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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

HEATHER K., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, K.K., *Appellees*.

No. 1 CA-JV 16-0070
FILED 8-16-2016

Appeal from the Superior Court in Maricopa County
No. JS517591, JD508376
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

Denise L. Carroll, Scottsdale
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Daniel R. Huff
Counsel for Appellees

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge Lawrence F. Winthrop and Judge Kenton D. Jones joined.

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T H U M M A, Judge:

¶1 Heather K. (Mother) appeals the superior court’s order terminating her parental rights to K.K., arguing the Department of Child Safety (DCS) did not establish that it made diligent efforts to provide appropriate reunification services and that termination was not in K.K.’s best interests. Because Mother has shown no error, the order is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In October 2014, the superior court granted DCS’ motion to terminate Mother’s parental rights to two other children (S.K. and A.K.) based on 15-months time-in-care. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(8)(c) (2016).² By that time, S.K. and A.K. had been in DCS’ care for nearly two years and S.K. had been subject to an earlier dependency. During the dependency leading to severance, Mother inconsistently participated in services to remedy mental health and domestic violence issues and had been hospitalized at least three times when she did not take her medication as prescribed.

¶3 In terminating Mother’s parental rights to S.K. and A.K., the superior court found DCS made “a diligent effort to provide appropriate reunification services,” including providing Mother a bonding assessment, case management services, parent-aide services, parenting classes, psychological consultation, psychological evaluation, transportation, urinalysis testing and visitation, yet Mother “has been unable to remedy the circumstances that cause the children to be in an out-of-home placement.” The court found Mother “has been inconsistent with [these] services regarding her mental health” and she

has not been able to demonstrate that she is stable, let alone, able to demonstrate that she is able to offer a safe and stable home for the children. There is a substantial likelihood based

¹ This court views the evidence in a light most favorable to sustaining the superior court’s findings. *See Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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upon [M]other's behavior since this case has started that she will not be able to remedy her circumstances in the near future.

Mother did not appeal this severance.

¶4 Mother gave birth to K.K. in March 2015, who was taken into care by DCS days after his birth following a hotline report that Thomas K. (Father)³ was particularly aggressive at the hospital and both parents were engaging in behavior "indicative of domestic violence between the parents, as well as their ongoing mental health." The resulting dependency alleged Mother was unable to parent K.K. due to the prior termination of her parental rights to S.K. and A.K., based on mental health issues and domestic violence, noting "numerous domestic violence incidents between Mother and Father and they continue to live together." Mother denied the allegations, but submitted the issue of dependency to the court, and K.K. was found dependent as to Mother in early April 2015. The court adopted a case plan of severance and adoption and ordered various services, including behavioral health assessment and/or treatment, parent aide/parenting services and visitation.

¶5 Later in April 2015, DCS filed a petition to terminate Mother's parental rights, alleging Mother "has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause." *See* A.R.S. § 8-533(B)(10). DCS alleged that Mother's parental rights to S.K. and A.K. were terminated in October 2014 based on 15-months time-in-care and Mother "has still not remedied the domestic violence and mental health concerns that caused those children to be in an out of home placement."

¶6 DCS unsuccessfully moved to discontinue reunification services, with the superior court finding DCS had not established by clear and convincing evidence that an aggravating circumstance existed that would relieve DCS of its obligation to provide such services. *See* A.R.S. § 8-846(D)(1). In July 2015, without objection by Mother, the court found DCS had made reasonable efforts to provide appropriate services. In January 2016, without apparent objection by Mother, the court again made a reasonable-efforts finding.

³ Father's appeal was dismissed in April 2016 after his counsel avowed there was no non-frivolous issue for him to press on appeal.

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¶7 The adjudication on the severance petition occurred in February 2016. The DCS case manager testified, explaining DCS took S.K. and A.K. into care because of concerns after a domestic violence incident in 2012 and that, during that case, Mother also had mental health issues. The case manager acknowledged that Mother was fairly consistent in her participation in services, but testified that Mother cannot demonstrate behavioral changes. Mother did not testify, but her friend testified Mother has been stable recently and would be a good parent. Father testified, stating he and Mother planned to co-parent K.K. and stay together.

¶8 After taking the matter under advisement, the superior court granted severance. In discussing the services DCS provided to Mother, the court noted a psychological evaluation opining that a child in Mother's care would be at significant risk and that there are reasonable grounds to believe her significant mental health issues would continue for a prolonged, indeterminate time. Discussing domestic violence, the court noted it was unknown whether Mother completed counseling because she rescinded an authorization for release of her records and that Mother and Father (who remained together) "do not have insight in identifying domestic violence behaviors." As to visitation, the court noted statements by Mother late in 2015 "about absconding with the child;" that Mother and Father "requested the parent-aide services be discontinued" and that they "chose not to participate in visits until January 2016." The court found DCS showed by clear and convincing evidence that Mother has yet to remedy her mental health and domestic violence issues that were present with S.K. and A.K. and that termination is in K.K.'s best interests. This court has jurisdiction over Mother's timely appeal pursuant to A.R.S. §§ 8-235, 12-120.21(A)(1) and 12-2101(A)(1) and Arizona Rules of Procedure for the Juvenile Court 103-04.

