IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SABRINA H.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND T.R.,
Appellees.

No. 2 CA-JV 2020-0012
Filed June 11, 2020

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NOT FOR PUBLICATION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. JD20150422
The Honorable Lori B. Jones, Judge Pro Tempore

AFFIRMED

COUNSEL

The Huff Law Firm PLLC, Tucson
By Laura J. Huff
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Emily M. Stokes, Assistant Attorney General, Phoenix
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Sabrina H. appeals from the juvenile court's order terminating her parental rights to her daughter, T.R. (born March 2007), on the ground of time-in-care under A.R.S. § 8-533(B)(8)(c). She argues there was insufficient evidence that she was "not capable of exercising proper and effective parental . . . control . . . in the near future." We affirm.

¶2 The Department of Child Safety (DCS) first removed T.R. from Sabrina's care in June 2015 when Sabrina and her newborn son tested positive for opiates. T.R. was adjudicated dependent as to her in August 2015. T.R. was returned to Sabrina's home in August 2017 but was removed again just over two months later based on reports that T.R., who is autistic and requires special services and behavioral medication, was frequently absent from school, had poor personal hygiene, had not been taking her medication, and her behavior had regressed while in Sabrina's care.

¶3 In April 2018, DCS moved to terminate Sabrina's parental rights to T.R., but the juvenile court denied that motion after a contested hearing. The court concluded the case plan should be family reunification with a "target date" of six months from the December 2018 ruling. The court noted that Sabrina had been participating in psychiatric services and taking medication for her depression, and concluded she should be able to parent T.R. if she continued to receive treatment for depression and participate in services to aid T.R.

¶4 By July 2019, however, Sabrina was not meaningfully engaged in services, including mental-health services, participating only in methadone treatment. The juvenile court changed the case plan to severance and adoption, and DCS filed a second motion to terminate Sabrina's parental rights on the ground of time-in-care under § 8-533(B)(8)(c). After a contested severance hearing, the court granted the

motion.[1] It noted that Sabrina had not "been able to begin expanded and unsupervised visits" with T.R. and that her testimony regarding her lack of progress was not credible. This appeal followed.

¶5 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that terminating the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the court with respect to its factual findings because it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14 (App. 2004). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶6 To show severance was warranted under § 8-533(B)(8)(c), DCS was required to show T.R. had been in court-ordered, out-of-home placement for at least fifteen months and "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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." Sabrina argues only that DCS failed to prove that she would not be capable of parenting T.R. in the near future. She contends DCS engineered the case toward termination of her rights by failing to provide her with a parenting class it "suddenly claimed" was required and by failing to provide in-home visits.

¶7 Sabrina's arguments, however, rely on a selective view of the record. She asserts that DCS failed to adequately monitor her case and "move her to unsupervised visits in her home when appropriate" and that DCS was "unable" to offer increased visits. What this argument ignores, however, is evidence that she missed numerous visits after the first severance trial. Sabrina had requested relative supervision instead of agency supervision, and the relative's limited availability hindered visitation, as did Sabrina's failure to consistently engage in services. And

[1] The juvenile court also terminated the parental rights of T.R.'s father. He is not a party to this appeal.

Sabrina's claim that DCS justified the infrequent visits by citing Sabrina's failure to request more visits is unsupported by the record. The record shows that, during cross-examination, Sabrina acknowledged she had not requested more visits. But DCS did not refer to that evidence during closing, and the juvenile court did not refer to it in its ruling.

¶8 Sabrina also argues DCS required but failed to timely provide a parenting class to address T.R.'s special needs, asserting DCS raised that requirement for the first time at the contested hearing. A case worker testified that she believed Sabrina should complete a special-needs parenting class and had not done so. But the case worker explained the case plan is adjusted every six months and the parenting class had been added recently to address gaps in Sabrina's ability to parent T.R., and Sabrina would have been aware of the class had she attended the monthly contact meeting where that class was to be discussed. In any event, the juvenile court did not address or discuss the special-needs parenting class in its ruling.

¶9 For the remainder of her argument, Sabrina identifies the evidence that weighs against terminating her rights. But we do not reweigh the evidence on appeal. *Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14. Particularly in light of Sabrina's failure to progress to unsupervised visits, the juvenile court did not err in concluding she was not capable of parenting T.R. in the near future.

¶10 We affirm the juvenile court's order terminating Sabrina's parental rights to T.R.