IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE TERMINATION OF PARENTAL RIGHTS AS TO N.M.,

No. 2 CA-JV 2022-0090
Filed November 25, 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NOT FOR PUBLICATION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. 602(i)(17).

Appeal from the Superior Court in Pima County
No. S20210096
The Honorable Bunkye Olson, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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By David Miller
Counsel for Minor

MEMORANDUM DECISION

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

E C K E R S T R O M, Presiding Judge:

¶1 Appellant Alexandra G. challenges the juvenile court's order of August 1, 2022, terminating her parental rights to her son N.M., born November 2015. The court did so on the ground that N.M. had previously been in a court-ordered, out-of-home placement, was returned to her legal custody, and was removed again within eighteen months, while Alexandra was "unable to discharge parental responsibilities." *See* A.R.S. § 8-533(B)(11). On appeal, Alexandra argues termination was "contrary to the law's express legislative purpose" and violated her fundamental rights. She also maintains that termination was not in N.M.'s best interests. We affirm.

¶2 We view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008). N.M. was removed from Alexandra's care in May 2021 after police officers responded to a report of a fight in the home. Alexandra had "punch[ed] her significant other with a closed fist," and both were arrested for felony assault. N.M. was placed with his maternal grandparents.

¶3 Before this removal, N.M. had been the subject of dependency proceedings in 2016 and 2019. In the later dependency, the state removed N.M. from Alexandra's care in January 2019 after she and N.M.'s father were arrested for domestic violence assault. The juvenile court adjudicated N.M. dependent, and the Department of Child Safety (DCS) provided services including case management services, parenting classes, parent aide services, domestic violence classes, healthy relationships services, and in-home services. N.M. was returned to Alexandra's custody in July 2020.

¶4 After N.M.'s removal in May 2021, DCS again provided Alexandra services, including random urine testing, individual therapy, domestic violence group therapy, and substance abuse classes. But Alexandra at times missed calling in for urine testing, provided diluted samples, and tested positive for alcohol use. In June 2021, DCS filed a petition to terminate Alexandra's parental rights. After a multi-day

contested severance hearing spanning February to July 2022, the juvenile court granted DCS's petition to terminate.

¶5 To sever a parent's rights, the juvenile court must find there is clear and convincing evidence of at least one of the statutory grounds for termination and that a preponderance of the evidence establishes severing the parent's rights is in the children's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005). We do not reweigh the evidence on appeal. Rather, we defer to the court's factual findings because, as the trier of fact, that court "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 (App. 2004). Consequently, we will affirm the order if reasonable evidence supports the factual findings upon which the order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002).

¶6 To terminate parental rights under § 8-533(B)(11), DCS was required to establish: (1) N.M. had been in an out-of-home, court-ordered placement; (2) DCS had "made diligent efforts to provide appropriate reunification services"; (3) "[w]ithin eighteen months" after his return to Alexandra's care, N.M. was again removed to out-of-home, court-ordered care; and (4) Alexandra's inability to discharge parental responsibilities. Alexandra does not dispute that DCS proved this ground for severance, but argues that termination of her rights "is contrary to the law's express legislative purpose" and violates her "fundamental rights." She contends that because N.M. was not "lingering" in foster care, but was placed in a "family home," we should reverse the juvenile court's order.

¶7 Alexandra has not directed us to, nor can we locate, anything in the record showing she raised these arguments in the juvenile court. *See* Ariz. R. P. Juv. Ct. 607(b); Ariz. R. Civ. App. P. 13(a)(7) (appellant must provide "references to the record on appeal where the particular issue was raised and ruled on"). "Generally, failure to raise an argument in the juvenile court waives the issue on appeal." *Logan B. v. Dep't of Child Safety*, 244 Ariz. 532, ¶ 9 (App. 2018); *see also Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."). And, although we have applied fundamental error review to an argument first asserted on appeal by a parent challenging the termination of her parental rights, *see Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶¶ 2, 22 (App. 2005), Alexandra has not argued fundamental error on appeal, *see State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008) (review for fundamental error waived when not argued on appeal).

¶8 Even were the arguments not waived, however, they are without merit. Although Alexandra cites Rule 103(b), Ariz. R. P. Juv. Ct., and argues "[t]he proceedings in this case fell below acceptable standards of fundamental fairness," she does not explain how any procedure employed by the juvenile court violated her due process rights. Rather, she focuses her argument on N.M.'s placement with family rather than in foster care. But, this argument requires that we ignore the plain language of the statute and reverse the juvenile court based on purported legislative intent. When the language of the statute is clear, however, we do not look beyond the plain language for intent; instead we must "apply it without resorting to other methods of statutory interpretation." *Bilke v. State*, 206 Ariz. 462, ¶ 11 (2003) (quoting *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994)). Here, there is no ambiguity requiring that we look to legislative intent as evidencing different requirements for termination based on where a child is placed after being removed from their home.

¶9 Alexandra also asserts that termination of her parental rights is not in N.M.'s best interests. She contends there was "no detriment, no showing that he would be harmed by his continuing relationship with his mother" and "[t]he only 'benefit' identified by [DCS] is 'permanency' through adoption by his grandparents." This argument, however, essentially asks us to reweigh the evidence, which we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 12. Reasonable evidence—including the case manager's testimony that termination was in N.M.'s best interests because he could be adopted by his grandparents and "no longer be exposed to domestic violence or substance use"—supported the juvenile court's ruling. We must therefore affirm. *See id.* ¶ 4.

¶10 For these reasons, we affirm the juvenile court's order severing Alexandra's parental rights.