IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DAVID S. AND ANN S.,
Appellants,

v.

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

PATRICK S.,
Appellant,

v.

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

Nos. 2 CA-JV 2015-0170 and 2 CA-JV 2015-0171 (Consolidated)
Filed January 28, 2016

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NOT FOR PUBLICATION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. JD20140264
The Honorable Geoffrey L. Ferlan, Judge Pro Tempore

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 In this consolidated appeal, intervenors and appellants Ann S. and David S., great aunt and uncle of S.S., born in August 2013, and Patrick S., great uncle of S.S.,[1] appeal from the juvenile court's September 2015 order continuing S.S.'s placement with her

[1]Although it is not clear whether Patrick is S.S.'s maternal grandfather or great uncle, and although the juvenile court referred to him as the former, that distinction is not essential to our ruling.

foster parents and denying appellants' motions to have S.S. placed with them.[2] We affirm for the reasons stated below.

Background

¶2 The Department of Child Safety (DCS)[3] removed then eight-month-old S.S. from the family home in April 2014, after which she was placed in shelter care until May 2014, when she was placed with the foster parents where she has remained; S.S. was subsequently adjudicated dependent. The parents' rights were severed in October 2014 and January 2015; the juvenile court granted Patrick's, and Ann's and David's motions to intervene and considered their motions for placement during a series of evidentiary hearings held between February and August 2015. The court denied both motions for placement and these appeals followed. *See Lindsey M. v. Ariz. Dep't of Econ. Sec.*, 212 Ariz. 43, ¶ 9, 127 P.3d 59, 61-62 (App. 2006) (order ratifying or changing child's placement during dependency is final and appealable order).

¶3 Pursuant to A.R.S. § 8-845(A)(2), the juvenile court has broad discretion in determining the proper placement of a dependent child, *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008), and its primary consideration must always be the child's best interest, *see* A.R.S. § 8-845(B) (child's health and safety of "paramount concern"); *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117. We review a court's placement decision only for an abuse of discretion. *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117.

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[2]Because the Department of Child Safety filed a notice of non-participation on appeal, we do not address that portion of the juvenile court's ruling denying the department's motion for removal of S.S. from the foster parents' home.

[3]DCS is substituted for the Arizona Department of Economic Security in this decision. *See generally* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, § 20.

¶4 Section 8-514(B), A.R.S., provides that "[t]he department shall place a child in the least restrictive type of placement available, consistent with the needs of the child," and sets forth an order for placement listing a "grandparent" in second position, a "member of the child's extended family, including a person who has a significant relationship with the child" in third position, and "licensed family foster care" in fourth position. As we determined in *Antonio P.*, however, § 8-514(B) "clearly states that the order of placement is a preference, not a mandate." 218 Ariz. 402, ¶ 12, 187 P.3d at 1118. The statute "provides the juvenile court with the legislature's preference for where or with whom a child is placed but it does not mandate that the order of preference be strictly followed when a placement is not consistent with the needs of the child," and instead "requires only that the court include placement preference in its analysis of what is in the child's best interest." *Id.*

¶5 Relying on "the evidence presented during the proceedings, the demeanor of the witnesses, the file, the arguments of counsel, and A.R.S. §§ 8-514(B) & 8-845(A)," the juvenile court noted it had considered the following factors before it denied the placement motions: S.S. is bonded to her foster family, who is willing to facilitate contact between S.S. and her mother and extended maternal family; it is in S.S.'s best interest to remain with her foster family, with whom she has lived for more than half of her life and has formed "significant bonds"; "[d]ue to her age, the number of removals and/or disruptions from primary caregivers, the length of time she has lived with [her foster family], her bond with [her foster parents and their children, S.S.] is at a high risk of having attachment issues and experiencing emotional harm if removed from [her foster family]"; and, even if S.S. were placed in "another safe and appropriate home," she would still be at risk for trauma.

¶6 The juvenile court also commended Ann and David for "their investment of love, time, and resources to establish such a positive relationship" with S.S. and concluded that ongoing contact with them is in S.S.'s best interest. The court further noted that if the foster parents were unable to provide S.S. with a permanent home, Ann and David would be the least restrictive alternative for

placement.[4] Based on clearly articulated factors, the court concluded continued placement with the foster parents was in S.S.'s best interest. The court considered the evidence and made clear it had carefully weighed that evidence in choosing among the potential placements for S.S. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, ¶ 10, 225 P.3d 604, 607 (App. 2010) (reviewing court "look[s] to the record to determine whether reasonable evidence supported the juvenile court's order").

