IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SANDRA N.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, A.N., E.J.-N., AND E.J.,
Appellees.

No. 2 CA-JV 2021-0081
Filed October 21, 2021

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NOT FOR PUBLICATION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. JD20140876
The Honorable Lisa I. Abrams, Judge

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Dawn R. Williams, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By Christopher Z. Lloyd
Counsel for Minors

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 Appellant Sandra N. challenges the juvenile court's order of June 15, 2021, terminating her parental rights to her children, A.N., born August 2012, E.J.-N., born August 2014, and E.J., born July 2016, on grounds of neglect and Sandra's inability to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than fifteen months. *See* A.R.S. § 8-533(B)(2), (B)(8)(c). On appeal, Sandra challenges the sufficiency of the evidence to establish that terminating her parental rights 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. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless 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 (App. 2009). And, in making that determination, we view the evidence in the light most favorable to upholding the court's order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 After being adjudicated dependent in April 2015, A.N. and E.J.-N. were returned to Sandra's care in April 2016. But the Department of Child Safety (DCS) subsequently received reports of domestic violence, marijuana and alcohol abuse, and Sandra's having left the children with someone who allegedly molested them. In February 2019, the children, including E.J., who had been born shortly after the end of the dependency, were removed again.

¶4 DCS began offering services to Sandra, including parenting classes, substance abuse groups and drug testing, individual therapy, healthy relationship groups, and psychiatric services. Although Sandra participated in services initially, she showed no benefit from them. In

January 2020, she moved out of state and did not participate in services for approximately one year. Sandra participated in virtual visits with the children, but in December 2020 concerns about Sandra arose when her "screen would go blue" so she could not be seen and a male voice was heard in the background, which Sandra did not explain. The three children have been placed in separate homes due to the need for specialized services.

¶5 DCS filed a motion for termination in March 2021, alleging Sandra had neglected the children and had failed to remedy the circumstances that led them to be in a court-ordered, out-of-home placement for fifteen months or more. Sandra failed to appear at the contested severance hearing in June, and the juvenile court found that DCS had established the grounds for severance and that severance was in the children's best interests. It therefore granted the motion for termination.

¶6 As to the sole issue raised on appeal, Sandra argues the juvenile court abused its discretion by finding "termination to be in the best interests of [E.J.-N. and E.J.] when they were not in prospective adoptive placements at the time of termination." As our supreme court has directed, when determining best interests, "we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 12 (2018) (quoting *Kent K.*, 210 Ariz. 279, ¶ 35). "The 'child's interest in stability and security' must be the court's primary concern." *Id.* (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016)). And, "termination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Id.* ¶ 13. Thus, although a prospective adoption may support a best-interests finding, a court is not "free to disregard other evidence regarding a child's best interests." *Id.*

¶7 In this case, the juvenile court found that termination was in E.J.-N.'s and E.J.'s best interests because the children "are adoptable" and terminating Sandra's "parental rights would allow the minors to find permanency through adoption." It further determined that severance would "allow the possibility of additional permanent placements for the minors" and that failure to sever "would require that the minors remain in foster care not knowing ultimately the outcome of their case." These findings are supported by the record before us.

¶8 Although E.J.-N. and E.J. were not in adoptive placements at the time of the hearing, the family's case manager testified that they were "very resilient" and "able to make special connections and bonds with their

placements and with those around them." She also testified that she had recently received a list of "possible family members that might be interested" in adoption. She further emphasized that if Sandra's rights were not terminated the children "would remain in out-of-home care and they would not have permanency." She explained, "[T]hey deserve permanency, and they're adoptable children." This testimony is supported by reports to the juvenile court that E.J.-N. was doing well in his placement and continued to "learn and improve" there. Likewise, reports showed that after working with his placement, E.J. was learning to "be more gentle" with animals and to refrain from using foul language. And despite issues with "meltdown[s]" at school, the placement reported she was "very hopeful" for him, "reporting he just needs extra attention and time" to help with the transition to school and his behaviors.

¶9 Sandra's argument that there was insufficient evidence that severance was in the children's best interests amounts to a request for this court to reweigh the evidence presented to the juvenile court, but "[t]he appellate court's role is not to weigh the evidence." *Id.* ¶ 18 (quoting *State v. Fischer*, 242 Ariz. 44, ¶ 28 (2017)). Viewing the evidence of the totality of the circumstances at the time of severance in the light most favorable to upholding the court's ruling, as we must, *see id.* ¶¶ 13, 18, we cannot say the court abused its discretion in finding severance was in the children's best interests.

¶10 We affirm the juvenile court's order terminating Sandra's parental rights.