

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

GUADALUPE B. AND J.B.,
Appellants,

v.

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

No. 2 CA-JV 2021-0150
Filed May 3, 2022

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NOT FOR PUBLICATION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 Santa Cruz County
Nos. JD19010 and SV21002
The Honorable Thomas Fink, Judge

AFFIRMED

COUNSEL

Janelle A. Mc Eachern, Chandler
Counsel for Appellant Guadalupe B.

Emily Danies, Tucson
Counsel for Appellant J.B.

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

MEMORANDUM DECISION

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

ECKERSTROM, Presiding Judge:

¶1 Appellants Guadalupe B. and J.B. challenge the juvenile court's order of November 19, 2021, terminating Guadalupe's parental rights to two of her children, J.B., born August 2009, and L.B., born October 2011. The court did so on grounds of her mental health impairment and 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)(3), (B)(8)(c). On appeal, Guadalupe argues the court erred in finding she had failed to remedy the circumstances that brought the children into care and in terminating her parental rights because the Department of Child Safety (DCS) "had failed to provide appropriate services . . . to assist in her efforts." J.B. contends the court erred in finding severance was in his best interests. We affirm.

¶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 (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 (App. 2009). 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 (App. 2008).

Factual and Procedural Background

¶3 The children were removed from Guadalupe's care in April 2019, after school officials reported they had hygiene issues such as dirty clothing and body odor, they had continued to miss school due to lice, and L.B. had not been receiving her medication for seizures. J.B. had threatened

his siblings¹ and other adults with a knife and suffered from incontinence. The children were also being left home alone at night and were sometimes outside until midnight. Guadalupe had also failed to make and missed medical appointments for the children.

¶4 DCS also learned that Guadalupe's now-adult daughter had reported sexual abuse by her uncle, Guadalupe's brother, to Mexican authorities in 2014. Two of Guadalupe's other children also reported sexual abuse by the uncle. Guadalupe did not believe the children and failed to keep the uncle away from them.

¶5 After a hearing in July 2019, at which Guadalupe entered "a no contest plea," the children were adjudicated dependent. Guadalupe continued receiving services that had begun in March, before the removal, but because providers reported she was not making progress, DCS arranged a psychological evaluation. Psychologist Elena Parra found Guadalupe had "low to average intellectual ability," "a learning disability," and dealt with unresolved trauma. She recommended for Guadalupe "an in-home training team . . . conducted by a mental health professional" with "observational feedback training"; counseling by a "Master level therapist" to discuss scenarios requiring good judgment and resolve her trauma; and "[i]n home parenting observational-feedback training, parenting discussion groups," parenting classes, and vocational rehabilitation services. Parra also recommended the children be returned to Guadalupe's care, either "simultaneously or [after] some safety training," but DCS determined it could not safely return the children.

¶6 In May 2019, Guadalupe began services with a master's-level therapist, Alberto Durazo. He diagnosed her with severe depression and stress, and his treatment included addressing her trauma history and cognitive limitations. Guadalupe, however, was generally unable to talk about traumatic events in her past. She also rejected the eye movement desensitization and reprocessing (EMDR) therapy Durazo recommended.² After a safety plan was put into place, Guadalupe had contact with the brother who had sexually abused her children, but she eventually obtained protective orders against her mother and brother, and her brother was ultimately incarcerated.

¹Two other children were initially part of the dependency and severance proceedings, but they are not part of this appeal.

²On the final day of the severance hearing in July 2021, Guadalupe's DCS case manager testified that although Guadalupe had rejected EMDR earlier, she had "since indicated a willingness to participate in it."

¶7 J.B. was placed in foster care, and L.B. was placed with a relative. J.B. and L.B. eventually disclosed further abuse; J.B. reported that his father would beat him to unconsciousness, and Guadalupe would not intervene. He also reported various acts of physical, emotional, and sexual abuse, some of which were committed by Guadalupe, and others committed by his father and other relatives. L.B. reported Guadalupe hitting her on the head with a broom until she bled. Both children exhibited anxiety around visits with Guadalupe and sometimes avoided them.

