IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

JENNIFER L.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, T.J., M.O., A.O., L.O.,
M.M., AND A.L.-M.,
Appellees.

No. 2 CA-JV 2017-0090
Filed August 30, 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NOT FOR PUBLICATION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. JD168760
The Honorable Brenden J. Griffin, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Kelly[1] concurred.

S T A R I N G, Presiding Judge:

¶1 Jennifer L. appeals from the juvenile court's order terminating her parental rights to her six children, ranging in age from fourteen months to twelve years, on neglect and time-in-care grounds. *See* A.R.S. § 8–533(B)(2), (8)(a), (c). We affirm the court's ruling.

Factual and Procedural Background

¶2 We view the 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). Between October 2013 and March 2014, the Department of Child Safety (DCS)[2] received four reports alleging Jennifer's four children[3] had been left outside

[1]The Hon. Virginia C. Kelly, 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.

[2]DCS has replaced the Arizona Department of Economic Security (ADES) as the agency responsible for administering child welfare and placement services under title 8, A.R.S. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, § 20. For simplicity, our references to DCS in this decision encompass both ADES and Child Protective Services, formerly a division of ADES.

[3]In September 2014, Jennifer had four children: nine-year-old T.J., seven-year-old M.O., three-and-a-half-year-old A.O., and nineteen-month-old L.O. Her two youngest children were born

unsupervised, sometimes as late as midnight and often without clothes or shoes. On September 18, 2014, a DCS worker investigating an unrelated matter observed that the children had been playing outside unattended and unsupervised for over an hour, noting one of them was naked and "playing . . . with dog feces." When the oldest child was asked to go inside and get their mother, she returned to report her mother, Jennifer, was sleeping. In addition, the home and yard were reportedly "unsanitary for the children." DCS took the children into temporary custody and filed a dependency petition, which Jennifer did not contest.

¶3 DCS later took custody of Jennifer's fifth child, M.M., after his birth in May 2015, alleging he was "at risk for neglect" and citing Jennifer's "history of leaving her children without appropriate care and supervision." The juvenile court adjudicated M.M. dependent in October 2015, stating the parents were "close to achieving in-home placement" but had "a few more steps to complete." At a November 2015 hearing, the court granted Jennifer's request for return of the children and, over DCS's objection, set a schedule for transitioning the children to placement in her care by the end of January 2016. Although DCS continued to raise concerns about the transition plan, it complied with the court's transition schedule.

¶4 In March 2016, the case manager reported she had been unable to make contact with the family, despite having made three unannounced visits as well as a scheduled home visit, and was unable to reach Jennifer by telephone. She then attempted to visit the older children at school, but was told Jennifer had withdrawn them due to "car problems," and further learned Jennifer had removed her two toddlers from their preschool. She reported Jennifer had been "inconsistent" with drug testing protocols and was no longer attending individual therapy. At a dependency review hearing that month, the juvenile court affirmed the children's placement with Jennifer and ordered her to be available for a home visit later that month.

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during the course of these proceedings—M.M. in May 2015, and A.L.-M. in June 2016.

¶5 In April 2016, DCS learned Jennifer and her family had been evicted from their home for non-payment of rent and had left it in "deplorable" condition. Jennifer had not told DCS about the eviction or where the children had been moved. The children's guardian ad litem visited the two oldest children at their school, and one of them gave her the name of the hotel where the family had been staying. On May 25, DCS convened a team decision-making meeting to address concerns that the parents did "not currently hav[e] safe, sanitary, and stable housing" and had refused to allow service providers access to the children. Jennifer told DCS she had left the children, late the previous night, with a woman who had served as an early placement, and DCS took the children into temporary custody later that day.

¶6 Jennifer was still homeless when she gave birth to A.L.-M. in June 2016, and she told DCS only that she and the infant planned to stay with "a friend" after the hospital's discharge, without providing the friend's identity or address. DCS took temporary custody of A.L.-M. and filed a dependency petition alleging he would be at risk of neglect in Jennifer's care. The juvenile court adjudicated A.L.-M. dependent in August.

¶7 In September 2016, DCS filed a motion to terminate Jennifer's parental rights to all six children on the ground of neglect, *see* § 8-533(B)(2), and to the oldest four children on the fifteen-month time-in-care ground, *see* § 8-533(B)(8)(c).[4] In March 2017, before testimony was taken at the contested severance hearing, DCS amended its termination motion to allege the fifteen-month time-in-care ground with respect to M.M. and to allege, with respect to

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[4]Section 8-533(B)(8)(c) provides termination may be justified when (1) a child has been in court-ordered, out-of-home placement "for a cumulative total period of fifteen months or longer"; (2) "the parent has been unable to remedy the circumstances" causing that placement; and (3) "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future."

A.L.-M. alone, that Jennifer had "substantially neglected or willfully refused to remedy the circumstances" that caused him to be in court-ordered care for nine months or more, *see* § 8-533(B)(8)(a). After receiving evidence over three days in April and May, the juvenile court issued a thirteen-page, under-advisement ruling terminating Jennifer's parental rights to her six children on the grounds alleged, and concluding severance is in their best interests.[5]

Discussion

¶8 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for termination and a preponderance of evidence that termination of the parent's rights is in the children's best interests. A.R.S. §§ 8–533(B), 8–537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). If sufficient evidence supports any one of the statutory grounds found, "we need not address claims pertaining to the other grounds." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009).

