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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/21/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAY C. and KIMBERLY C.,) No. 1 CA-JV 11-0032
)
Appellants,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY and AUSTIN C.,) ARCAP 28)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 16250

The Honorable Colleen McNally, Judge

AFFIRMED

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H A L L, Judge

¶1 Kimberly C. (Mother) and Jay C. (Father) appeal the juvenile court's order terminating their parental rights to A.C.¹ For the following reasons, we affirm.

FACTUAL² AND PROCEDURAL BACKGROUND

¶2 A.C. was born in August 2001 and largely resided with his paternal grandparents³ (collectively, Grandparents) since he was an infant due to Mother's and Father's financial and marital difficulties. A.C. was removed from Grandparents' home in November 2007 because the home:

was observed in deplorable condition with dirty clothing, garbage, and dirty dishes [and] other safety hazardous items [found] throughout the home. There was exposed wiring from the wall. There was a strong odor of urine because the carpet had been soaked with

¹ Although Father was not the biological parent of A.C., he was deemed A.C.'s legal parent because he was married to Mother at the time of A.C.'s birth and listed as the father on A.C.'s birth certificate. A.C.'s biological father has refused to have any contact with the State regarding A.C., his parental rights have been terminated to A.C., and he is not a party to this appeal. The parental rights of Mother's and Father's biological son together, T.C., have not been terminated. Mother also has a third son, C.S., with her current boyfriend and her rights to C.S. have not been terminated.

² We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

³ A.C.'s paternal grandmother died in June 2010. The State submitted an appendix with this court comprised of court orders granting Grandparents guardianship of A.C. and requested that we consider these orders as part of the record on appeal. The record on appeal adequately informs this court of the nature of the guardianship and we therefore decline to consider the appendix.

urine and was ruined in different areas. The cribs where [A.C. slept] had dirty diapers and other papers inside and the mattress was soaked with urine. This family had been involved in ongoing reports and concerns with CPS since July of 2006. There have been numerous reports of abuse against the family over the past two years regarding physical abuse and neglect towards all of the children.⁴

¶13 Arizona Department of Economic Security (ADES) filed a dependency petition in November 2007, alleging that Mother was unable to parent due to failure to protect and Father was unable to parent due to failure to protect and physical abuse. A.C. was adjudicated dependent, made a temporary ward of the juvenile court, and committed to the care, custody and control of ADES. A.C. was initially placed at the Phoenix Child Crisis Center, but subsequently moved in January 2008 to his current foster home.

¶14 After a visitation with Mother, Father, and paternal grandmother in March 2008, A.C. "had increasing aggression towards Foster Mother's other kids, kicking, biting, slapping, etc. [A.C. started] urinating [and] defecati[ng] on himself [and around the] home. . . . He [] expressed suicidal [and] homicidal ideation to family. He [began] injuring self [by] banging [his] head [and] pulling [his] hair" and "picking his

⁴ There were fourteen prior Child Protective Service (CPS) reports filed from 2002 to 2007, expressing serious concern for A.C.'s mental and physical well-being. Despite these concerns, he was not removed from the home until November 2007.

skin and biting flesh from his fingers." A.C. also "expressed anxiety through fecal smearing including drawing a line of feces in front of his door to act as a 'force field.'" A.C. "scream[ed] uncontrollably" and "threaten[ed] to put a pillow over the foster parents' child." Thereafter, he was hospitalized in the psychiatric unit of Phoenix Children's Hospital for nine days. As a direct result of A.C.'s reaction to the visitation with Mother, Father, and paternal grandmother, the visitations were permanently suspended on the recommendation of A.C.'s therapist.

¶15 Glenn L. Moe, Ph.D., conducted a psychological evaluation of A.C. in October 2008. He concluded that Mother and Father's ability to adequately care for A.C. was:

highly suspect at this time. A review of their Psychological Evaluation Reports reveals concerns about the stability of their marital relationship that may interfere with their ability to parent as a team. This is combined with the history of [Father], according to records as well as [A.C.'s] reports, having abused [A.C.] Therefore, [Father], at a minimum, would need to display significant understanding and changes in his behaviors before being able to adequately meet [A.C.'s] needs. Furthermore, the child would need to develop a much more trusting relationship with his father before he could be successfully parented by [Father]. Specifically, [A.C.] reports a variety of [negative] thoughts and feelings regarding his father, . . . [it] appears [A.C.] has had minimal contact and interactions with [Mother] over the years.

