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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 06/26/2012  
RUTH A. WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

VALERIE G., ) No. 1 CA-JV 12-0025  
)  
) DEPARTMENT E  
Appellant, )  
) **MEMORANDUM DECISION**  
v. )  
) (Not for Publication -  
) Ariz. R.P. Juv. Ct. 103(G);  
ARIZONA DEPARTMENT OF ECONOMIC ) ARCAP 28)  
SECURITY, and E.G., )  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD13582

The Honorable Joan Sinclair, Judge Pro Tempore

**AFFIRMED**

John L. Popilek, P.C.  
Attorney for Appellant

Phoenix

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By Michael F. Valenzuela, Assistant Attorney General  
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Phoenix

**H A L L**, Judge

¶1 Valerie G. (Mother) appeals the juvenile court's order terminating her parental rights to E.G.<sup>1</sup> For the following reasons, we affirm.

#### **FACTUAL<sup>2</sup> AND PROCEDURAL BACKGROUND**

¶2 Mother is the biological parent of E.G., born in 2003. Child Protective Services (CPS) began investigating Mother after it received a report that she was under the influence at E.G.'s school. During the investigation, E.G. reported that Mother did not provide him with food and he only ate at school. When CPS asked Mother why she did not have resources for food even though she received disability benefits, Mother responded that it was "none of CPS business." On September 2, 2010, CPS took temporary custody of E.G. and placed him in a foster home.

¶3 On September 8, 2010, the Department of Economic Security (ADES) filed a petition alleging that E.G. is dependant to Mother. Mother submitted the dependency issue to the juvenile court without contest and the court found E.G. dependent. The juvenile court ordered a family-reunification plan and ADES offered Mother the following services to assist

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<sup>1</sup> E.G.'s father has also had his parental rights terminated. He is not, however, a party to this appeal.

<sup>2</sup> We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

with the plan: parent-aide services, substance-abuse assessment and treatment, substance-abuse testing, psychiatric evaluation, visitation, and transportation.

¶4 In August 2011, the Foster Care Review Board (FCRB) issued its findings and recommendations. It found that Mother had not been compliant or participated in services and E.G.'s out-of-home placement was both necessary and meeting all of his needs.

¶5 After the permanency hearing, ADES filed a motion to terminate Mother's parent-child relationship with E.G. on the grounds that Mother: (1) is unable to discharge her parental responsibilities because of chronic substance abuse, pursuant to Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (Supp. 2011), and (2) E.G. has been in a court-ordered out-of-home placement for a cumulative period of nine months or longer, ADES made diligent efforts to provide Mother with appropriate reunification services, and Mother substantially neglected or willfully refused to remedy the circumstances that caused E.G. to be in care, pursuant to A.R.S. § 8-533(B)(8)(b).<sup>3</sup> ADES also alleged that termination of the relationship was in E.G.'s best

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<sup>3</sup> At the contested severance hearing, ADES moved to amend the motion for termination to add that E.G. has been in an out-of-home placement for fifteen months or longer, pursuant to A.R.S. § 8-533(B)(8)(c). After taking the matter under advisement, the juvenile court granted ADES' motion.

interest. Mother denied the allegations in the petition and the juvenile court held a contested severance hearing.

¶16 At the hearing, Mother testified that she is currently living with friends, but acknowledged that she has been homeless for a significant period of time during the previous year. She is unemployed and receiving disability income for post-traumatic stress disorder, but looking for employment. Although Mother admitted using methamphetamine and other illegal substances to "self-medicate," she testified that she has not used methamphetamine for six to eight months. When asked why she did not comply with substance-abuse testing, Mother stated she could not because of depression. She also explained that her three mental health hospitalizations during the previous year were the result of one of the service providers, Magellan, "dropp[ing] the ball" by failing to give her the medications she needs, which caused her mental instability.

¶17 CPS case manager Charlan then testified that Mother did not comply with substance-abuse testing, parent-aide services, or substance-abuse counseling. Charlan referred Mother to TERROS twice for substance-abuse treatment, but Mother never completed a program and was removed from one program because she had "confrontations" with other participants. Mother repeatedly reported to Charlan that she was actively

using drugs and claimed she could not participate in services until she received the medications she believed she needed.

¶18 In addition, Charlan testified that Mother refused to submit to a psychological evaluation. For the majority of the time Mother was offered services, she could not qualify for a psychological evaluation because she failed to maintain sobriety for the requisite thirty-day period. Indeed, Mother only submitted to seven urinalysis tests during the entire period she was provided services, and one test was positive for marijuana. Mother provided two clean tests in October 2011, however, and Charlan made an appointment for her to have a psychological evaluation. Ultimately, Mother refused the evaluation because she could not "bring herself to leave her apartment."

