IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DENIA L.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, H.C.-L., AND H.C.-L.,
Appellees.

No. 2 CA-JV 2017-0047
Filed August 17, 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NOT FOR PUBLICATION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
Nos. JD20160177 and S20160232 (Consolidated)
The Honorable Brenden J. Griffin, Judge

AFFIRMED

COUNSEL

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Counsel for Appellant

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

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By John Walters
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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Appellant Denia L. challenges the juvenile court's order of February 28, 2017, terminating her parental rights to her children, H.C.-L. and H.C.-L., twins born in August 2015, on grounds of abuse. *See* A.R.S. § 8-533(B)(2). On appeal, Denia contends "[i]t was fundamental error for the [juvenile] court to allow a Petition for termination to be heard after children have been found dependent." She also argues her due process rights were violated and the court abused its discretion in finding willful abuse or neglect and in concluding severance was in the children's best interests.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *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). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the

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[1]The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 The twins were taken into the custody of the Department of Child Safety (DCS) in March 2016 after one of them was hospitalized with subdural hematoma, an occipital skull fracture, and retinal hemorrhages. Denia claimed the child had fallen from a bed on which she had left the twins, but a doctor testified the injuries were not consistent with such a fall. In April, Denia entered a "no contest" plea to the allegations DCS made in a dependency petition. The court adjudicated the children dependent and ordered a case plan of reunification.

¶4 In November 2016, however, the twins filed a petition for severance, alleging termination was warranted on the grounds of neglect and abuse, based on the physical injuries sustained by the hospitalized child. Denia and DCS opposed the petition. After a hearing on the matter, the juvenile court found Denia had abused the twin who had been hospitalized, and concluded that abuse provided a "nexus" to warrant severance as to the other twin as well. The court also determined that severance was in the children's best interests to avoid the risk of future abuse and because they were adoptable and in a potentially adoptive placement with their paternal grandmother.

¶5 Denia first contends the juvenile court fundamentally erred in allowing the twins to file a petition for termination during the dependency proceeding. In *Bobby G. v. Arizona Department of Economic Security*, however, we rejected a similar argument and determined a child subject to an ongoing dependency proceeding was permitted to independently seek termination of her parent's rights under § 8-533. 219 Ariz. 506, ¶¶ 3, 5, 9-11, 200 P.3d 1003, 1005, 1006-07 (App. 2008). Pursuant to § 8-533(A), "[a]ny person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, a foster parent, a physician, the department or a private licensed child welfare agency, may file a petition for the termination of the parent-child relationship." We concluded that, "[t]aken together, the statutory provision and [Rule 64(B), Ariz. R. P. Juv. Ct.] make clear that Arizona's statutes provide two procedurally

distinct paths toward termination of parental rights, but they do not prohibit the filing of a petition for termination at any time before a motion for termination is ordered." *Bobby G.*, 219 Ariz. 506, ¶ 10, 200 P.3d at 1006-07.

¶6 Denia contends our decision in *Bobby G.* "left critical issues unresolved," but we do not find her arguments related to the use of the word "was" in the rule, the length of the rule, or the impact of the rule on "reactivated dependency cases" sufficiently compelling to cause us to depart from our established precedent. *See State v. Patterson*, 222 Ariz. 574, ¶ 19, 218 P.3d 1031, 1037 (App. 2009) (we will follow prior decision unless firmly convinced it was based on clearly erroneous principles or conditions have changed to render it inapplicable). We disagree with Denia that there is a split between the two divisions of this court on this issue. The case upon which she relies, *Marianne N. v. Department of Child Safety*, addressed the issue whether Rule 64(C), "which permits the juvenile court to deem a parent's failure to appear at a pretrial conference without good cause a waiver of the opportunity to contest the allegations of a pending termination motion, is a proper exercise of judicial authority and therefore constitutional." 240 Ariz. 470, ¶ 1, 381 P.3d 264, 265 (App. 2016). Although the court noted: "Proceedings for the termination of parental rights may be initiated by motion if the child is dependent . . . or by petition if the child is not dependent," *id.* ¶ 8, as Denia acknowledges, that language was dicta; it was not relevant to the issue being decided.

¶7 Denia also argues the juvenile court denied her due process "when it proceeded on the petition for termination of parental rights during the dependency process." She apparently contends this is so because "the court allowed a petition for termination to truncate reunification proceedings." But Denia had been receiving services for nearly a year at the time of the hearing. And she has cited no authority to suggest that due process guarantees a parent the "right to pursue a dependency case until such time as the judge found it appropriate to change the case plan," as Denia argues. Due process requirements in this context "may vary depending on the setting." *Dep't of Child Safety v. Beene*, 235 Ariz. 300, ¶ 11, 332 P.3d 47, 52 (App. 2014), *quoting Gaveck v. Ariz. State Bd. of Podiatry Exam'rs*, 222 Ariz.

433, ¶ 14, 215 P.3d 1114, 1118 (App. 2009). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.*, *quoting Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), and the record clearly shows Denia received that opportunity.

¶8 Denia next maintains the juvenile court abused its discretion in concluding she had abused the injured twin. In so arguing, however, Denia relies on favorable testimony but does not address the contrary evidence cited by the court, particularly failing to acknowledge medical testimony that the injuries could only have been sustained by abuse. We do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court's resolution of conflicting inferences because they are supported by the record, *see In re Pima Cty., Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶9 Finally, Denia argues the juvenile court abused its discretion in determining severance was in the children's best interests. But again, this argument amounts to a request to reweigh the evidence presented at the hearing, which we will not do. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. Evidence presented at the hearing about the children's need for and possibility of permanency, potential risk to the children, and pending criminal charges against Denia supported the court's best interests ruling.

¶10 For all these reasons, we affirm the juvenile court's order.