¶16 Dr. Moe re-evaluated A.C. in October 2009 and found that A.C. "continues to express much anxiety about the abuse he

perceives he suffered in the relationship from [Father] and grandparents. He then reports feeling that [Mother] did not protect him from these abusive individuals." Dr. Moe found that it was in A.C.'s:

best interest to pursue a case plan of severance and adoption. Given the child's high anxiety as it pertains to the relationships with his parents combined with the impression that [Mother] would have significant difficulty meeting [A.C.'s] specialized needs, it is concluded that [A.C.] would benefit from a permanent adoptive home with skilled caregivers in meeting his developmental and emotional needs.

¶17 James S. Thal, Ph.D., evaluated Mother in March 2010 and reported that Mother admitted she knew Grandparents' home was "in very poor condition" and A.C. was "being locked in [his] room[] at night." Dr. Thal also reported that Mother did not realize she could revoke the initial temporary guardianship given to the Grandparents and that Grandparents "forged" her and Father's signatures on the permanent guardianship agreement approved by the court. Dr. Thal concluded that A.C. was "extensively abused and neglected" and Mother and Father "contend that they were powerless to do anything about [A.C.'s] plight." Dr. Thal found that Mother "seem[ed] to possess minimally adequate parenting knowledge [and gave] the impression of being emotionally detached. She may be lacking in a proactive approach to caring for a child who reportedly has special needs." Dr. Thal elaborated that Mother "does seem to

exhibit a certain degree of detachment and passivity which has had implications for conscientious and consistent care of her children." Dr. Thal also stated that "[i]t seems very doubtful that [Mother] will respond to therapeutic intervention" and "[t]he prognosis that [Mother] will demonstrate minimally adequate parenting skills in the foreseeable future is seen as satisfactory" for parenting T.C.

¶18 A.C. dictated a letter to his foster mother in July 2010 and asked that she give the letter to his team of mental-health professionals, social workers, guardian ad litem, and the court. A.C. stated in the letter that he did not "want to see [Mother] because . . . she didn't help me or protect me and that hurt. I don't like her because she also spanked me on my back with a belt. [Mother] was there when [Father and paternal grandmother] hurt me, I saw her." A.C. continued that he did not want to have Father's last "name because he hurt me so bad and [Mother] is called that too. I just want them all to go away and I don't want to hear that name anymore. It makes me think of all that stuff they did." He signed his name with a fictitious last name.

¶19 CPS case manager Brenda Sondersted submitted a progress report to the juvenile court in July 2010 and stated that Mother "has historically presented as uninterested and uninvolved in regards to her son" A.C. Sondersted reported that

A.C. "continues to connect [Mother] with [Father]. [A.C.'s] therapist attempted to pursue exploring a change in mindset with [A.C.] regarding a re-connect with [Mother]. He became extremely upset and agitated. She feels that it is not in [A.C.'s] best interest to proceed as he may mentally de-compensate." Sondersted noted that Mother and Father were supposed to attend parent training classes, but "they responded so negatively that they were asked not to continue in the class[.]" Sondersted found that A.C.:

continues to be very fearful of [Father]. He had an increase in anxieties regarding [Father] since receiving a letter from [Father]. The concerns are consistent with issues about being thrown against a wall and hurting his penis.⁵ . . . [A.C.] was told that [Father] was not his biological father. He was pleased and showed signs of relief.

Sondersted recommended a case plan of severance and adoption after opining that Mother and Father:

have not put forth the effort needed to parent [A.C.] and they do not consider their children's needs above their own.

This case manager feels strongly that [Mother] and [Father] both lack insight and judgment to meet [A.C.'s] needs successfully. [Mother] has never parented [A.C.] and there is no bond between [Mother] and child. [A.C.] is extremely fearful of [Father] and his concerns have been consistently vocalized throughout this entire case.