¶7 An early childhood clinician acknowledged that S.S. had made progress due to the foster parents' intervention and assistance with her "exercises." Additionally, due to the trauma S.S. had suffered based on neglect, substance exposure at birth, and multiple placements,[5] the clinician expressed concern that S.S. would "regress in progress" if she were removed from her foster family. Testifying she had "never questioned [Ann's and David's] ability to give [S.S] a good home and to . . . meet her needs and her delays," the clinician nonetheless noted her concern with removing S.S. from the foster parents' home, where "she is already settled in" with a family to whom she is "bonded and attached." Similarly, a child-family therapist who opposed removing S.S. from her foster home testified that S.S. has a strong bond with her foster parents,

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[4]We recently granted Ann's and David's request for a stay of the adoption proceedings in this matter pending this court's issuance of the mandate in this appeal, *David S. v. Ferlan*, No. 2 CA-SA 2015-0072 (order filed Jan. 4, 2016), and determined that all appellants have standing to seek such a stay, *David S. v. Ferlan*, No. 2 CA-SA 2015-0072 (decision order filed Jan. 21, 2016).

[5]To the extent Ann and David challenge the juvenile court's reliance on evidence regarding S.S.'s placement changes, we conclude it was for the juvenile court, and not this court, to determine whether the "disruptions" in S.S.'s life were tantamount to placement changes and the impact of such events on her. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002) (resolving conflicts in evidence is province of juvenile court; appellate court will not re-weigh evidence on review).

who are meeting her needs. She further testified that S.S. requires "'[c]ontinuity and stability'" and that even though Ann and David are an appropriate placement, "'any disruption to [S.S.'s] current relationship [with her foster family] will be detrimental to [her] social and emotional health, as it would risk undermining the strides she has made.'"

Ann's and David's Arguments

¶8 Ann and David, who live in Indiana, were approved as a placement for S.S. in February 2015. On appeal, they first argue the evidence does not support the juvenile court's finding that placement with them would limit or eliminate S.S.'s contact with the parties and other relatives, and argue, to the contrary, that continued placement in Arizona would result in that outcome. In its ruling, the court found, "If [S.S.] were moved out of state, her contact with the biological mother, biological maternal grandmother, [Patrick and foster family] would be limited, and possibly eliminated." Although David and Ann correctly point to testimony stating that several relatives, including the mother and maternal grandmother currently live in Indiana, we nonetheless are not persuaded by their argument.

¶9 Despite acknowledging that she feels a personal connection with S.S.'s mother, Ann additionally acknowledged the following: Ann's own family is "estranged" from S.S.'s mother and the maternal grandmother and Ann did not have a relationship with them at the time of the hearing in May 2015; S.S.'s mother and grandmother have a "bad feeling" about Ann's part of the family "in general"; and, Ann and David did not visit S.S. during the first six months of her life even though S.S. and her mother were living in Indiana. In contrast, there was evidence that the foster parents regularly communicated with S.S.'s mother throughout the dependency and intend to "continue a relationship with her." Additionally, the DCS case worker agreed that a relationship between S.S. and her mother was more important than "a possible relationship with extended family members."

¶10 Ann and David also maintain the juvenile court erroneously found that placement with them would cause trauma or emotional harm to S.S., disrupt her development, or cause her to regress. Ann and David argue that they are an appropriate placement for S.S., and further support their claim by citing the following testimony: an individual who performed an assessment of S.S.'s relationship with Ann and David testified that S.S. "has the ability to form . . . a secure relationship" with them;[6] the DCS case manager testified S.S. should be placed with Ann and David in keeping with the department's preference to place children with relatives; and, the Court Appointed Special Advocate recommended S.S. be placed with Ann and David.

¶11 We initially note that, not only does the record support Ann's and David's claim that they are an appropriate placement for S.S., but the juvenile court so found. However, that is not the issue before us. Rather, despite finding that Ann's and David's home is "safe and appropriate," the court nonetheless determined continued placement with the foster parents is in S.S.'s best interest, a finding it was entitled to make and which, for the reasons previously stated, the record fully supports. *See* A.R.S. § 8-845(B); *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117.