¶8 Late in 2019, Guadalupe began services with a parent aide, Guadalupe Sabori. Sabori supervised visits with the children and provided parenting-skills instruction. Sabori did not know Guadalupe had been specifically diagnosed with cognitive limitations, but she worked to ensure that Guadalupe understood her instructions. Sabori noted that Guadalupe would implement instruction regarding appropriate redirection of the children and topics of conversation with them at the next visit, but she would not retain the instruction for future visits.

¶9 Guadalupe also received behavioral-health case management, life-skills training, and parenting instruction from Gabriela Robles. Robles was aware of Guadalupe's cognitive challenges and provided individual instruction, rather than the typical group sessions. Another service provider, Erica Mezquita, provided Guadalupe case management and family-support services, including help working with DCS, the court, and other service providers. She also engaged in "role play" with Guadalupe.

¶10 By July 2020, J.B. had been diagnosed with post-traumatic stress disorder, anxiety, and attention deficit/hyperactivity disorder. His therapist determined he was emotionally and academically at half of his chronological age. As a result of his abuse and trauma, J.B. had "accidents," defecating and urinating on himself, and had short-term memory problems, sexual misbehavior, and difficulty managing his emotions. His therapist also observed that Guadalupe denied accountability for J.B.'s problems and expressed no interest in helping him overcome his trauma.

¶11 J.B. expressed a desire to be adopted, at least as late as the summer of 2020. But, he had disrupted from several placements and, after being placed in a group home again, wanted to return to Guadalupe. However, over the course of the dependency, J.B. had trauma responses and showed distress before and after visits with her. And, the family's case manager observed that his behavioral issues, including anger, sexual acting-out, and food hoarding, improved when he was not having contact with Guadalupe.

¶12 In February 2021, DCS filed a petition to terminate Guadalupe’s parental rights. But it later withdrew the motion as to the older two children, and it also withdrew the ground of abuse. After a five-day severance hearing in May and July 2021, the juvenile court granted the petition and ordered Guadalupe’s rights terminated.

Discussion

¶13 Guadalupe argues DCS failed to “take into account [her] special needs” and to provide services that had been recommended by her therapist and in her psychological evaluation by Dr. Parra, including trauma therapy, vocational rehabilitation, “parenting classes and life coaching with specific situational feedback,” and “training to enhance [her] caregiving and protective capacities.” She contends that DCS instead provided “the typical range of counsel and parenting aide services.”

¶14 Before seeking to terminate parental rights pursuant to A.R.S. § 8-533(B)(3) or (B)(8), DCS must make reasonable efforts to provide appropriate reunification services. *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶ 33 (App. 1999); *Jessica P. v. Dep’t of Child Safety*, 249 Ariz. 461, ¶ 45 (App. 2020), *vacated in part on other grounds*, CV-20-0241-PR (Ariz. Dec. 15, 2020) (decision order). DCS makes reasonable efforts to afford such services when it provides a parent with the time and opportunity to participate in programs designed to help the parent become an effective parent. *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). And, “‘reasonable efforts’ includes seeking to reasonably accommodate disabilities from which a parent may suffer.” *Vanessa H. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 252, ¶ 20 (App. 2007). DCS need not, however, provide “every conceivable service” or ensure that the parent actually participates in the services offered. *Maricopa Cnty. No. JS-501904*, 180 Ariz. at 353. Nor is it required to provide a parent with unlimited time to take positive steps toward rehabilitation. *In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994). DCS need not undertake futile reunification efforts and is required to undertake only those measures with a reasonable prospect of success. *Mary Ellen C.*, 193 Ariz. 185, ¶ 34.

¶15 Guadalupe’s argument as to the reasonableness of DCS’s efforts toward reunification amounts to a request for this court to reweigh the evidence presented to the juvenile court, which we will not do. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). As detailed above, DCS provided Guadalupe with numerous services, many of which were tailored to address her cognitive limitations. Guadalupe argues specifically that she did not receive trauma therapy, but her therapist testified he did provide trauma treatment. Instead, it was a specific trauma treatment, EMDR, that Guadalupe did not receive. Although Dr. Parra

testified she believed that treatment would be helpful, her report did not specify that treatment. In view of DCS's inability to offer it during times of restriction due to COVID-19 and Guadalupe's resistance, we cannot say the court abused its discretion in determining DCS had made reasonable efforts in regard to Guadalupe's treatment for trauma.

