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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARIA P.,	)	2 CA-JV 2009-0118
	)	DEPARTMENT A
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
NATALIE P.,	)	Appellate Procedure
	)	
Appellee.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S-188453-99

Honorable Peter W. Hochuli, Judge

AFFIRMED

Sarah Michèle Martin — Tucson
Attorney for Appellant

Thea M. Gilbert — Tucson
Attorney for Appellee

K E L L Y, Judge.

¶1 Maria P., mother of Natalie, born in 2005, appeals from the juvenile court's order terminating her rights to Natalie on the ground of abandonment.[1] *See* A.R.S. §§ 8-531(1); 8-533(B)(1).[2] Maria contends the court erred in severing her parental rights without assuring she had been provided with appropriate reunification services or acknowledging the undue burden placed upon her by her undocumented alien status and finding that severance was in Natalie's best interests. For the reasons stated below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d

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[1]The court also terminated the parental rights of Natalie's father, who is not a party to this appeal.

[2]Section 8-531(1) provides "'Abandonment' means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision . . . . Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment."

682, 686 (2000). When Natalie was born, eighteen-year-old Maria, an undocumented alien, was living in Sahuarita with a family friend, Lisa. It is undisputed that Maria, Natalie, and Maria's older daughter, born in 2004, lived in Lisa's home and that Lisa cared for the children from 2005 to 2008. But the extent to which Maria spent time away from Lisa's home is disputed, including her work hours and the nights spent away with various friends and boyfriends. In April 2006, Maria consented to give Lisa legal guardianship of her daughters.

¶4 In January 2008, Maria was arrested for driving under the influence of alcohol, for which an arrest warrant was still pending at the time of the 2009 severance hearing. Shortly after her arrest, she moved to Texas in March 2008 with her future husband and her older daughter, leaving Natalie with Lisa. Maria had no contact with Natalie until the severance hearing began in May 2009, nor did she send Natalie any cards, gifts, or support during this period. In September 2008, just one month before Maria gave birth to her third child in Texas,[3] she filed a motion to revoke Lisa's guardianship; Lisa then filed a dependency petition as to Natalie. The court ultimately "voided" the guardianship, adjudicated Natalie dependent, substituted the Arizona Department of Economic Security (ADES) as the petitioner in the dependency proceeding, and ordered it to provide appropriate reunification services to the parents. ADES informed the court of the difficulties it had encountered in providing services to Maria in Texas. In October 2008, Natalie's attorney filed a petition to terminate the

[3]That child and Maria's older daughter are currently in the custody of Child Protective Services in Texas.

parents' rights to her pursuant to § 8-533(A). The juvenile court treated the dependency and severance proceedings simultaneously "on two tracks right next to each other," noting, however, that ADES was not a party to the severance proceeding. A contested severance hearing was held on various dates in May, June, July and August 2009, at which both parents appeared telephonically. The court then terminated both parents' rights to Natalie.

¶5 Maria initially argues that by permitting the severance and dependency matters to proceed simultaneously, the court prevented her from taking advantage of reunification services, thereby denying her the constitutional right to preserve her relationship with Natalie. The court had denied Maria's request to continue the severance hearing to permit her to participate in reunification services. This court previously addressed and rejected a similar argument in *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶¶ 10-11, 200 P.3d 1003, 1006-07 (App. 2008), where we held that Arizona law does not prohibit the filing of a petition for termination when there is an ongoing dependency action and that federal law did not require a parent be provided reunification services before termination based on abandonment. *Cf. Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, ¶¶ 14, 17, 178 P.3d 511, 515-16 (App. 2008) (juvenile statutes provide two separate mechanisms to terminate parental rights; parties have option of pursuing termination by petition despite ongoing dependency proceeding). In addition, to the extent Maria asserts she was entitled to receive reunification services pursuant to A.R.S. § 8-846(A), we find this argument misplaced. That sub-section provides that, "if the child has been removed from the home, the court shall order the department to make

reasonable efforts to provide services to the child and the child's parent." But Natalie was not "removed from the home." And § 8-846(A) is located in article 3, chapter 10 of title 8, which pertains to dependency determinations and dispositions. Moreover, it is § 8-533(B)(8), (11) and (C), that delineate the child welfare agency's responsibility to provide appropriate reunification services in actions to terminate parental rights, not §8-846(A).

