

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

L.M., T.M., AND M.N.,
Appellants,

v.

DEPARTMENT OF CHILD SAFETY AND MISTY H.,
Appellees.

No. 2 CA-JV 2016-0199
Filed March 14, 2017

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NOT FOR PUBLICATION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. JD201765
The Honorable Jane Butler, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellants

L.M., T.M., & M.N. v. DEPT OF CHILD SAFETY
Decision of the Court

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

VÁSQUEZ, Judge:

¶1 L.M., T.M., and M.N. appeal from the juvenile court’s October 2016 order terminating the parental rights of their mother, Misty H., on the grounds of length of time in court-ordered care (nine months or longer), A.R.S. § 8-533(B)(8)(a), and prior removal from court-ordered care, § 8-533(B)(11). The children challenge the court’s finding that termination of Misty’s parental rights was in their best interests. We affirm for the reasons stated below.¹

¶2 Misty has had a lengthy history of substance abuse, commencing as early as 2006, when a child who is not the subject of this appeal, T.-M., was born exposed to substances. Although Misty received services over the years, in May 2012, T.M. was also born substance-exposed. The Department of Child Safety (DCS) took custody of the children and filed a dependency petition, alleging, inter alia, the children were being neglected because of Misty’s substance abuse and that she and the father had been engaging in

¹Misty appealed the juvenile court’s order terminating her rights to L.M., T.M., and M.N., as well as two other children, T.-M. and J.Z., but her appeal was dismissed after appointed counsel failed to file an opening brief. Counsel’s untimely amended affidavit pursuant to Rule 106(G)(1), Ariz. R. P. Juv. Ct., in which counsel avowed he had found no non-frivolous issues to raise on appeal, was denied as moot.

L.M., T.M., & M.N. v. DEPT OF CHILD SAFETY
Decision of the Court

domestic violence and could not provide the children with stable housing. L.M., born in December 2008, T.-M., and T.M. were adjudicated dependent in July 2012. M.N. was born in July 2013, and DCS filed a dependency petition as to him; he was adjudicated dependent in August 2013.

¶3 Because Misty maintained sobriety and complied with the case plan, the four children were returned to her and the dependency was dismissed in July 2014. But Misty relapsed and in July 2015, DCS took custody of the children and filed a dependency petition. The children were adjudicated dependent in October. In December, Misty gave birth prematurely to another child, J.Z., who is not a party to this appeal but was subsequently adjudicated dependent after Misty continued to abuse drugs. Misty failed to comply with her case plan in the ensuing months and continued to use drugs, resulting in the suspension of visitation and a change in the case plan from reunification to severance and adoption. At the court's direction, DCS filed a motion to terminate Misty's parental rights to all five children, which the court granted after a contested severance hearing in October 2016.

¶4 A parent's rights may be terminated if the juvenile court finds by clear and convincing evidence that at least one statutory ground for severance exists and a preponderance of the evidence shows termination of the parent's rights is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "Because the juvenile court is in the best position to weigh evidence and assess witness credibility, we accept the juvenile court's findings of fact if reasonable evidence and inferences support them, and will affirm a severance order unless it is clearly erroneous." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 9, 365 P.3d 353, 355 (2016); *see also Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008) (appellate court views evidence in light most favorable to upholding juvenile court's ruling).

¶5 The children contend there was insufficient evidence to support the juvenile court's finding that it was in their best interests to terminate Misty's parental rights. They argue the court did not give sufficient weight to their wishes to maintain a relationship with their

L.M., T.M., & M.N. v. DEPT OF CHILD SAFETY
Decision of the Court

mother. They also assert the court erred by failing to consider the less intrusive alternative of a permanent guardianship by the maternal grandmother.

¶6 To establish that termination is in a child's best interests, a petitioner must show how the child would benefit from termination or be harmed by the continuation of the parent-child relationship. *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). "Of foremost concern" is ensuring that the child's interest in a stable and secure environment is protected. *Demetrius L.*, 239 Ariz. 1, ¶ 15, 365 P.3d at 356. That a child's current placement is meeting the child's needs is a proper factor for the court to consider in determining a child's best interests. See *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court does not "weigh alternative placement possibilities to determine" if termination is in child's best interests). So, too, is the fact that the child is in a home where the placement wishes to adopt the child. See *Demetrius L.*, 239 Ariz. 1, ¶ 16, 365 P.3d at 356-57.

¶7 Here, the juvenile court articulated the correct standard for deciding the issue of best interests and made specific factual findings at the end of the hearing, on the record. Among those findings is that the children are in a good placement with their maternal grandmother, who wishes to adopt them, which the court identified as a benefit of termination. And, the court found, the children would have contact with each other and J.Z., whose maternal aunt and uncle intended to adopt him. The court specified that it would be detrimental to the children not to terminate Misty's rights because, notwithstanding the years the family has been in the system, Misty "continues to abuse drugs and does not have her own home and has not demonstrated to this Court that she has remedied the circumstances that would prevent her from engaging in criminal behavior or dangerous relationships in the future." Ample evidence supports these findings, including the testimony of the child safety worker that termination was in the children's best interests given that throughout their lives, Misty "repeatedly" placed them in dangerous situations, continued to use drugs, could not provide them with stable housing, and otherwise was unable to meet their needs. She testified further that termination would benefit the children by allowing them

L.M., T.M., & M.N. v. DEPT OF CHILD SAFETY
Decision of the Court

to “achieve permanency with a stable, loving family member,” rather than compelling them to face “the instability . . . [of] not knowing . . . what will happen when the mother relapses, if they would be removed again,” and they could continue their lives in a happy, stable home.

¶8 The children have not persuaded this court that in considering all of the relevant factors, the juvenile court was required to give greater weight to their desire to maintain a relationship with their mother. During her opening statement, children’s counsel stated she had met with the children and L.M. and T.M. had stated “they would like to be with their mother.” At the end of the hearing, counsel stated in her only closing argument, “the children love their mother and I’ll submit [the matter] to the Court.” The court was thus well aware of the children’s wishes, and we presume it gave the evidence any weight it believed was warranted. We will not reweigh the evidence on appeal. See *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (juvenile court in best position to weigh evidence, judge credibility of witnesses, and resolve disputed facts).

¶9 The children also argue the juvenile court failed to consider whether a “less restrictive alternative of permanent guardianship” in evaluating whether termination was in the children’s best interests. But, as DCS points out, there was no guardianship motion before the juvenile court, only a motion to terminate Misty’s rights. We agree with DCS that the children’s reliance on A.R.S. § 8-862 is therefore misplaced; it applies to permanency hearings, not termination hearings. Moreover, our legislature has made clear that when adoption is available, as it was here, it is preferable to a permanent guardianship. See A.R.S. § 8-871(A)(4); *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555-56, 944 P.2d 68, 70-71 (App. 1997). And, despite having had ample opportunity to do so, the children did not urge the court to order a guardianship as an alternative to severance. The argument is waived, and, in any event, we find no support for the children’s suggestion that the court was required sua sponte to consider a permanent guardianship as an alternative to severance.

L.M., T.M., & M.N. v. DEPT OF CHILD SAFETY
Decision of the Court

¶10 The record contains reasonable evidence supporting the juvenile court's factual findings, which are proper bases for the determination that terminating Misty's parental rights was in the children's best interests. We therefore affirm the court's order terminating Misty's parental rights to L.M., T.M., and M.N.