⁵ A.C. made sexual allegations against Father and his paternal grandmother, but these allegations were not substantiated.

Sondersted added that A.C. "has a great relationship with his foster family and they are exceptional at reading [A.C.'s] behavioral cues and meeting his needs. [A.C.] requires constant attention and reassurance. [A.C.] trusts them and they would like to continue to be a part of [A.C.'s] life should he transition to an adoptive placement."

¶10 ADES offered Mother the following services: individual and family counseling, parent aide, drug testing, housing subsidy, bonding assessment, psychological evaluation, and transportation. Father was offered: individual and family counseling, bonding assessment, parent aide, and transportation. Although Mother and Father both generally participated in these services, Mother failed to attend a scheduled bonding assessment with Dr. Moe and failed to participate in a behavioral health training course Sondersted recommended. Additionally, both Mother and Father were asked to stop attending parenting classes due to negative behavior.

¶11 The Foster Care Review Board (FCRB) found A.C.'s current placement "necessary" and "safe, appropriate and least restrictive." It recommended implementing a case plan goal of severance and adoption as a result of little progress being made towards family reunification and because it was "unknown if [Mother] and [Father] would be able to manage [A.C.'s] behavioral and emotional issues[.]"

¶12 In August 2010, ADES filed a motion for termination of Mother's and Father's parental rights to A.C., alleging that A.C. had been in an out-of-home placement for fifteen months or longer. The juvenile court changed the case plan to severance and adoption and held a contested severance hearing in January 2011. Sondersted testified that severance and adoption was in A.C.'s best interest and that he was adoptable. Sondersted thought it would be a "detriment" to A.C. if Mother's and Father's parental rights were not severed. She stated that Father was unable to parent A.C. because A.C. "is very afraid of [Father]. He . . . believes sincerely that [Father] has treated him neglectfully and abusively." She also did not believe that Mother could properly accommodate A.C.'s need for structure if he was returned to her and Mother could not provide A.C. with "consistent understanding and consistent support." Sondersted revealed that since A.C. was informed the case plan for family reunification was changed to severance and adoption, A.C. stopped "displaying any [post-traumatic stress disorder (PTSD)] behaviors, no fecal smearing, no urination, no aggressive behavior. . . . [H]is behavior and attention seeking, particularly in school, too has reduced. . . . [H]e has [] taken off and settled in and seems happier. His coloring looks good. He [] smiles a lot and is content."

¶13 A.C.'s foster mother testified that after A.C.'s visit with Mother and Father in March 2008 and immediately prior to A.C.'s psychiatric hospitalization, A.C. "was blank, mouth wide open, screaming, smearing feces, urinating over the entire house. He had attacked the other children, he attacked us, he attacked me[;] he was absolutely out of control." She further testified that A.C. did not feel Mother could keep him safe and he did not want a relationship with either Mother or Father. A.C.'s foster mother stated that since the case plan was changed to severance and adoption, A.C.'s behaviors have "been really good. We have not seen any of the PTSD responses. . . . At school he's doing really, really great . . . He's completely off of his medication now [and] his academics are soaring [and] he's really assimilating with the rest of his peers."

¶14 Dr. Moe testified that he diagnosed A.C. with bipolar disorder, PTSD, a learning disorder not otherwise specified, and determined that A.C. was a victim of physical abuse and neglect. Dr. Moe explained that the fecal smearing in which A.C. engaged was a "traumatic," "very regressed, very primitive behavior" and would likely recur if the visits with Mother or Father were reintroduced. Dr. Moe agreed with his earlier report that it would be in A.C.'s best interest to have Mother's and Father's parental rights severed.

¶15 Laurene Schindledecker, a therapist with the Child Help Children's Center, testified that A.C. "appeared to have a heightened sense of fear, a heightened sense of anxiety . . . lack of his perception of his ability to be safe, [a] fear that his well-being and his safety [were in jeopardy and was] directed at his parents." Schindledecker testified that although she initially made efforts to move A.C. towards family reunification, she opined that it was in A.C.'s best interest to have Mother's and Father's rights severed and that A.C. would be "relieved" if that occurred.