¶19 Charlan further testified that Mother repeatedly demonstrated emotional instability during visits with E.G. Mother had several bouts of uncontrollable crying and had to be comforted during visits rather than focusing her attention on E.G.

¶10 Finally, Charlan testified that E.G. has been in a court-ordered out-of-home placement for more than fifteen months and Mother substantially neglected or willfully refused to comply with reunification services. Charlan also opined, without objection, that Mother's substance abuse will continue for a prolonged and indeterminate period. When questioned about

E.G.'s best interest, Charlan testified that E.G.'s foster parents are meeting all of his educational, social, medical, physical and emotional needs and want to adopt him. In addition, E.G. consistently states that he wants to stay with his foster parents and is frightened by the possibility he could be returned to Mother. Accordingly, Charlan opined that severance and adoption is in E.G.'s best interest.

¶11 In addition to presenting Charlan's testimony, ADES submitted numerous exhibits for the juvenile court's consideration, including a psychological evaluation of E.G. conducted by G. Joseph Bluth, Ph.D., on November 28, 2011. During the evaluation, E.G. told Dr. Bluth that he "did not like living with [Mother] because her behavior was strange and they frequently did not have food in the home." In addition, E.G. informed Dr. Bluth that "getting adopted by [his foster parents]" is the best thing that has happened in his life. Based on his evaluation of E.G., Dr. Bluth opined that E.G. suffers from both depression and anxiety as a result of "severe abuse and neglect." Dr. Bluth also diagnosed E.G. as suffering from post-traumatic stress disorder and dysthymic disorder. Dr. Bluth recommended that Mother's parental rights and all visitation be terminated because contact with Mother is "traumatizing" to E.G.

¶12 After taking the matter under advisement, the juvenile court found ADES proved by clear and convincing evidence that Mother's parental rights should be terminated due to her inability to discharge her parental responsibilities because of chronic substance abuse, A.R.S. § 8-533(B)(3), E.G.'s out-of-home placement for nine months, A.R.S. § 8-533(B)(8)(a), and E.G.'s out-of-home placement for fifteen months, A.R.S. § 8-533(B)(8)(c).<sup>4</sup> The court additionally found that ADES proved by a preponderance of the evidence that termination was in E.G.'s best interest.

¶13 Mother timely appealed. We have jurisdiction under A.R.S. §§ 8-235 (2007), 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(A).

#### DISCUSSION

¶14 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interest. We will affirm an

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<sup>4</sup> Mother does not challenge the juvenile court's finding of a statutory basis for termination and we will therefore not address it on appeal.

order terminating parental rights unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶15 On appeal, Mother contends that the juvenile court erred by finding ADES made reasonable and diligent efforts to provide her with reunification services and by finding that termination of the parent-child relationship was in E.G.'s best interest. She also asserts that she was denied effective assistance of counsel. We address each argument in turn.



## **I. Reunification Services**

¶16 "It is well established that the State, before acting to terminate parental rights, has an affirmative duty to make all reasonable efforts to preserve the family relationship." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1, 971 P.2d 1046, 1047 (App. 1999). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.* Likewise, ADES is not "oblige[d] . . . to undertake rehabilitative measures that are futile" and need only "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053.

¶17 Mother argues the juvenile court erred by finding ADES made reasonable and diligent efforts to provide her with reunification services. Specifically, Mother claims ADES failed to provide her with three "crucial services": (1) a third parent-aide referral, (2) photo identification to assist her substance-abuse testing, and (3) transportation.

¶18 ADES offered Mother parent-aide services, visitation, substance-abuse assessment and treatment, substance-abuse

testing, psychiatric evaluation, and transportation. The record is replete with evidence that Mother was largely non-compliant in participating in these services. Mother received two referrals for substance-abuse treatment, but failed to complete a program. Likewise, Mother received two referrals for parent-aide services, but failed to participate. Although Mother contends ADES' reunification efforts were insufficient because it denied her request for a third parent-aide referral, case manager Charlan testified that she submitted Mother's request for parent-aide services, but the service provider refused to offer services because Mother failed to comply with services related to the two previous referrals.

