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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BONNIE M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, ANTONIO M., and ALANNIE B., Appellees.	2 CA-JV 2010-0072 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J16854400

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

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E C K E R S T R O M, Judge.

¶1 Bonnie M. appeals from the juvenile court's June 2010 orders establishing permanent guardianships for her daughter, Alannie B., born in 1997, and her son, Antonio M., born in 1999. She argues the evidence was insufficient to support the court's findings that the Arizona Department of Economic Security (ADES) had made reasonable efforts to reunite her with Alannie and Antonio and that further reunification efforts would be unproductive. For the following reasons, we affirm.

¶2 Pursuant to A.R.S. § 8-871(A)(3), before a juvenile court may establish a permanent guardianship for a dependent child in ADES's custody, it must find by clear and convincing evidence that ADES "has made reasonable efforts to reunite the parent and child and further efforts would be unproductive." *See* A.R.S. § 8-872(F) (party moving for permanent guardianship has "burden of proof by clear and convincing evidence").[1] This requirement may be waived, however, if the court finds that "reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child." § 8-871(A)(3). "In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional needs of the child." § 8-871(C).

[1]Bonnie has not disputed the juvenile court's other findings, also required by § 8-871(A), that the prospective guardianships are in each child's best interests, that each child has been in the custody of his or her prospective permanent guardian for at least nine months, and that termination of Bonnie's parental rights to the children would not be in their best interests.

¶3 Child Protective Services (CPS) took custody of Alannie, Antonio, and two of Bonnie's other minor children, Ariela M. and Luis M. Jr., in February 2009,[2] after investigating allegations that Bonnie's live-in boyfriend, Luis M., had physically and sexually abused Alannie and that Bonnie had failed to protect her.[3] Bonnie had not always had physical custody of Alannie and Antonio; Alannie had lived with her father, Agustin B., for about five years, and Antonio had lived with his paternal grandparents for more than six years, beginning when he was nineteen months old.

¶4 According to CPS investigative case manager Linda Carlson, Antonio had told her Luis "babie[d]" his own children—Luis Jr. and Ariela—but treated him and Alannie differently. He said he had seen Luis hit Alannie and he was afraid of Luis, who had threatened to "cut him." Reports that Luis had physically abused Bonnie's children "date[d] back to 2003 and . . . continue[d] to come to the attention of CPS," but Bonnie did "not appear to be listening to her children's concerns" and had failed to "follow through on the recommendations [ADES] ha[d] made in the past for therapeutic intervention."

¶5 The four children were adjudicated dependent after Bonnie admitted the allegations in an amended dependency petition. In those admissions, she acknowledged the children's reports of "ongoing physical and verbal abuse by Luis" and Alannie's statement that Luis and Bonnie had both "hit, push[ed], shove[d], grab[bed] and shake[n]

[2]Although Bonnie has other children, it appears these were the only minor children in her custody when the dependency petition was filed.

[3]Luis is the father of Ariela and Luis Jr. During the course of the dependency proceeding, Bonnie married Luis.

her," resulting, on at least one occasion, in injuries observed by school employees. Bonnie also acknowledged that she knew Alannie felt mistreated by Luis but had declined her daughter's request that she intervene. In a stipulated amendment to the petition, she opined that she and Luis had disciplined her children "strict[ly]" but were "not abusive." At a permanency hearing in March 2010, the juvenile court found Alannie and Antonio could not be returned to Bonnie's custody "without substantial risk of harm to the children's physical, mental or emotional health and safety." The court changed the case plan goal for these two children to permanent guardianship and reaffirmed family reunification as the case plan goal for Ariela and Luis Jr.

¶6 After a contested hearing, the juvenile court granted ADES's motions for permanent guardianship and stated, "One of the key issues in this case is the failure of the mother to acknowledge any kind of responsibility for [the] . . . abuse and neglect [of her children], and her failure to protect them." Consistent with this observation, the court made the following finding:

> [ADES] has made reasonable efforts to attempt reunification, [but] further efforts would be unproductive . . . . The key to reunification is therapeutic benefit, which has not happened due to the position of the mother and her inability to recognize her children[']s needs and to participate in appropriate services. The children are [a] preteen and a teenager, they have made it clear throughout the case that the[ir] foremost desire is to remain in their current placements [and] to be safe and not afraid, and that will only happen if the guardianship is granted[,] giving them permanency with their current placements.

¶7 On appeal, Bonnie relies almost entirely on her relatively successful efforts to reunite her with her younger children, Ariela and Luis Jr., to argue the juvenile court erred in finding that ADES had made reasonable efforts to reunite her with her two older children, Alannie and Antonio. Specifically, she maintains ADES failed to make reasonable efforts to reunite her with Alannie and Antonio because it had not established "services aimed at resolving the issues that made Alannie and Antonio resistant to returning" to her home.[4]

¶8 On review, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007). We will not disturb the court's order establishing a permanent guardianship unless its factual findings are clearly erroneous, *see Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997), that is, unless no reasonable fact finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

[4]Bonnie also asserts the juvenile court violated her due process rights, but appears to base this claim on her allegation that there was insufficient evidence to support the court's findings. This assertion therefore adds nothing to her argument on appeal. And we agree with ADES that she has failed to develop a constitutional claim with sufficient clarity to warrant our review, and we decline to address it. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (specifying Rule 13, Ariz. R. Civ. App. P., generally "appl[ies] in appeals from final orders of the juvenile court"); *cf. State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.").

¶9 Ample evidence supported the juvenile court's findings here. CPS case manager Aiza Huerta reported that Bonnie had been provided with supervised visitation, domestic violence education and non-offender group therapy, individual therapy, a parent aide, and parenting classes, and that Alannie and Antonio had also been provided with individual counseling. She explained that Bonnie's contact with Alannie and Antonio had been more limited than her contact with her younger children because she had improperly discussed case matters with them during visits, had engaged in other inappropriate conversations with Alannie, and had "coach[ed]" Antonio to tell Huerta and the court that he wanted to return home.

¶10 Moreover, Bonnie was still denying that Luis had abused Alannie and so was not prepared to appreciate the impact of that abuse or reassure Alannie that she believed her and would support her. Similarly, after Bonnie's marriage to Luis, Antonio expressed concerns that his mother could not or would not protect him from Luis. He was fearful of Luis, would not visit with him unless accompanied by the visitation supervisor or his grandparents, and was adamant that he did not want to live with Bonnie and Luis.

¶11 We see no error in the juvenile court's findings that ADES had made reasonable efforts to reunite Bonnie with Alannie and Antonio or that further reunification efforts would be unproductive. We agree with ADES that Huerta adequately "reconciled [ADES's] seemingly contradictory positions" of seeking permanent guardianships for Alannie and Antonio but continuing efforts to reunite Bonnie and Luis with their two younger children. Unlike Alannie and Antonio, who had

different fathers and had spent years in the care of other relatives, the two younger children were Luis's biological children and had always resided with Bonnie before CPS took custody of them. And, importantly, the service providers, therapists, and the children themselves—including Ariela—had opined that the younger children would be safe at home, but that Alannie and Antonio would not.

¶12 We conclude reasonable evidence supported the juvenile court's orders establishing permanent guardianships for Alannie and Antonio, and we affirm those orders.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

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