

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DANELLE C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND S.H.,
Appellees.

No. 2 CA-JV 2014-0092
Filed May 8, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD172956
The Honorable Kathleen Quigley, Judge

AFFIRMED

COUNSEL

Emily Danies, Tucson
Counsel for Appellant

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Mark Brnovich, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 Danelle C. appeals from the juvenile court's July 2014 order terminating her parental rights to S.H., born in January 2009, on the grounds of length of time in court-ordered care (fifteen months) and prior out-of-home placement pursuant to A.R.S. § 8-533(B)(8)(c) and (B)(11). She argues there was insufficient evidence that termination of her parental rights was in S.H.'s best interest. We affirm.

¶2 The record, viewed in the light most favorable to sustaining the juvenile court's order, *see Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005), establishes the following history of this case, which the juvenile court summarized in its ruling. Danelle had a lengthy history of substance abuse and domestic violence involving S.H.'s father, Joseph H. It appears Danelle's contacts with the Department of Child Safety (DCS),¹ began in 2004, before she became involved with Joseph, with respect to her physical and emotional abuse and neglect

¹DCS is substituted for the Arizona Department of Economic Security (ADES) in this decision. For simplicity, our references to DCS encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

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of her two daughters. The children were adjudicated dependent in 2005 and in 2007, Danelle relinquished her rights to her daughters.

¶3 In 2009 DCS removed then eight-month-old S.H. from Danelle and Joseph's care after DCS received reports that Danelle was mentally ill and had threatened to kill herself, Joseph, and S.H. Joseph tested positive for amphetamine and cocaine, and Danelle tested positive for methamphetamine and cocaine. Joseph and Danelle admitted amended allegations in a dependency petition filed by DCS, and S.H. was found dependent as to both parents. The dependency was dismissed in October 2010 after the court found both parents had complied with their case plan.

¶4 Between June 2010 and May 2011, law enforcement officers went to the home at least fifteen times in response to reports of domestic violence. And in May 2011, S.H. again was removed from the parents' home based on reports of domestic violence and substance abuse; Danelle tested positive for amphetamine and methamphetamine. DCS filed a dependency petition and S.H. was adjudicated dependent for a second time after Danelle admitted allegations of an amended dependency petition. Danelle was provided a plethora of services but did not fully participate in or benefit from those services. In May 2013, S.H. filed a motion to terminate Danelle's parental rights on the grounds of neglect, mental illness, substance abuse, length of time in care, and prior out-of-home placement. DCS joined in the motion, seeking to sever Danelle's rights on all but the grounds of abuse and substance abuse.

¶5 The juvenile court terminated Danelle's rights on the two out-of-home placement grounds. It entered extensive factual findings and legal conclusions in a thorough, fourteen-page under-advisement ruling. This appeal followed.²

²Joseph's parental rights also were terminated and he, too, appealed. We affirmed the termination order in our recent memorandum decision. *Joseph H. v. Dep't of Child Safety*, No. 2 CA-JV 2014-0093 (memorandum decision filed Apr. 10, 2015).

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¶6 We review a juvenile court's order terminating parental rights for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8, 83 P.3d 43, 47 (App. 2004). We view the evidence and all reasonable inferences that may arise from that evidence in the light most favorable to upholding the ruling and will affirm so long as there is reasonable evidence to support the factual findings upon which the order is based. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). As the petitioners, DCS and S.H. were required to prove, by clear and convincing evidence, the existence of statutory grounds for terminating Danelle's parental rights; they also were required to establish by a preponderance of the evidence that termination of Danelle's parental rights was in S.H.'s best interest. See A.R.S. §§ 8-533(A), (B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 22, 41, 110 P.3d 1013, 1018, 1022 (2005).

¶7 In its under-advisement order, the juvenile court entered thorough factual findings related to the specified statutory grounds for terminating the parents' rights as well as the child's best interest. It found, inter alia, that the risk to S.H. posed by the parents "ha[d] not abated and both parents are not able to recognize what is in their child's best interest nor do they recognize the effect of their behaviors on [him]." The court further found the time that S.H. was in court-ordered care had "begun to significantly impact [S.H.'s] mental health." Additionally, the court found S.H.'s current foster placement, with whom he had lived since he was two years of age, was willing to adopt him, removing him from their care would be harmful, and adoption would provide him permanency and stability. It would be detrimental to S.H., the court added, if severance were not granted because he "is being pulled in two different directions by the very people who should be primarily concerned with his well-being," and the "disharmony between the parents[] is a constant problem" for him.

¶8 Danelle does not challenge the juvenile court's determination that termination of her parental rights was warranted on time-in-care grounds. She contends only there was insufficient evidence that termination of her parental rights to S.H. was in the

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child's best interest. She argues that a bond existed between her and S.H. and "[t]he idea that simply being adoptable will serve to function as evidence of best interests of children does not take into account the psychological reality of additional confusion and abandonment issues for S.[H.]" Danelle also argues that the juvenile court unfairly concluded she does not care about S.H.'s well-being because she did not want the foster parents to adopt him.

¶9 To establish that termination is in a child's best interests, a preponderance of the evidence must show termination would benefit the child, or continuing the parental relationship would harm the child. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684, 689 (App. 1998). Among the factors the court properly may consider is whether the child is adoptable and evidence "that an existing placement is meeting the needs of the child." *Mary Lou C.*, 207 Ariz. 43, ¶ 19, 83 P.3d at 50; *see also In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990) (to establish severance in child's best interests, "petitioner might prove that there is a current adoptive plan for the child").

¶10 The juvenile court did not consider improper factors in finding termination of Danelle's parental rights in S.H.'s best interest. Reasonable evidence supported the court's best-interest findings. To the extent Danelle is asking this court to reweigh that evidence, we will not do so. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). It is the juvenile court's function to observe the parties, judge the credibility of witnesses, weigh the evidence, and make appropriate factual findings. *Id.* ¶ 4.

¶11 We affirm the juvenile court's order terminating Danelle's parental rights to S.H. for the reasons stated herein.