¶19 In addition, ADES offered Mother substance-abuse testing, but Mother generally refused to submit to urinalysis. She also tested positive for marijuana in one of seven urinalysis tests she completed. Mother argues that ADES' reunification efforts were insufficient because the agency failed to provide her with a "CPS ID" after she lost her identification, and therefore she was unable to participate in substance-abuse testing. The record reflects that Mother informed case manager Charlan that she lost her photo identification in late October or early November 2011. At the severance hearing, Mother's attorney asked Charlan why she did not provide Mother with a "CPS ID," that is, a letter from CPS

accompanied by Mother's photograph. In response, Charlan explained that the service provider, TERROS, generally did not accept a "CPS ID" and instead required state-issued identification. Accordingly, Charlan encouraged Mother to obtain a replacement state-issued identification that would be accepted by TERROS.

¶20 Finally, Mother argues that ADES failed to provide adequate reunification services because it "denied [her] transportation." To the contrary, the record reflects that ADES offered Mother bus passes, but Mother's requests for taxi service were denied on some occasions.

¶21 Thus, the record supports the juvenile court's finding that the services ADES provided Mother were reasonable, appropriate and sufficient under the circumstances.

## **II. Best Interest**

¶22 Termination of the parent-child relationship is in the child's best interest if the child will benefit from the termination or would be harmed if the relationship continued. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). In assessing the child's best interest, the juvenile court may consider several factors, including the child's adoptability and whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't*

*of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶123 The record supports the juvenile court's finding that termination of the parent-child relationship is in E.G.'s best interest. Charlan testified that E.G.'s foster parents are meeting all of his educational, social, medical, physical and emotional needs and want to adopt him. In addition, Dr. Bluth concluded that continuation of the parent-child relationship would be traumatic to E.G. Although Mother testified that E.G. was not "being properly taken care of" by the foster parents as demonstrated by the "tartar on his teeth" and the holes in his shoes that she observed during their visits, we conclude this testimony does not undermine the juvenile court's best interest finding. Moreover, Mother's testimony is also contrary to other evidence in the record, such as Dr. Bluth's assessment that E.G. was "appropriately dressed and groomed" during the evaluation, and we defer to the juvenile court, as the trier of fact, to weigh the evidence and judge the credibility of witnesses. See *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004) ("A juvenile court as the trier of fact in a termination proceeding is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts."). Therefore, we

affirm the juvenile court's finding that terminating Mother's parental rights was in E.G.'s best interest.

### **III. Ineffective Assistance of Counsel**

¶24 As previously recognized in Arizona case law, a parent has a due process right to the effective assistance of counsel to ensure that severance proceedings are fair and the results of the proceedings are reliable. See *John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, 324, ¶ 14, 173 P.3d 1021, 1025 (App. 2007). Applying, by analogy, the standard set forth in *Strickland v. Washington*, 466 U.S. 688 (1984), for establishing ineffective assistance of counsel in criminal cases, a parent claiming ineffective assistance in a severance proceeding must establish both incompetence by counsel and resulting prejudice. *John M.*, 217 Ariz. at 325, ¶ 17, 173 P.3d at 1026. Thus, to prevail, the parent must "demonstrate that counsel's alleged errors were sufficient to 'undermine confidence in the outcome' of the severance proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different." *Id.* at 325, ¶ 18, 173 P.3d at 1026 (quoting *Strickland*, 466 U.S. at 694).

¶25 Mother contends that she was denied effective assistance of counsel because her attorney failed to submit a list of witnesses and exhibits prior to the severance trial and, as a result, only one of her two character witnesses was

permitted to testify. We need not determine, however, whether the performance of Mother's attorney was incompetent because Mother has failed to demonstrate, or even claim, resulting prejudice. Instead, Mother simply asserts that "[t]here is no knowing" whether the "outcome of the proceeding" may have been different had she been permitted to have both of her character witnesses testify. Mother's argument consists only of speculation and falls far short of showing the requisite prejudice. See *State v. Santanna*, 153 Ariz. 147, 150, 735 P.2d 757, 760 (1987) ("Proof of ineffectiveness must be to a demonstrable reality rather than a matter of speculation."). Thus, Mother "has provided no basis for us to conclude that the severance proceeding[] in this case [was] fundamentally unfair; that the result of the hearing is unreliable; or that, had counsel conducted himself differently, the juvenile court would have reached a different result." *John M.*, 217 Ariz. at 325, ¶ 19, 173 P.3d at 1026.

**CONCLUSION**

¶26 For the foregoing reasons, we affirm the judgment terminating Mother's parental rights to E.G.<sup>5</sup>

\_\_\_\_\_  
\_/s/\_\_\_\_\_  
PHILIP HALL, Judge

CONCURRING:

\_\_\_\_\_  
\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

\_\_\_\_\_  
\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Judge

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<sup>5</sup> We amend the caption in this appeal to refer to the child solely by his initials.