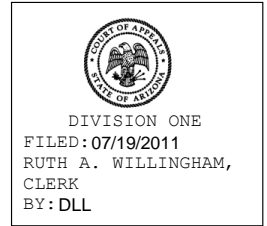


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DEVINA H. ,) 1 CA-JV 11-0036
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, AMEER H. ,) ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD18858

The Honorable Aimee L. Anderson, Judge

AFFIRMED

David W. Bell
Attorney for Appellant

Mesa

Thomas C. Horne, Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

N O R R I S, Judge

¶1 Devina H. ("Mother") appeals the termination of her parental rights to Ameer H. ("A.H."), arguing the State failed to present sufficient evidence termination was in A.H.'s best

interests. We disagree and affirm the juvenile court's termination order.

FACTS AND PROCEDURAL BACKGROUND

¶2 In February 2010, after police investigated Mother for physically abusing three children under her guardianship, Child Protective Services ("CPS") took A.H.¹ into temporary physical custody and the Arizona Department of Economic Security ("ADES") petitioned for dependency. Although Mother denied the allegations in the petition, the juvenile court found A.H. dependent. In June 2010, A.H.'s guardian ad litem ("GAL") moved to appoint A.H.'s placement as a permanent guardian, and in July 2010, ADES moved to terminate Mother's parental rights on the ground of wilful abuse under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2) (Supp. 2010),² which it later amended to include the additional statutory grounds of mental illness, A.R.S. § 8-533(B)(3), and the nature of felony conviction, A.R.S. § 8-533(B)(4).

¶3 The juvenile court held a contested hearing on the permanent guardianship and severance motions on November 3, 2010, and January 31, 2011. Two detectives testified the

¹A.H. was born on June 4, 2004, and is subject to the Indian Child Welfare Act. 25 U.S.C. § 1903(4) (2006).

²Although the Arizona Legislature amended certain statutes cited in this decision after the proceedings, the revisions are immaterial. Thus, we cite to the current version of the statutes.

injuries to the children under Mother's guardianship were severe and extensive, and the doctor who evaluated one of the children after she reported the abuse testified the child's injuries were significant and potentially life-threatening. The psychologist who consulted with A.H. testified A.H. told him Mother hit him with a belt and spanked him, he saw Mother hitting the other children, and he was scared when the abuse was occurring. The psychologist also testified continued custody with Mother would "very likely" result in severe physical or emotional injury to A.H. and, because of A.H.'s anxious attachment and need for stability coupled with the lengthy treatment required for a person who inflicts physical abuse, a permanent guardianship would not be appropriate for A.H.

¶4 The supervising psychologist and the graduate psychology student who administered Mother's psychological evaluation testified Mother had Bipolar II Disorder and Antisocial Personality Disorder. They both testified Antisocial Personality Disorder negatively impacted Mother's ability to parent because people with this disorder typically lack empathy, disregard the safety of others, and act aggressively and impulsively without any remorse. Moreover, they testified that although the impulsive, manic, and depressive behaviors associated with Bipolar II Disorder may be regulated with medication and therapy, Antisocial Personality Disorder has no

effective treatment. They also testified any CPS services offered to Mother would be futile to treat that disorder and a child in Mother's care would be "at risk of physical abuse or neglect."

¶15 A CPS unit supervisor testified adoption was in A.H.'s best interests because it would provide him with permanency and safety from Mother's physical abuse. The supervisor also expressed concern about what A.H. had observed and what trauma he had suffered. She stated guardianship was not appropriate because it would not provide A.H. with stability as Mother could disrupt the guardianship. Conversely, a caseworker from the Tohono O'odham Nation ("Nation") Child Welfare Division testified the Nation preferred children to be placed in a guardianship because it allowed the children to maintain ties with the Nation. The caseworker also testified, however, A.H. would likely sustain "serious physical or emotional damage" if returned to Mother and A.H. should not "ever return to his mother." After ADES counsel cross-examined the caseworker, she conceded adoption would be more appropriate than family reunification as of the date of the hearing if the court found insufficient evidence to grant a guardianship or if a guardianship was not in the child's best interests.

¶16 Mother refused to testify about the child-abuse allegations, invoking her Fifth Amendment right to do so. She

also denied observing injuries or scars on the children in her custody. She acknowledged, however, that she had pled guilty to child abuse and endangerment. Mother testified she saw A.H. daily before her incarceration and he was bonded to her, although A.H. resided with his grandfather for the 2009-10 school year because it "was easier for [Mother's] father to transport [A.H.] to and from school while [Mother] was working." Mother also testified she had been participating in parenting classes and would work to regain custody of A.H. because he is her son and "needs to be with [her]."

