IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

KATHLEEN J.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, A.N., AND A.G.,
Appellees.

No. 2 CA-JV 2015-0086
Filed August 10, 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NOT FOR PUBLICATION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 Pinal County
No. JD201400090SUPP
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Brammer[1] concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Kathleen J., mother of A.N. and A.G., born in 2012 and 2014, appeals from the juvenile court's order terminating her parental rights to the children based on her history of chronic substance abuse, consent to adopt, and length of time in care. *See* A.R.S. § 8-533(B)(3), (7), and (8)(a), (b).[2] On appeal, Kathleen argues the court failed to state "how the children would benefit from terminating her rights or how they would be harmed by a continuing relationship with her." For the reasons set forth below, we affirm.

¶2 To terminate a parent's rights, the juvenile court must find at least one statutory ground for termination exists and severance of a parent's rights is in the child's best interests. § 8-533(B). The existence of a statutory ground for termination must be proved by clear and convincing evidence, and a preponderance of the evidence is required to establish that severance will serve the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 16, 41, 110 P.3d 1013, 1017, 1022 (2005). We will affirm the court's order terminating a parent's rights unless we can conclude as a matter of law that no reasonable person could find the essential elements proven by the evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 6, 9-10, 210 P.3d 1263, 1265-66 (App.

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[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]The juvenile court also terminated the parental rights of the children's fathers, who are not parties to this appeal.

2009). On review, we consider the evidence in the light most favorable to upholding the juvenile court's order. *Id.* ¶ 10.

¶3 In May 2014, the juvenile court adjudicated A.G. dependent as to Kathleen, who had pled no contest to the allegations in a dependency petition filed by A.G.'s guardian ad litem. In July 2014, the court also adjudicated A.N. dependent as to Kathleen after she had admitted the allegations in the dependency petition filed by the Department of Child Safety (DCS). DCS filed a motion to terminate the parents' rights to the children in January 2015. At the conclusion of the initial severance hearing held in March 2015, the court stated DCS had proven "by clear and convincing evidence all of the allegations contained in the Motion for Termination . . . [a]nd that the termination of parental rights is in the best interest of the minor children," and ordered DCS to prepare the "findings of fact and conclusions of law within 10 days."

¶4 The juvenile court signed the written findings of fact and conclusions of law on May 1, 2015, after giving the parties an opportunity to object. The court comprehensively summarized the facts and concluded, in part, as follows:

> 5. The Department has proven, by a preponderance of the evidence, that termination of the parent-child relationship . . . is in the children's best interest. Termination of the relationship would benefit the children because it would further the plan of adoption, which would provide the children with permanency and stability. The children are residing in an adoptive placement which is meeting all of their needs. The children are considered adoptable and another adoptive placement could be located should the current placement be unable to adopt.
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> 6. [A.N.] is placed with grand-parents who have a significant relationship with the child. [A.G.] is not placed with a

> grandparent or another member of the child's extended family including a person who has a significant relationship with the child, which is in her best interests, because DCS is unaware of any such person who is willing, able, and/or appropriate to care for the child. [A.G.] is placed in a kinship placement with a family friend. The children's current placement is the least restrictive placement available consistent with their needs.

¶5 On appeal, Kathleen raises only one issue—the juvenile court violated her due process rights by failing to state on the record the basis for its best-interests finding. Acknowledging that she waived this claim by failing to raise it below, Kathleen asks us to review for fundamental error. For the reasons set forth below, we find no error, much less fundamental error. We initially note that we find disingenuous Kathleen's failure to even mention the court's extensive written ruling, while instead suggesting that the court's oral statement at the severance hearing that termination was "in the best interest of the minor children" was the only reason given to support its best-interests finding. The court expressly referred to and contemplated a written ruling both when it made its oral ruling at the severance hearing and in its written minute entry order of the same date. And, on May 1, 2015, the court signed and filed that ruling, which constitutes the final decision in this matter.

¶6 The juvenile court was required to determine whether the children would benefit from termination or whether they would be harmed if they remained in her care. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004); *see also* A.R.S. § 8-538(A); Ariz. R. P. Juv. Ct. 66(A), (F). In making its best-interests assessment, the court correctly considered the existence of current adoptive plans and noted the children are adoptable. *See Mary Lou C.*, 207 Ariz. 43, ¶ 19, 83 P.3d at 50. In addition, the court was permitted to consider the fact that the children's current placements met their needs. *See id.* The record shows the court applied the proper legal standard in making its

best-interests determination. *See Ruben M. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 236, ¶ 25, 282 P.3d 437, 442 (App. 2012) (findings of fact and conclusions of law should be sufficiently specific to enable appellate court to provide effective review). Besides failing to mention the court's written termination order, Kathleen does not challenge the legal sufficiency of the best-interests finding in that order. For all of these reasons, we reject Kathleen's wholly unsupported argument on appeal.

¶7 Finally, to the extent DCS argues Kathleen's erroneous reference in her notice of appeal to the "February 13, 2015" order rather than the May 1, 2015 order from which she appeals deprives this court of jurisdiction, we disagree. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (court of appeals lacks jurisdiction to review matters not contained in notice of appeal). Kathleen's incorrect reference to a non-existent order appears to be a typographical error. In addition, the record contains only one severance order. Rule 104(B), Ariz. R. P. Juv. Ct., does not contemplate a situation like this one, in which the actual notice appealed from is clear. *See also* Ariz. R. Civ. App. P. 8(c). Moreover, DCS does not assert it was unaware that Kathleen was appealing from the May 1, 2015 order, nor would the record support such an argument.

¶8 For the foregoing reasons, we affirm the juvenile court's order terminating Kathleen's parental rights to A.N. and A.G.