¶16 Guadalupe also maintains she was "making sincere, active efforts to remedy the circumstances" that had caused her children to be in court-ordered, out-of-home care. But again, this argument essentially asks us to reweigh the evidence presented to the juvenile court. She relies on favorable testimony but does not address the contrary evidence cited by the court. We do not reweigh the evidence, *Jesus M.*, 203 Ariz. 278, ¶ 12, and will defer to the court's resolution of conflicting inferences when, as in this case, they are supported by the record, *In re Pima Cnty. Adoption No. B-6355 & H-533*, 118 Ariz. 111, 115 (1978).

¶17 J.B., for his part, contends that severance is not in his best interests. He argues the juvenile court made "clearly erroneous factual findings" in support of its conclusion to the contrary. The only such "erroneous" finding to which he points, however, is the court's failure to discuss in its ruling "that [he] refuses to be adopted," that he is "not adoptable," and that "there is no adoptive home available" for him. Instead, the court noted, "The children's best interests are served by living in a safe, secure and supportive home, where they can achieve permanency." Contrary to J.B.'s assertion, the court's implicit finding that J.B. could achieve permanency in such a home is supported by the record. Although various witnesses acknowledged his struggles, they also testified that he remained an adoptable child. The DCS caseworker further testified there was a possibility of adoption by a former placement. And, although the family's case manager agreed that J.B. currently "has no interest in being adopted," the record shows this has not always been the case. The juvenile court was in the best position to weigh the inferences presented by this conflicting evidence. See *Jesus M.*, 203 Ariz. 278, ¶ 4. Moreover, while A.R.S. § 8-106(A)(3) requires a child twelve or over to consent to an adoption, J.B. has cited no authority that such consent is required as part of a severance proceeding when no specific adoption plan has been proposed. See Ariz. R. Civ. App. P. 13(a)(7); Ariz. R. P. Juv. Ct. 106(A) (ARCAP Rule 13 applies to juvenile appeals).

¶18 In concluding that severance was in J.B.'s best interests, the juvenile court emphasized the risks to the children were Guadalupe's parental rights not terminated. It noted the extensive physical, emotional, and developmental injuries the children had sustained as a result of the abuse that Guadalupe had allowed and herself caused. It determined that "[a]ny hope" of "healthy development would be destroyed by further

emotional and/or physical abuse which could occur if the children are returned to [Guadalupe]'s custody.”

¶19 In determining best interests, “[t]he ‘child’s interest in stability and security’ must be the court’s primary concern.” *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, ¶ 12 (2018) (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016)). Thus, termination of parental rights “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 (emphasis added). On the record before us,³ even accepting arguendo that J.B.’s adoptability is questionable, we cannot say the juvenile court abused its discretion in determining that he was subject to harm on the “difficult rehabilitative path” ahead of him if severance were denied.

Disposition

¶20 For these reasons, we affirm the juvenile court’s order terminating Guadalupe’s parental rights.

³In J.B.’s opening brief, counsel directs us to studies relating to “issues of loss” arising in children whose parents have had their parental rights severed. These citations constitute attempts to introduce to this court evidence not presented to the juvenile court and therefore violate Rule 13(a)(5), (7), Ariz. R. Civ. App. P. See Ariz. R. P. Juv. Ct. 106(A). We therefore do not address J.B.’s claims that the court did not adequately “take[] into account” psychological damage arising from severance, as we have not been directed to any evidence in support of that claim in the record. Counsel further suggested the court was “simply irresponsible” for purportedly failing to consider such evidence. We caution counsel against so characterizing judicial officers who take seriously their commitment to protect both the legal interests of both children and parents in these proceedings. See e Ariz. R. Professional Conduct Preamble here with parenthetical (“A lawyer should demonstrate respect for the legal system and for those who serve it, including judges . . .”).