DISCUSSION

I. The Superior Court Did Not Err By Terminating Mother's Parental Rights.

¶9 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm

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an order terminating parental rights so long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

A. Mother Has Not Shown DCS Failed To Provide Appropriate Reunification Services.

¶10 DCS was required to prove that Mother “has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.” A.R.S. § 8-533(B)(10). On appeal, Mother argues DCS “was required to establish by clear and convincing evidence that it had made a ‘diligent effort to provide appropriate reunification services’ to [Mother] pursuant to A.R.S. § 8-533(B)(8)(c),” and DCS “failed to provide Mother with the time and opportunity to participate in services with a reasonable prospect of success.” Mother also argues DCS should have provided an additional psychological evaluation and that DCS was late in starting services.

¶11 Mother appears to argue that, in seeking termination of her parental rights to K.K., DCS was required to prove the same statutory ground upon which her parental rights to S.K. and A.K. were terminated. This is not the law. Instead, DCS was required to prove that the same factual cause is present in both proceedings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 48 ¶ 11 (App. 2004) (noting “the juvenile court properly interpreted the ‘same cause’ language in subsection (B)(10) as referring to the factual ‘cause’ that led to the termination of Appellant’s parental rights . . . , and not the statutory ground or grounds that supported that preceding severance”). Accordingly, DCS did not have to prove 15-months time-in-care because DCS did not assert that ground in seeking severance of Mother’s parental rights to K.K., who was not yet 15-months old at the time of severance. Instead, DCS needed to prove that the same factual cause of the termination of Mother’s parental rights to S.K. and A.K. properly led to the termination of Mother’s parental rights to K.K. *See* A.R.S. § 8-533(B)(10); *Mary Lou C.*, 207 Ariz. at 48 ¶ 11.

¶12 S.K. and A.K. came into care as a result of a domestic violence incident between Mother and Father. And Mother was offered, and participated in, services calculated to address her diagnosed mental illness. As such, the factual cause of the termination of Mother’s parental rights to S.K. and A.K. is a combination of domestic violence issues and Mother’s mental illness.

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¶13 The dependency and severance of Mother's parental rights to K.K. involved these same factual causes. Mother's inability to remedy these issues resulted in the termination of her parental rights to K.K., despite her participation in the prescribed services. Days after K.K. was born, hospital staff made a hotline call reporting Father's aggressive behavior and categorizing the behavior of both Mother and Father as "indicative of domestic violence between the parents, as well as their ongoing mental health." In July 2015, Mother was arrested following a domestic violence incident with Father. Notwithstanding this dysfunctional relationship, and after years of services, evidence at the February 2016 trial indicated Mother and Father planned to co-parent K.K. A psychological evaluation expressed concern about Mother inconsistently participating in mental health services and inconsistently taking medication.

¶14 By the time of the February 2016 trial, DCS had been providing services to Mother to address her mental health and domestic violence issues for more than three years. The trial evidence, however, supports the superior court's conclusion that Mother's "mental health issues impair her ability to keep the child safe" and that she was unable to parent due to domestic violence, given the couples' history of domestic violence, their continuing relationship and that "neither has demonstrated they recognize the negative effect domestic violence has on a child." Nor has Mother demonstrated that the superior court erred in not finding that DCS failed to provide appropriate reunification services, particularly given the services provided during the dependencies. Accordingly, Mother has not shown that the superior court erred by finding by clear and convincing evidence that Mother was unable to "discharge parental responsibilities due to the same cause" as in the severance proceeding involving S.K. and A.K. *See* A.R.S. § 8-533(B)(10).

B. Mother Has Not Shown Severance Was Not In K.K.'s Best Interests.

¶15 Mother also challenges the superior court's finding that severance is in K.K.'s best interests. The best-interests assessment focuses on "how the child would benefit from a severance or be harmed by the continuation of the relationship." *Mary Lou C.*, 207 Ariz. at 50 ¶ 19 (citation omitted). The superior court found termination was in K.K.'s best interests because K.K. needs "a permanent and stable home free from domestic violence" and his current placement "provides for his physical, psychological and emotional needs." Indeed, Mother was arrested during K.K.'s dependency after a domestic violence incident with Father and no evidence suggests Mother planned to separate from Father to resolve those

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domestic violence issues. Trial evidence also indicated Mother continued to be inconsistent with mental health medication and services. Because of the instability and ongoing domestic violence in Mother and Father's home, and K.K. being in a stable, adoptive placement, or being otherwise adoptable, Mother has not shown the superior court erred by finding termination was in K.K.'s best interests.

CONCLUSION

¶16 The superior court's order terminating Mother's parental rights to K.K. is affirmed.



Amy M. Wood • Clerk of the court
FILED: AA