¶12 Moreover, by reasserting the facts they believe establish their fitness to have S.S. placed with them and by suggesting the juvenile court assigned too much or too little weight to certain factors, Ann and David are asking us to invade the province of the court by finding facts and reweighing evidence. This we cannot do. "[R]esolution of . . . conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002); *see also Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005)

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[6] Notably, however, the same individual responded affirmatively when asked, "[I]f a child is in a secure, attached, adoptive placement, and they've had multiple removals, is it optimal for them to not have to experience another removal?"

(reweighing evidence not function of appellate court, which determines only whether substantial evidence supports ruling). Accordingly, because the record contains substantial evidence to support the court's best-interest determination, we do not conclude the court abused its discretion in denying Ann's and David's motion for placement. *Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928.

¶13 Finally, Ann and David argue the juvenile court failed to give sufficient weight to § 8-514(B) regarding placement with relatives. In support of their argument, they assert that in the absence of the identification of a specific risk to S.S. or evidence of the likelihood she would suffer harm if placed with them, the court's ruling makes it far more difficult for out-of-state relatives seeking placement. As previously noted, the court was provided with reasonable evidence to support its best-interest finding that placement with the foster parents was in S.S.'s best interest. And, once again, the court included placement preference in its best interest determination, as it was required to do. *See Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118. Moreover, in light of the evidence that Ann and David would provide a loving and appropriate home for S.S., the court predictably found no evidence of a specific risk or a quantifiable likelihood S.S. would suffer harm if she were placed with them. Nonetheless, continued placement with foster parents did not require evidence of any risk to S.S. by Ann or David. *Id.*

Patrick's Arguments

¶14 On appeal, Patrick argues there was insufficient evidence that placement with him was *not* in S.S.'s best interest. He also asserts that § 8-514(B) and DCS's policy require placement with a family member "'above' all others," including the foster family.[7]

[7]The foster parents maintain § 8-514(B)(3) places them "in the same legal position" as Patrick for purposes of placement because they have a significant relationship with S.S. However, notwithstanding the ambiguity in the record regarding Patrick's relationship to S.S. or any preferences that may exist, because preferences are not mandatory and a child's best interest is of

Pointing to the training he received to address the special needs of his own children, Patrick argues he was "more than capable of meeting S.S.['s] special needs." Additionally, although Patrick concedes there was evidence that S.S. "could suffer trauma and would risk additional attachment issues and emotional harm" if she were moved from her foster family, Patrick argues that risk was speculative.

¶15 Patrick testified that his "specialized training" consisted of attending physical and speech therapy sessions with his own children. When asked to summarize S.S.'s special needs, Patrick stated generally "[j]ust her speech and occupation."[8] Patrick also acknowledged at the August 2015 hearing that he had not seen S.S. for "a fairly lengthy period of time," and that she had "seemed like she was a little dazed on who [Patrick and his wife] were" when they saw her recently. In addition, a DCS supervisor expressed concern that Patrick's wife had failed to report promptly what the wife apparently perceived to be a serious medical condition related to S.S.

¶16 To the extent Patrick suggests the juvenile court was required to find that placing S.S. with him was *not* in her best interest, we disagree. As we concluded in *Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118, "the court is not obligated to find that placement with a grandparent is *not* in the child's best interest before placing the child with an aunt . . . . The statute requires only that the court include placement preference in its analysis of what is in the child's best interest." And although this case does not involve competing interests between relatives as in *Antonio P.*, we nonetheless conclude the court's consideration of the statutory preference for placement in making its best interest determination satisfied the statute's requirements, and that it had reasonable

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paramount importance, we decline to address this argument. *Antonio P.*, 218 Ariz. 402, ¶ 1, 187 P.3d at 1116.

[8]In contrast, one of the foster parents testified in detail about S.S.'s physical challenges and eating problems, and identified the specialists the foster parents had consulted to address these issues.

evidence to support its finding that placement with Patrick was not in S.S.'s best interest. Moreover, to the extent Patrick also asks us to invade the province of the court by finding facts and reweighing the evidence, we will not do so. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207; *see also Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928.

Disposition

¶17 For all of these reasons, we affirm the juvenile court's denial of the placement motions.