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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KRISTINE S., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and BREKELLE S-D., Appellees.	2 CA-JV 2010-0077 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. J182529 and S191817

Honorable Hector E. Campoy, Judge

AFFIRMED

Jacqueline Rohr
Tucson
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E C K E R S T R O M, Judge.

¶1 Kristine S. challenges the juvenile court's June 29, 2010, order terminating her parental rights to Brekelle S-D., born April 27, 2004, on the ground of prior removal. *See* A.R.S. § 8-533(B)(11). She argues the court erred by finding termination of her parental rights was in Brekelle's best interests. We affirm.

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Id.* ¶ 10.

¶3 Kristine does not assert the juvenile court erred in finding termination was appropriate under § 8-533(B)(11), only that the court improperly found termination was in Brekelle's best interests. Kristine does not contest the court's thorough recitation of the facts, which we therefore adopt. Brekelle was removed from Kristine's care and placed in foster care in May 2007 based on Kristine's methamphetamine abuse and Child Protective Services' discovery that Brekelle's father, Scott D., was convicted of a sex crime involving a child. Although Brekelle was returned to Kristine's care in June 2008, she was removed again in July 2009 after Kristine resumed her methamphetamine use

and permitted Scott to have unsupervised contact with Brekelle in violation of a court order. Brekelle was returned to the same foster family she had been with previously.

¶4 The Arizona Department of Economic Security (ADES) filed a petition to terminate Kristine's and Scott's parental rights on the basis of prior removal pursuant to § 8-533(B)(11) and, as to Scott only, abuse of a child pursuant to § 8-533(B)(2). After a seven-day contested hearing, the juvenile court granted the petition as to Kristine but denied it as to Scott, finding § 8-533(B)(11) did not apply to him because Brekelle never was in his custody and that ADES had failed to prove termination was appropriate under § 8-533(B)(2) by clear and convincing evidence.[1]

¶5 Relevant to Brekelle's best interests, the juvenile court found she was well-adjusted and bonded with her foster family, which was "able and willing to adopt her," and that it would be to her benefit to stay with that family. It noted that Kristine had permitted Brekelle to live in an unhealthy and unstable environment, that both her parents had an "insecure/avoidant attachment" to Brekelle, and that placing Brekelle in Kristine's care would be harmful to her. The court also observed it would be "beneficial" for Brekelle if both parents' rights were terminated so she could be adopted by her foster family.

¶6 Kristine first argues the juvenile court improperly based its best-interests finding on the fact the foster family was willing and able to adopt Brekelle. She asserts that, because the court denied the termination petition as to Scott, "[t]here is no adoption in the offing" and therefore the possibility of adoption could not be considered a benefit to Brekelle. We reject this argument. A finding that a child is adoptable, even if no

[1]Scott is not a party to this appeal.

adoption plan is pending, is relevant to a best interests finding. *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) ("[A]DES need not show that it has a specific adoption plan before terminating a parent's rights; [A]DES must show that the children are adoptable."). Although Scott's parental rights have not been terminated, a finding that Brekelle's current placement is willing to adopt her is similarly relevant to whether terminating Kristine's rights is in Brekelle's best interests. Kristine cites no authority, and we find none, suggesting ADES must successfully terminate both parents' rights at the same time in order for a child's potential adoptive placement to be relevant to a determination of the child's best interests—particularly when one of the parents has never had custody of the child and appears unlikely to have custody in the future.

¶7 In a related argument, Kristine asserts the juvenile court improperly found termination was in Brekelle's best interests before finding termination was warranted under § 8-533(B)(11), thereby making its decision in the improper "order and . . . context." As we understand her reasoning, she contends that, because the court mentioned in its best-interests findings that adoption would be in Brekelle's best interests, but ultimately did not terminate Scott's parental rights—thereby removing adoption as an immediately available option, the court must have improperly conducted its best-interests analysis first. We agree a best-interests determination is unnecessary until a juvenile court has found a statutory ground for termination. *See Kent K.*, 210 Ariz. 279, ¶ 16, 110 P.3d at 1017. And a consideration of the child's best interests should not influence the court's decision whether a petitioner has proven a statutory ground for

termination exists. *See id.* (distinguishing grounds for termination from best-interests determination).

¶8 But Kristine does not dispute the juvenile court's finding that termination was warranted under § 8-533(B)(11). Thus, she cannot reasonably argue the court's purportedly premature best-interests calculation improperly influenced its § 8-533(B)(11) finding. And the court's observation that Scott was not likely to be a suitable custodial parent is germane to its determination that Brekelle's remaining with her foster parents was in her best interests because it suggests that placement will likely be stable for the foreseeable future. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 15, 53 P.3d 203, 207 (App. 2002) (stability of current placement relevant to best-interests determination). Accordingly, we find no error in the court's consideration of factors relevant to Scott's suitability as a parent in assessing whether terminating Kristine's parental rights is in Brekelle's best interests.

¶9 Kristine additionally asserts that, because Scott's parental rights were not terminated, the termination of her rights was not in Brekelle's best interests. She reasons that having her rights "remain intact" would provide "a layer of protection and a source of understanding" for Brekelle "as she becomes aware of her father's past." But Kristine identifies no evidence in the record that suggests she is willing to protect Brekelle or is capable of doing so. Indeed, in her opening brief she expressly "adopts" the court's finding that she not only violated the court's order prohibiting Scott from having unsupervised time with Brekelle, but that she had no intention of complying with that order when the first dependency proceeding ended and Brekelle was returned to her care.

Nor does she identify any evidence suggesting she is better suited than Brekelle's foster parents to help Brekelle understand Scott's past.

¶10 Kristine also asserts the juvenile court's best-interests finding was incorrect because she has been sober for five months and is employed for the first time in fifteen years. But the weighing of competing facts relevant to Brekelle's best interests is properly left to the juvenile court's discretion. *See Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). Kristine has not demonstrated the court abused that discretion here. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (evidence child is adoptable and current placement meeting child's needs sufficient to find termination in child's best interest).

¶11 For the reasons stated, we affirm the juvenile court's order terminating Kristine's parental rights to Brekelle.

/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