IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ASHLEY L.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND K.L.,
Appellees.

No. 2 CA-JV 2017-0116
Filed October 2, 2017

Appeal from the Superior Court in Pima County
No. JD20160100
The Honorable Peter W. Hochuli, Judge

AFFIRMED

COUNSEL

Suzanne Laursen, Tucson
Counsel for Appellant

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

Pima County Office of Children's Counsel, Tucson
By John Walters
Counsel for Appellee K.L.

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 Ashley L. appeals from the juvenile court's June 2017 order terminating her parental rights to K.L., born in September 2015, based on the grounds of mental illness and length of time in court-ordered care (six months).[2] *See* A.R.S. § 8-533(B)(3), (8)(b). Ashley challenges the sufficiency of the evidence to terminate her rights under either ground. We affirm for the reasons stated below.

¶2 A juvenile court may terminate a parent's rights if it finds both clear and convincing evidence of at least one statutory ground for termination and a preponderance of the evidence that termination of the parent's rights is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41, 110 P.3d 1013, 1020, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the

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[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]Although paternity was not established, the juvenile court also terminated the parental rights of K.L.'s alleged father.

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

¶3 Pursuant to a voluntary placement, the Department of Child Safety (DCS) took K.L. into temporary custody in November 2015, due to Ashley's depression and inability to care for him, including her statement that she "needed someone to pick up [then six-week-old K.L.] or she [would] kill him."[3] Ashley admitted to the allegations in the dependency petition DCS later filed, and K.L. was adjudicated dependent as to her in April 2016. DCS offered Ashley various services, the appropriateness of which she does not challenge on appeal. Those services included a psychiatric evaluation "to see if medication could be something that she could benefit from," visitation with K.L., parent-child relationship therapy, individual therapy, case management, and day care. Ashley was never fully compliant with the case plan requirements, and, throughout the dependency, the juvenile court remained concerned that she was not benefitting from the case plan.

¶4 In November 2016, DCS filed a motion to terminate Ashley's rights based on mental illness and time-in-care grounds. *See* § 8-533(B)(3), (8)(b). Following a seven-session contested severance hearing that began in February and concluded in June, the juvenile court granted DCS's motion. In a thorough, seventeen-page under-advisement ruling, the court found sufficient evidence to terminate Ashley's parental rights to K.L. based on both of the grounds DCS had asserted in its motion and found that termination was in K.L.'s best interests. On appeal, Ashley asserts there was insufficient evidence to support the juvenile court's findings that she was unable to discharge her parental responsibilities because of her mental illness; that this condition would continue for a prolonged,

[3] Ashley later told her therapist she had wanted "to stomp [K.L.'s] head or leave him somewhere."

indeterminate period; and that she had substantially neglected or willfully refused to remedy the circumstances that caused K.L. to be in an out-of-home placement, including refusal to participate in reunification services.

¶5 We first address the argument regarding the time-in-care ground. Ashley asserts the evidence showed that she "was in compliance with her case plan at the time of the severance" and that she was "trying to remedy the circumstances that prevented [K.L.] from being reunified with her." A court may terminate a parent's rights pursuant to § 8-533(B)(8)(b) if it finds clear and convincing evidence "[t]he child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer[,] and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to" remain outside the home, "including refusal to participate in reunification services offered by the department." In determining whether this standard has been met, we look to the circumstances existing at the time of the severance rather than the initial dependency petition. *See E.R. v. Dep't of Child Safety*, 237 Ariz. 56, ¶ 17, 344 P.3d 842, 846 (App. 2015) (addressing similar language in § 8-533(B)(8)(a)).

¶6 In its ruling, the juvenile court made detailed factual findings to support its conclusion that K.L. had been out of the home pursuant to a court order for six months or longer and that Ashley had substantially neglected or willfully refused to participate fully in her services, thereby failing to remedy the circumstances that caused K.L. to be out of the home. The court found it significant that although Ashley had participated in services offered by DCS, which were "necessary to assist [her] in treating her mental health issues and instruct her on effective parenting," she "was seldom in full compliance," conduct the court found to be "willful on her part." The court stated that even when Ashley participated in services, she "did not fully benefit" from them. It also noted that Ashley's visits with K.L. initially were required to be supervised because of her "untreated mental illness and failure to follow through with services." And the court further found that she continued to have supervised visits "because she has yet to be able to show that she can consistently provide the necessary care for [K.L.] with[out] another

person there to either remind her when to do something or tell her she must do something." That is because "she forgets what she must do if she doesn't have someone there to remind her which places [K.L.] at risk for abuse or neglect."

¶7 The juvenile court noted with specificity numerous instances when Ashley had missed medical or therapy appointments, either for herself or K.L. And, because she had missed so many visits with K.L. during the dependency, the court noted she was placed on a "call-ahead list" to confirm her attendance, leading the court to conclude her "pattern of case compliance regarding visiting [K.L.] continues to be sporadic and her blame of [the public bus system] is harmful and proof of her inability to multi-task and care for [K.L.]." The court also found Ashley had "failed to become medication compliant by not treating all mental health issues." The court's ruling, however, illustrates it also was well aware of the evidence that was favorable to Ashley, including her partial compliance with the case plan and some signs of improvement in her relationship with K.L.

¶8 Viewed in the light most favorable to sustaining the juvenile court's order, there was ample evidence to support its finding that Ashley had "substantially neglected or willfully refused to remedy the circumstances that cause" K.L. to remain out of the home, "including her failure to consistently participate in reunification services." § 8-533(B)(8)(b). The record shows Ashley did not consistently participate in or avail herself of the required services, leading the court to conclude that although Ashley had improved, and although "there is no doubt that [she] loves [K.L.] and wants to reunite . . . what le[]d to the removal of the child has not been remedied [and Ashley] has failed to complete and benefit from her case plan [and] still lacks the necessary skills to effectively parent [K.L.]."

¶9 Psychologist Lorraine Rollins, who evaluated Ashley in February 2016, diagnosed her as suffering, in relevant part, from "Unspecified Depressive Disorder[,] Unspecified Anxiety Disorder[,] Attention Deficit Hyperactivity Disorder [ADHD] Predominantly Hyperactive/Impulsive Presentation[, and] Consider Unspecified

Personality Disorder (with Obsessive-Compulsive features) [OCD]."[4] Rollins opined that Ashley's ADHD "can lead to likely risk for neglect or some form of abuse of a child due to impulsivity leading to poor judgment . . . distractibility and disorganization," which can impact parental decision-making. Importantly, she also opined that "medication is the most [e]ffective way to address" ADHD. Rollins recommended Ashley "have ongoing psychiatric consultation to monitor her medication needs and her compliance with taking medication," and emphasized that she needed to find out if she required medication for her ADHD. Noting that Ashley had taken herself off medication for her ADHD in the past, Rollins testified she "still had some concerns about [her] ADHD." Rollins also testified she "definitely would give serious consideration [whether Ashley posed a risk for a child in her care] if she has not completed the[] case plan tasks."

¶10 Significantly, in an August 2016 permanency planning hearing report, one of Ashley's case managers reported that Ashley had "been asked to become medication compliant since the beginning of the voluntary dependency in November [2015]," and although "this Specialist stressed it as her 'number one task' to complete," Ashley did not have her first medication review until July 7, 2016, almost three months into the dependency. That manager also testified, "[T]here really [are] a limited number of things that a case manager can do if the client cannot or will not address their mental health of their own accord." Similarly, a different case manager testified that although Ashley's case plan required her to have monthly medication reviews, as late as November 2016, she had not gone for a medication review for "many months," and she had "missed a couple of [medication review] appointments."

[4]To the extent the juvenile court believed Ashley had been diagnosed with OCD, as suggested by the statement in its ruling that she had "failed to treat the ADHD and OCD," we note that the record establishes she suffered from OCD "features," but not necessarily from OCD itself. However, on this record, that portion of the court's finding does not impact our ruling.

¶11 Ashley's current case manager testified that "to her knowledge," Ashley remains noncompliant with the requirement that she meet with a psychiatrist regarding medications. She also testified that Ashley still needs to be prompted to feed K.L. and is not "able to recognize his cues," behavior Rollins testified could fall within the distractibility category associated with ADHD. As recently as January 2017, a case manager reported that Ashley still "has a hard time multitasking and will ask [the supervisor] to inform her when it is time to feed [K.L.] (which she does during each visit)." A different case manager similarly testified that during her parenting classes, Ashley had demonstrated difficulty with "split attention," to wit, paying attention to more than one thing at a time.

¶12 Additionally, although Ashley's private therapist testified she is "close to completion" of her mood stabilization treatment goal for her depression, anxiety, and ADHD, she is nonetheless "about three months" away from the six-month requirement to achieve that goal, and her attendance at recent sessions has been "sporadic." A February 2017 addendum report indicated that although Ashley had started attending individual therapy sessions in November 2016, approximately three months before the severance hearing began, the evidence showed she still had not sufficiently benefitted from those sessions to "incorporate the feedback provided by other team members including appropriately feeding [K.L.]." In addition, Ashley's therapist from the Easter Seals Blake Foundation reported that her inconsistent attendance at their sessions had delayed her progress. She explained that Ashley had not successfully completed her treatment goals and that she had remaining concerns regarding Ashley's ability to meet K.L.'s basic needs, including reading his hunger cues, staying focused, and her lack of understanding whether he is meeting his "developmental milestones."

¶13 In contrast, Ashley testified she had complied with her case plan requirements to attend psychiatric appointments and medication reviews, although she nonetheless acknowledged she recently had missed scheduled visits with her parent aide and weekly healthy relationship classes and had failed to attend several of K.L.'s medical appointments. She cited difficulties in following the public

bus schedule as a reason for her absences, an excuse the juvenile court found unavailing. Ashley also testified she currently was taking medication for depression and anxiety and had been doing so for nine months. When asked if she had discussed her ADHD with her psychiatrist, she responded that she had and she believed "he would have prescribed something" had he felt it appropriate.

¶14 To the extent Ashley argues DCS failed to prove she did not regularly attend her medical reviews or that her parenting problems at the time of the severance did not relate to her mental illness, the record belies her arguments, for the reasons noted above. Rather, the record supports the juvenile court's finding that Ashley "had failed to become medication compliant by not treating all mental health issues," which necessarily included attending her medication reviews regularly in order to determine if she needed medication for her ADHD, a mental health condition that could place K.L. at risk in her care. And, to the extent Ashley asks us to reweigh any conflicting evidence on this issue and make a credibility determination, we do not do so. Rather, because the juvenile court is the trier of fact, we regard that court as being "in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶15 In summary, the record contains reasonable evidence to support the juvenile court's severance order, to wit, that Ashley substantially neglected or willfully refused to remedy the circumstances that caused K.L. to be in an out-of-home placement, including her refusal to fully participate in reunification services. Because we have rejected Ashley's argument that the juvenile court erred by terminating her parental rights on time-in-care grounds, we need not address her argument that it erred in finding termination also was warranted on the ground of mental illness. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) (appellate court need not consider challenge to alternate grounds for severance if evidence supports any one ground).

¶16 For all of these reasons, we affirm the juvenile court's order terminating Ashley's parental rights to K.L.