Neglect

¶9 Jennifer first contends the juvenile court erred in terminating her parental rights based on neglect. She maintains this ground "is not supported by the evidence" because DCS "failed to establish a nexus between past neglect and current circumstances." Relying on *Mario G. v. Arizona Department of Economic Security*, 227 Ariz. 282, 257 P.3d 1162 (App. 2011), she asserts that termination may not be based on neglect absent "[a]n adequate nexus . . . between the prior conduct and the risk of future neglectful behavior by the

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[5]In the same ruling, the court terminated the parental rights of Aaron M. to his sons M.M. and A.L.-M. Aaron M. is not a party to this appeal.

parent." But *Mario G.* is inapposite, at least with respect to Jennifer's older children.

¶10 Pursuant to § 8-533(B)(2), termination may be justified by evidence "[t]hat the parent has neglected . . . a child." "Neglect" is defined, in relevant part, as "[t]he inability or unwillingness of a parent . . . to provide th[e] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25). Unlike some other grounds for termination, § 8-533(B)(2) requires only proof of past conduct. *Compare* § 8-533(B)(2), *with* § 8-533(B)(3) (termination for disabling mental illness or drug abuse dependent on "reasonable grounds to believe . . . condition will continue for a prolonged indeterminate period"), *and* § 8-533(B)(8)(c) (fifteen-month time-in-care ground dependent on finding "a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future").

¶11 In *Mario G.*, and, before it, *Linda V. v. Arizona Department of Economic Security*, this court was required to consider a 1997 amendment that changed the language of the provision from "the child" to "a child," and to determine whether and when a court could sever rights to a child whom the parent had not neglected or abused. *Linda V.*, 211 Ariz. 76, n.2, 117 P.3d 795, 798 n.2 (App. 2005), *quoting* 1997 Ariz. Sess. Laws, ch. 222, § 49 (emphasis added); *see also Mario G.*, 227 Ariz. 282, ¶ 15, 257 P.3d at 1165. In *Linda V.*, we concluded parents who have abused or neglected one of their children "can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." 211 Ariz. 76, ¶ 14, 117 P.3d at 798. Similarly, in *Mario G.*, this court considered whether a court "may properly sever a parent's rights to a child who was not yet born" when the parent had abused a different child. 227 Ariz. 282, ¶ 16, 257 P.3d at 1165. Rejecting the argument that this construction would permit termination of parental rights to any future child "in perpetuity," this court clarified that termination in such cases required "a 'constitutional nexus' between the prior abuse and the risk of future abuse to a different child." *Id.* ¶¶ 14, 16; *see also Linda V.*, 211 Ariz. 76, n.3, 117 P.3d at 799 n.3 (not addressing, as issue not before court, circumstance of "prior conduct

by a parent that is remote in time"). *Mario G.* in no way suggests that a juvenile court must consider "current circumstances" before finding a parent "has neglected . . . a child" under § 8-533(B)(2).[6] *See Mario G.*, 227 Ariz. 282, ¶¶ 14, 16, 257 P.3d at 1165-66.

¶12 Moreover, to the extent a nexus is required between the 2014 neglect of the older children and M.M. and A.L.-M., both born during the pendency of this proceeding, the juvenile court clearly addressed the issue in its ruling. Relaying the history of the case in detail, the court noted an evaluating psychologist's conclusion that Jennifer suffered from a personality disorder with narcissistic and dependent features, such that she placed her own needs above the needs of her children. And the court found "prescient" the psychologist's opinion that Jennifer's "lack of willingness to acknowledge and take responsibility for issues and consider the needs of her children are likely to be significant barriers to effective treatment." The court cited evidence that Jennifer had failed to provide safe or stable housing for the children after they were returned to her in early 2015, stating it was "convinced that if the children were returned to [Jennifer and Aaron] at any time in the near future, they would need to be re-removed for the same or similar type of neglect." The court then expressly found, "[A] nexus exists between the parents' neglect and all of these children. They are all relatively young. They are all siblings. They are all at risk for the same neglect."

¶13 We need not repeat the entirety of the juvenile court's thorough, well-reasoned analysis. The record fully supports the court's factual findings on the ground of neglect, and "little would be gained by our further 'rehashing the trial court's correct ruling' in our decision." *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State*

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[6] Such circumstances may, however, be relevant to a determination of best interests. *See In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (determination that severance is in child's best interests must be based on "a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship").

v. Whipple, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). In essence, Jennifer asks that we overturn the court's assessment of witness credibility and reweigh the evidence in her favor. We will not do so. *See id.* ¶ 12.[7]

Best Interests

¶14 A determination that severance is in the children's best interest "must include a finding as to how the [children] would benefit from a severance *or* be harmed by the continuation of the relationship." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶ 30, 231 P.3d 377, 383 (App. 2010), *quoting In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (alteration in *Raymond F.*). The immediate availability of an adoptive home or evidence that a child is adoptable may be a sufficient benefit to support a best-interests finding. *See id.*, *see also Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 16, 365 P.3d 353, 356-57 (2016).

¶15 Jennifer asserts, in conclusory fashion, that DCS "presented no evidence whatsoever" that would support the juvenile court's best interests finding. Relying on the same evidence that supported its finding of neglect, the court reasoned that "<u>not</u> severing the parent's rights would expose the children to an unreasonable risk of future neglect and trauma." The court also found the children would benefit from a severance, noting that the youngest three children are currently in adoptive placements and another adoptive placement has been identified for the older children. The record supported the court's findings. Jennifer's argument also amounts to a request that we reweigh the evidence, which, again, we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

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[7]Because the record supports termination on the ground of neglect, we do not address the alternative grounds of the children's time-in-care. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205.

Disposition

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Jennifer's rights to T.J., M.O., A.O., L.O., M.M., and A.L.-M.