¶6 Maria also argues the court erred in terminating her parental rights without providing appropriate reunification services for grounds asserted in the termination petition (neglect, § 8-533(B)(2), and mental illness, § 8-533(B)(3)), grounds the court ultimately dismissed at Maria's request. Maria nonetheless asserts that she had a constitutional right to receive services based on these "other" grounds because they were pending during the dependency. However, in light of the fact that the court severed Maria's parental rights solely based on abandonment, a ground that does not require the provision of reunification services, her claim has no merit.[4] *See Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶ 15, 993 P.2d 462, 467 (App. 1999) (no requirement to offer reunification services when severance based on abandonment). Upon dismissing the neglect and mental illness grounds, the court correctly found "[t]he issue concerning whether or not the mother has a constitutional right to receive services and the opportunity to reunify with her child is a moot point at this time because the sole count

[4]Moreover, based on the scant record Maria has provided of the dependency proceedings, it appears that once ADES was ordered to participate in the dependency matter, it attempted to provide services to the extent it was able while Maria was living in Texas.

remaining as to the mother is the abandonment count." *Cf. Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687 (having found severance justified on one statutory ground, court need not consider sufficiency of evidence on another ground).

¶7 In a related argument, Maria claims her immigration status placed an undue burden on her and prevented her from returning to Arizona to see Natalie; she claims the juvenile court should have postponed the severance hearing to permit her to take advantage of reunification services in light of this burden. "[Q]uestions of abandonment and intent are questions of fact for resolution by the trial court." *In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990). "We are mindful that our function on review is not to reweigh the evidence before the juvenile court or supersede its assessment of the evidence with our own." *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004).

¶8 The court rejected Maria's argument, and explained "that if abandonment is proven, there would be no expectation that any parent, whether undocumented or not, would be entitled to receive services in order to reunify with a child that they have abandoned." The court expressly rejected Maria's attempt to carve out a special exception in this case based on purported constitutional questions arising from her status as an undocumented alien, and instead noted that Maria had made choices that showed, by her action and conduct, that she had abandoned Natalie. Notably, one of those choices included neglecting to visit Natalie during three visits to Arizona after she had left Natalie in Lisa's care, contradicting her assertions that her immigration status, outstanding arrest warrant, and a difficult pregnancy had prevented her return to Arizona.

Because the record contains abundant evidence to support the juvenile court's findings on this issue, we need not "'rehash[] the . . . court's correct ruling.'" *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Maria also challenges the juvenile court's ruling that termination of her parental rights was in Natalie's best interests, claiming there was "no evidence whatsoever" to support that finding. To support the finding that termination is in a child's best interests, the evidence must show by a preponderance that the child either will benefit from the severance or be harmed if the parental relationship continues. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). There was sufficient evidence to support the court's finding that Maria had had no contact with Natalie in more than one year and that Natalie is an adoptable child.

¶10 Cynthia Lemons, the individual who prepared the social summary pursuant to A.R.S. § 8-536, testified that the parents, "by their own account," had not seen Natalie for almost half of her life, and that termination was in Natalie's best interests so that she would be free for adoption. Notably, Lemons's opinion was not based on the belief that Lisa should adopt Natalie; in fact, Lemons acknowledged that she was concerned about pending criminal charges against Lisa.[5] Child Protective Services case worker Hilary Mahoney testified that, even if Lisa, who Natalie calls "mom" and with whom Natalie has developed a strong attachment, was unable to adopt Natalie, "she would be easy to

[5]Despite Maria's repeated references to Lisa's pending criminal charges, the court correctly noted that Natalie's ultimate adoption placement was not before the court in the severance proceeding.

adopt." *See In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (juvenile court could consider whether current adoptive placement existed, whether child adoptable, or whether existing placement meeting needs).

¶11 The record amply supports the juvenile court's termination of Maria's parental rights to Natalie. Therefore, we affirm.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge