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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

HANNAH S., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, AMETHYST B., NATHAN S., and JONATHON S., Appellees.	2 CA-JV 2009-0059 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JD200600019

Honorable Stephen M. Desens, Judge

AFFIRMED

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B R A M M E R, Judge.

¶1 Hannah S., mother of Amethyst, Nathan and Jonathan, born in 2002, 2006, and 2007, respectively, appeals from the juvenile court's order terminating her parental rights to her children based on mental illness, *see* A.R.S. § 8-533(B)(3), and length of time in care, *see* § 8-533(B)(8)(c).[1] On appeal, Hannah does not dispute that she suffers from a mental illness or that her condition will continue for an indeterminate time. Rather, she argues there was insufficient evidence to support the court's findings that her mental illness prevented her from discharging her parental responsibilities, *see* § 8-533(B)(3), and that there was a substantial likelihood she would be unable to parent the children in the near future. *See* § 8-533(B)(8)(c). For the reasons set forth 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).

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[1]Nathan's and Jonathan's father filed a separate appeal challenging the termination of his parental rights to them and this court affirmed. *See Joseph S. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2009-0058 (memorandum decision filed Nov. 16, 2009). Amethyst's father did not appeal the termination of his parental rights to her, nor did he participate in the severance trial. All references to the "parents" in this decision refer to Hannah and Joseph.

¶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 682, 686 (2000). In late 2005, when Hannah was pregnant with Nathan, Child Protective Services (CPS) received reports that Hannah was homeless and was neglecting and abusing then two-year-old Amethyst, "slapping" her and "dragging her around by her arms and legs." Shortly after Nathan was born in February 2006, CPS received reports that both children were being abused and neglected. A week later, upon learning that Hannah had an eleven-year history of mental illness; that she had been diagnosed with psychosis, schizophrenia, and a possible bipolar affective disorder; and that she was not receiving mental health treatment, the Arizona Department of Economic Security (ADES) took custody of Amethyst and Nathan. Except for the first month after they were removed from Hannah's care, Amethyst and Nathan have lived together with their current foster family, who want to adopt them.

¶4 In April 2006, Nathan's and Jonathan's father, Joseph, moved to Sierra Vista to be with Hannah; she became pregnant one month later with Jonathan. Like Hannah, Joseph suffers from mental health problems, including a twenty-year history of schizophrenia and bipolar disorder. In February and March 2006, ADES filed dependency petitions alleging that Hannah, whose parental rights to at least two other children had been terminated, had physically and medically neglected Amethyst and Nathan, and she was unable to parent them because of her mental condition. Reports alleged that Hannah, who had "wandered homeless through the country," had been observed at a Tucson homeless shelter "leaving [Amethyst] to sit in her own feces," and that she had said to newborn

Nathan, "Don't make me drop you again." Following a contested dependency hearing in June 2006, the court adjudicated Amethyst and Nathan dependent as to Hannah.

¶5 Jonathan, who was born in February 2007 without his right ear canal, is deaf in that ear. Based on reports that Hannah "was out [] of [] control" when Jonathan was born, that she had attempted to hit the nurses and had "pulled the baby's head out of her vagina and immediately placed him at her chest, 'almost crushing him,'" conduct Joseph characterized as normal, ADES took custody of Jonathan at birth. ADES filed a supplemental dependency petition as to Jonathan one week after he was born. At a February 2007 permanency planning hearing, the juvenile court approved a concurrent case plan goal of family reunification and severance and adoption. In July 2007, following a contested dependency hearing, Jonathan was adjudicated dependent as to Hannah. Jonathan has lived since birth with a foster family, albeit not the same family with whom Nathan and Amethyst live.

¶6 During the dependency, Hannah underwent psychological and psychiatric evaluations, participated in both individual and family therapy, received parent education and medication reviews, and participated in visits with the children. Despite ADES's efforts and Hannah's compliance with the services offered, "little to no behavioral changes were demonstrated" by either parent as of May 2007.

¶7 After an additional permanency planning hearing that spanned four days in October and December 2007, the juvenile court allowed the parents "more time to develop the skills and stability needed to parent their children effectively," despite ADES's having twice recommended the case plan be changed to severance and adoption. In December 2008,

years after the children had been removed from the parents' care (almost three years for Nathan and two for Jonathan), the court changed the case plan goal to severance and adoption, and ADES filed a motion to terminate both parents' rights. After a three-day contested hearing in March 2009, the court terminated the parents' rights based on mental illness and the children's having been out of the home for fifteen months or longer, pursuant to § 8-533(B)(3) and (B)(8)(c).

¶8 Psychologist Sergio Martinez, who evaluated Hannah in 2006 and diagnosed her as suffering from schizophrenia and as having a schizotypal personality disorder, testified at the severance hearing that Hannah's mental condition "would impair [her] ability to parent a child in a responsible manner," a problem that would increase with more than one child. He added that an individual with Hannah's condition who does not take proper medication "would place the children at risk of neglect or possibly abuse," an opinion that was particularly relevant in light of Hannah having reported to Martinez in 2006 that she had not had any mental health treatment or services during the previous four years. Martinez opined that the prognosis for Hannah to parent her children was poor.