¶16 CPS ongoing case manager Jessica Nokes testified that she did not believe Mother was able to parent A.C. based on Mother's "failure to follow through with the necessary needs of" T.C. Nokes also stated she did not believe that Father was able to parent A.C. because A.C. "had very negative reactions" to Father and was fearful of Father.

¶17 The juvenile court read Mother the aforementioned CPS description of A.C.'s Grandparents' home on the day he was removed from their care in 2007 and Mother conceded that she saw the home in that condition beginning in mid-2004. Mother also stated she saw "dog feces in [A.C.'s] bedroom." Mother further admitted she knew A.C. was being physically abused in Grandparents' home as early as 2005 because she witnessed it firsthand and also saw unexplained bruises on A.C. Mother

stated she attempted to get A.C. back, but she could not afford to hire an attorney and the police failed to help her. Mother also said that the paternal grandmother forged Mother's signature to give Grandparents permanent guardianship of A.C. Mother testified that she had not seen A.C. since March 2008 and first attempted to contact him by writing him a letter two years later in mid-2010.

¶18 Father testified that he never sexually or physically abused A.C. Father admitted that he was aware of the condition of Grandparents' home where A.C. had been residing, but aside from putting cable ties on the loose wiring in the home and contacting CPS, he failed to rectify the situation, clean up the home, or remove A.C. from the environment.

¶19 The juvenile court found by clear and convincing evidence that A.C. had been in an out-of-home placement for more than fifteen months and that the parents had been unable to remedy the circumstances which caused him to be placed in the out-of-home placement. It further found that there was a substantial likelihood that the parents would not be able to exercise proper and effective parental care and control over A.C. in the near future. The court found by a preponderance of the evidence that it was in A.C.'s best interest to terminate the parent-child relationship and that he was of an age where an adoptive home could be found for him.

¶20 The court elaborated that

[b]oth Mother and Father have a history of chaotic relationships with each other and other people. . . . It does not appear that either parent understand or are willing to provide the level of structure and predictability that [A.C.] requires.

ADES has made diligent efforts to provide services to the parents and the child to address these issues and to assist with family reunification.

Because of [A.C.'s] fear of the parents and his special needs there is a substantial likelihood that neither parent will be able to provide care for him in the near future.

¶21 The court terminated the parent-child relationship between Mother and Father and A.C. Mother and Father separately timely appealed. Mother and Father both separately argued on appeal that the juvenile court erred in terminating their parental rights due to a cumulative out-of-home placement of greater than fifteen months.

¶22 We have jurisdiction under Arizona Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶23 In order to terminate parental rights, the juvenile court must find, by clear and convincing evidence, a minimum of one of the factors listed in A.R.S. § 8-533(B) (Supp. 2010) and that termination is in the best interest of the child. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995

P.2d 682, 685 (2000). In this case, the court found that A.C. had been in an out-of-home placement for fifteen months or longer, Mother and Father had been unable to remedy the circumstances that had caused the out-of-home placement, and there was a substantial likelihood that they would not be capable of proper parental control in the near future pursuant to A.R.S. § 8-533(B)(8)(c), as reasons for terminating their parental rights. "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶124 Father and Mother both separately argue that because they were not allowed to visit with A.C. for almost three years, the State failed to prove that there was a substantial likelihood that Father and Mother would not be capable of exercising proper and effective parental care and control of

A.C. We disagree. As a direct result of A.C.'s initial visit with Father, Mother and his paternal grandmother in March 2008, A.C. suffered a complete mental breakdown and required a psychiatric hospitalization for nine days. Based on the recommendation from A.C.'s therapist, these visits were permanently suspended due to A.C.'s traumatic response. Dr. Moe specifically testified that the fecal smearing and A.C.'s "very regressed, very primitive behavior" would likely recur if the visitations with Father and Mother resumed. A.C. was committed to the care, custody, and control of ADES and it therefore had the responsibility to ensure A.C.'s mental well-being and safety. The State's permanent revocation of the visitations did not result in its failure to prove that Father and Mother would not be capable of exercising proper and effective parental control of A.C. Rather, based on recommendations from mental-health professionals, the State acted diligently and properly in determining that these visitations would cause A.C. undue stress and instability. A.C. also initiated a letter to his team of case managers, guardian ad litem, mental-health professionals, and the court requesting no further contact with Father or Mother.

