ret. Sys. Local Bd.*, CA-CV 10-0393, 2011 WL 1814234, 2, ¶ 9, ___ P.3d _ (App. 2011) (citation and quotation marks omitted).

⁶ We cite the current version of all statutes unless there are material revisions to the statute which effect this decision.

¶15 Section 8-533.B lists a number of grounds for termination of a parent-child relationship. Some are listed in the present tense, while others are listed in the past tense. Compare A.R.S. § 8-533.B.3 ("That the parent is unable to discharge the parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period."), with A.R.S. § 8-533.B.2 ("the parent has neglected or willfully abused a child"). "When a statute is clear and unambiguous, we apply it without using other means of statutory construction unless application of the plain meaning would lead to impossible or absurd results." *Mario G. v. Ariz. Dep't of Econ. Sec.*, CA-JV 10-0220, 2011 WL 1900138, 3, ¶ 14, ___ P.3d ___ (2011) (quotation and citation marks omitted).

¶16 In *Mario G.*, we determined that pursuant to section 8-533.B.2, past abuse may justify termination of a parent's rights to a child who is not yet born. *Id.* at 5, ¶ 19; see *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 14, 117 P.3d 795, 799 (App. 2005) (under section 8-533.B, past abuse or neglect of one child may be grounds to terminate a parent-child relationship with another child). Therefore, we agree with the juvenile court

that Mother's past neglect could support termination under the statute.

¶17 On appeal, Mother argues the evidence was insufficient and ADES did not meet its burden of proof. We have stated that we defer to the trial court's determination of the facts unless the court's findings are clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). Furthermore, "we will not disturb the juvenile court's disposition . . . unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Id.*

¶18 In its termination order, the juvenile court found that "the minor children were being neglected in [Mother's] home prior to their removal by [ADES] on the 18th day of November 2008." This finding was based on evidence that Gina's sexual assault occurred while Mother was in the home; Mother's failure to report the sexual assault immediately to authorities or take Gina to a hospital; that Children had previously been assaulted by K.A., yet Mother failed to file police reports in those instances; and that before their removal from Mother, Children would come to school unclean and tired on a regular basis, and suffered from poor academic performance, poor communication and social skills and mental health issues, most of which were either denied or not

addressed at all by Mother. We find that there was sufficient evidence that Mother neglected Children.⁷

Best Interest of the Children

¶19 Mother next contends that severance of her parental rights is not in the best interest of Children. In severing the parent-child relationship, the court must find by a preponderance of the evidence that severance is in the best interest of the child. A.R.S. § 8-533.B; *Kent. K.*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018. “[A] determination of [a child’s] best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship.” *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The court may consider factors such as whether an immediate adoptive placement is available, if an existing placement is meeting the children’s needs, and whether the children are adoptable. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010).

¶20 Thal testified that the goal for Children should be to prevent “reabuse, revictimization” and “their emotional and

⁷ To justify the termination of the parent-child relationship at least one statutory ground in § 8-533 must be found. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Mother claims that ADES failed to provide diligent reunification services under A.R.S. § 8-533.B.8(b). However, because we affirm the juvenile court’s finding that Mother neglected Children pursuant to § 8-533.B.2, we need not address this claim.

behavioral disorders worsening." Thal stated that Children should be protected from further harm and believed that severance and adoption was the way to "salvage" their young adulthood. He stated that knowing each child would like to be reunified with Mother would not change his mind because he believed reunification would cause more harm than a guardianship, adoption, or long-term foster care.

¶21 Berg testified that Children's special needs were incredibly difficult to provide for, even in their current placement, and to return Children to Mother's home, with the same unresolved issues, would result in "chaos" and that there was "no way that could work." Berg also testified that Children were adoptable and presently in a more stable home, and as a result, would "begin to do much better educationally, mental [health-wise], and emotionally."

¶22 The juvenile court found that the best interest of Children would be served by termination of the parent-child relationship by providing Children with the opportunity for permanence and stability through adoption. Substantial evidence supported this conclusion.

CONCLUSION

¶23 For the foregoing reasons we affirm the juvenile court's order terminating the parent-child relationship between Mother and Children.

PATRICIA A. OROZCO, Judge

CONCURRING:

DIANE M. JOHNSEN, Presiding Judge

ANN A. SCOTT TIMMER, Judge