¶17 In closing arguments, A.H.'s GAL, the Nation's counsel, and Mother's counsel requested the juvenile court grant permanent guardianship, despite presenting no evidence the current placement was willing to become A.H.'s permanent guardian. Based on the evidence presented at the hearing, the juvenile court found termination of Mother's rights to A.H. was appropriate based upon the statutory grounds of wilful abuse, nature of felony conviction, and mental illness. The court also found beyond a reasonable doubt -- as required by the Indian Child Welfare Act -- that "continued custody is likely to result in serious emotional and physical harm to the child[]," and ADES made "active efforts" to provide remedial services and programs to prevent the breakup of the Indian family. Further, the court found termination was in A.H.'s best interests. It explained

A.H. would benefit from termination and subsequent adoption by the current placement because the placement "will continue to provide an appropriate, loving, safe, [and] nurturing [home], free from abuse and neglect, free from emotional abuse and neglect, free from violence, free from anger, free from mental illness," and A.H. "would suffer a detriment" if Mother's rights were not terminated:

The Court further finds, and this is the [linchpin] between severance and adoption, and permanent guardianship that this child would suffer a detriment if his parental rights to his mother were not terminated. This woman poses a serious, serious high risk of abuse towards this child. And that would be detrimental for him to maintain any type of legal relationship with his mother in order for him to move on and be free from the life of abuse that he had to witness and that he had to sustain.

Mother timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235(A) (2007).

DISCUSSION

¶18 Mother argues the State failed to present sufficient evidence that terminating Mother's rights was in A.H.'s best interests because, first, terminating Mother's parental rights also severed A.H.'s relationship to the Nation, which is contrary to the best interests of the Indian child, and second, the risk of abuse was not supported by the record because the terms of Mother's probation prohibited her from having

unsupervised contact with any person under the age of 18. We disagree; the State presented sufficient evidence to support the juvenile court's best-interests finding.

¶19 The juvenile court may terminate the parent-child relationship if it finds by a preponderance of the evidence termination is in the child's best interests.³ *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010); see A.R.S. § 8-533(B). We view the "juvenile court's termination order in the light most favorable to sustaining the court's decision."⁴ *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). Although the Indian Child Welfare Act requires the juvenile court to make certain additional findings using a beyond-a-reasonable-doubt standard to terminate parental rights to an Indian child, it does not require a higher standard of proof for state-law findings such as best interests. *Valerie M.*

³The court must also find clear and convincing evidence demonstrating a statutory ground for termination. A.R.S. § 8-537(B) (2007). Mother does not challenge the juvenile court's findings regarding the specific statutory grounds for termination or the findings required under the Indian Child Welfare Act.

⁴As the trier of fact in a termination proceeding, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," so we will accept those findings unless no reasonable evidence supports them. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004).

v. Ariz. Dep't of Econ. Sec., 219 Ariz. 331, 335, ¶ 16, 198 P.3d 1203, 1207 (2009).

¶10 To support a best-interests determination, the court "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). To find an affirmative benefit, the court may consider whether "there is a current adoptive plan for the child or that the child will be freed from an abusive parent." *Id.* at 6, 804 P.2d at 735. The court may also consider whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶11 Here, ADES presented evidence of an affirmative benefit of termination -- the current placement was willing to adopt A.H. -- and the Nation's caseworker stated the Nation was "comfortable with" the placement. Although Mother argues "guardianship would provide a greater benefit than adoption," no party presented evidence to the court, other than the Nation's caseworker's testimony the Nation generally preferred guardianship over adoption, that the placement was willing to become A.H.'s permanent guardian or that guardianship was otherwise appropriate for A.H. Furthermore, the CPS unit supervisor and the psychologist who consulted with A.H.

testified guardianship was not appropriate for A.H. because it would not provide permanency or stability; only adoption would provide such stability.

¶12 Additionally, ample evidence supports the juvenile court's finding A.H. would be harmed by a continuation of the parental relationship. The supervising psychologist and the graduate student who evaluated Mother both testified Mother's mental illnesses negatively affect her ability to parent and a child in Mother's care would be at "risk of physical abuse or neglect" because there is no effective treatment for the problematic behaviors associated with Antisocial Personality Disorder. The psychologist who consulted with A.H. testified A.H. had anxious attachment; his continued custody with Mother would "very likely" result in severe injury to him; and if not provided with a stable, permanent home, A.H. may act out "down the road," have problems with school and his social environment, and experience feelings of insecurity and anger. Furthermore, the doctor who evaluated one of the children after the abuse allegations testified that when a child witnesses violence in the home, that child's brain suffers biological trauma, which can result in school failures, dysphoria, and sometimes depression, emotional difficulties, sleep disorders, and post-traumatic stress disorder.

¶13 In addition to the sentencing minute entry following Mother's guilty plea to child abuse, ADES also presented the juvenile court with multiple exhibits -- including CPS reports, police reports, and photographs -- chronicling the abuse Mother had inflicted on the children under her guardianship. Although the terms of Mother's probation prohibit her from having unsupervised contact with any person under the age of 18 and thus theoretically protect A.H. from physical abuse, Mother's behavior was such that continuing her parental rights would not, as the juvenile court stated, allow A.H. to "move on" and be "free from . . . abuse." Therefore, ample evidence supports the juvenile court's finding termination was in A.H.'s best interests.

CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's termination order.

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

_____/s/_____
PHILIP HALL, Judge

_____/s/_____
DONN KESSLER, Judge