¶25 Despite Mother and Father largely complying with the remainder of ADES services, A.C. remained extremely fearful of Father, and Mother consistently appeared uninterested and

uninvolved in A.C.'s well-being. Dr. Moe specifically stated that A.C. had to be more trusting of Father before he could be successfully parented by Father. This trusting relationship never developed. Father argues he is currently parenting T.C. and he could therefore adequately parent A.C. However, "the fact that [a parent] is able to minimally act as an adequate parent for one child does not mean that [the parent] would be able to care for . . . other . . . children." *In re Maricopa County Juv. Action No. JS-5209 and JS-4963*, 143 Ariz. 178, 187, 692 P.2d 1027, 1036 (App. 1984).

¶126 Further, Mother maintains that Dr. Thal opined Mother could parent. This argument is misleading because Dr. Thal actually stated that Mother may be able to "demonstrate[] minimally adequate parenting skills in the foreseeable future" to T.C., not A.C., and A.C. has greater specialized needs and requires a higher level of care. See *In re Maricopa County Juv. Action No. JS-5209*, 143 Ariz. at 187, 692 P.2d at 1036 ("the fact that appellant is able to minimally act as an adequate parent for one child does not mean that she would be able to care for . . . other . . . children.").

¶127 Thus, A.C.'s extreme trauma, behavior and strong desire to cease all contact with Mother and Father, as well as Mother's lack of interest, A.C.'s fear of Father, and both Mother's and Father's inability to grasp the severity of A.C.'s

needs, were the main reasons cited by the professionals that Father and Mother would not be able to properly and effectively parent and control A.C. We agree that the court correctly determined there was a substantial likelihood that neither Mother nor Father would be capable of exercising proper and effective parental care and control of A.C.

¶128 Mother also contends that ADES failed to provide the family therapy and relationship counseling services recommended for Mother that would remedy the circumstances that caused A.C. to be in an out-of-home placement. First, therapeutic services were not uniformly recommended for Mother as Dr. Thal concluded that “[i]t seems very doubtful that [Mother] will respond to therapeutic intervention.” Additionally, Mother failed to attend the some of the therapeutic services that were offered to her. For example, Mother did not attend her scheduled bonding assessment with Dr. Moe and did not attempt to reschedule the assessment and Mother failed to participate in a behavioral health training course from which Sondersted felt she could benefit. Further, Mother and Father were asked to stop the parent training classes based on their negative behavior in the class. Next, although Dr. Thal recommended family therapy, he did not recommend it for A.C. and Mother and Father, but rather for T.C. and Mother and Father. Finally, the family therapy initially recommended for Mother, Father, and A.C. was

discontinued on the recommendation of A.C.'s therapist because of A.C.'s traumatic response and subsequent psychiatric hospitalization. Thus, ADES met its obligation to provide reasonable rehabilitative services to Mother and Father.

¶129 The court properly terminated Mother's and Father's parental rights to A.C. Despite being aware that A.C. was subjected to physical abuse and abhorrent living conditions, Mother and Father failed to remove A.C. from Grandparents' home. Additionally, Mother's lack of interest in A.C., A.C.'s extreme fear of Father, and both Mother's and Father's unpreparedness to adequately parent him based on his special needs and their inability to grasp the severity of his needs, led to the unanimous conclusion of the CPS case managers, mental-health professionals, and FCRB that it was in A.C.'s best interest to terminate Mother's and Father's parental rights to A.C.

CONCLUSION

¶30 For the foregoing reasons, we affirm the juvenile court's judgment terminating Mother's and Father's parental rights to A.C.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PATRICIA K. NORRIS, Judge