¶9 Psychologist Daniel Overbeck evaluated Hannah in 2007 and diagnosed her as suffering from schizoaffective disorder, bipolar type. He observed that Hannah's history "raise[s] concerns regarding her continued capacity to effectively parent her three young children," particularly as a single parent. In a letter to CPS supervisor Robin St. Germain, Overbeck concluded, "[t]here appears to be no scenario of interventions and supports that reasonably might be expected to allow [the parents] to independently parent one, two or all

of their children in an effective, consistent and safe manner." In addition, although psychologist Steven Hirdes did not testify at trial, he concluded in his February 2009 written report that Hannah suffers from schizoaffective disorder, bipolar type, and a schizotypal personality disorder with symptoms that are "persisting and debilitating." His diagnosis led him to "strongly" question Hannah's capacity to parent adequately. He also noted that Hannah's condition would limit "her ability to handle . . . the inevitable stresses that result in the managing of children."

¶10 St. Germain testified the parents had failed to remedy the circumstances that had rendered the children dependent and the children were not safe in the parents' care, despite the services CPS had provided. She explained the parents simply cannot parent the children effectively because the children are "too much to handle" in light of the parents' mental illnesses. St. Germain also testified that termination was in the children's best interests and that they would "face further emotional neglect or physical abuse if returned to the parents." *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (to sustain burden of establishing termination in child's best interests, ADES must prove, by preponderance of evidence, child either would benefit from severance or be harmed if parental relationship continued). Michael Vetter, clinical and resource director for Child and Family Resources, testified the parents were not currently capable of providing a safe and stable household for the children and further clinical intervention would not change his conclusion.

¶11 In its nine-page minute entry, followed one month later by formal findings of fact and conclusions of law, the juvenile court entered extensive factual findings and legal conclusions. The court specified that it had

> fully considered the evidence and testimony presented at the contested severance hearing . . . together with the testimony and evidence presented at the Permanency Planning Hearing . . . [that it had] the unique ability to observe the witnesses during their testimony . . . [and had] read and fully considered the written closing arguments of respective counsel.

The court specifically found, as § 8-533(B)(3) and (B)(8)(c) requires, that ADES had made diligent efforts to provide reunification services; Hannah's mental illness had prevented her from discharging her parental responsibilities; she had not remedied the circumstances causing the children's dependency and she would not be able to parent them effectively in the near future; and termination was in the children's best interests.

¶12 Notably, the juvenile court acknowledged that three psychologists had opined specifically that the parents have a longstanding diagnosis of serious psychotic disorders "from which they cannot recover nor is the condition curable" and that counsel for the parents "have avoided confronting the brutal reality" that Hirdes, their own retained psychologist, "came to the same material and relevant conclusions [as the state's psychologists] concerning the parent[s'] ability to parent in a consistent and safe manner over a prolonged period of time without significant interventions and outside support." The court also noted the parents' attorneys had not challenged the "expert opinions, findings, perceptions or conclusions" and Hirdes's opinions had been rendered just before the severance hearing. The parents had then been "fully compliant with their medical and drug

regimes as well as having over the past two years demonstrated their ability to maintain a stable mental health condition with the help of various clinicians and professionals."

¶13 The record contains abundant evidence to support the juvenile court's findings with respect to the statutory grounds for severance and the best interests of the children. Given the court's detailed findings, we need not "'rehash[] the . . . court's correct ruling'" here. *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). Although we adopt the court's ruling, we address one additional issue Hannah has raised.

¶14 Hannah suggests the juvenile court improperly relied on the generalized opinions of the three psychologists who evaluated her, permitting their testimony to "trump" the arguably favorable testimony of the professionals who had worked with her "over the course of months and years." But, the juvenile court, not this court, resolves any conflicts in the evidence, and it did so here. *See In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987) (as fact-finder in termination proceedings, court in best position to weigh evidence and judge witness credibility).

¶15 In its minute entry, the court noted the "dispute between the various professional witnesses as to their respective perceptions of these parents and their ability to care for these children in the future." The court pointed out Hirdes had observed that Hannah was "highly anxious and intolerant of circumstances that increase her level of anxiety . . . likely . . . result[ing] in recurring episodes of significant deterioration in her psychological status with a concurrent, markedly reduced ability to function adequately." The court relied

on Hirdes's opinion to explain the inconsistent testimony about Hannah as follows: "[W]hile [Hannah] may be perceived by those who interact with her on superficial levels as pleasant, somewhat congenial, even manifesting delightful characteristics, she is just as likely to be perceived as highly eccentric or unusual, confusing, and socially inadequate, especially over a more extended period of interaction." We note, moreover, that despite Hannah's claim there was evidence she had complied with her case plan and was "managing well," the record simply does not show she was able to discharge her parental responsibilities then, now or in the future.

¶16 The record amply supports the juvenile court's termination of Hannah's parental rights to Amethyst, Nathan and Jonathan. Therefore, we affirm.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge