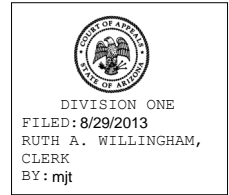


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DARCIE J.,) 1 CA-JV 13-0036
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28, Arizona Rules
SECURITY, H.J.,) of Civil Appellate
) Procedure)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Navajo County

Cause No. S0900JD201100046

The Honorable Michala M. Ruechel, Judge

AFFIRMED

Riggs, Ellsworth & Porter, P.L.C.
By David G. Moore
Attorneys for Appellant

Show Low

Thomas C. Horne, Arizona Attorney General
By Amanda L. Holguin, Assistant Attorney General
Attorneys for Appellees

Mesa

K E S S L E R, Judge

¶1 Darcie J. ("Mother") appeals the juvenile court's order terminating her parental relationship with her daughter, H.J.¹ For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of H.J., born in February 2011. Eleven months later, Mother was arrested on an outstanding warrant for failure to pay court fines. At the time she was arrested, Mother's blood alcohol content was .209, she was reportedly staggering around with H.J. in her arms, and officers found an open bottle of vodka in her purse. Mother voluntarily placed H.J. with her parents so she could enter substance abuse treatment.

¶3 Later that month the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging that "[M]other's substance abuse places her nine-month-old at risk of neglect due to [Mother's] extreme intoxication and inability to care for [H.J.] during periods of intoxication." The juvenile court found H.J. to be dependent and set the case goal as family reunification.

¹ On the Court's own motion, it is hereby ordered amending the caption for this appeal to refer to the minor child by initials only. The above referenced caption shall be used on all documents filed in this appeal.

¶4 Mother completed a substance abuse assessment with Reed Bradford from Arizona Families F.I.R.S.T. She admitted to using alcohol on the day of her arrest, but claimed this incident was an isolated occurrence. Ten days later, however, she showed up to a supervised visit with H.J. intoxicated and got into a physical altercation with her parents. The initial screening indicated that Mother "has a high probability of having a substance dependence," "a high probability of being domestically violent," and "[i]t would be in the family's best interest for [Mother] to continue random [drug tests] at the maximum rate." She was tested for three months and each test showed alcohol in her blood stream of varying amounts.²

¶5 Alice Alibrio, a substance abuse therapist, diagnosed Mother with an unspecified bipolar disorder and an unspecified polysubstance dependence disorder. She opined that Mother had little understanding of her relapse issues and needed a "24 hour structured supervised setting to build more effective recovery skills."

² Mother's blood alcohol levels were .127 on November 7, .192 on November 29, .243 on December 20, .202 on December 21, .028 on December 23, .436 on December 30, .264 on January 3, .046 on January 4, and .463 on January 6.

¶6 In January 2012, Mother was admitted to A Women's World, a substance abuse treatment center.³ Throughout her stay at A Women's World, Mother remained sober and did not miss any visits with H.J. She also participated in group counseling, addiction education, a parenting course, anger management classes, living skills training, and a twelve step recovery program. Mother also received medication management.

¶7 Mother graduated from A Woman's World in April 2012. Child Protective Services temporarily suspended Mother's visits with H.J. to allow Mother to move, get settled, and apply for low income housing. The April Child Protective Services Report stated that once visitation reconvened, the visits would be geared toward slowly transitioning H.J. back into Mother's care. Following her release, Mother was offered random urinalysis to help with her sobriety but failed to participate.

¶8 In May 2012, the parent aid noticed that Mother had a black eye. Mother explained that "she and her boyfriend had gotten in a fight the other day and that he had beat her up." She also stated that she had broken ribs and a concussion, and she showed the parent aid the bruises on her shoulder, hips,

³ Mother had enrolled in and graduated from A Woman's World for the first time about a year before her child was born. She then met and became romantically involved with a man from her twelve step recovery program. She relapsed one day after he left her and continued to drink until her arrest in November 2011.

back, arms, and neck. Although a breathalyzer was not taken, the police report indicates that Mother was slurring her speech, her eyes were bloodshot and watery, and she smelled of alcohol. Mother testified that she was on Trazodone and her boyfriend threw an open beer on her.

¶9 The next month, law enforcement officers responded to a complaint of a disorderly female subject wielding a knife. Mother told the police that she was sitting on her porch when the neighbor's dog started barking. She told her neighbors that "they had better quiet their dog or it would be a dead pit bull." She then got up, approached the neighbor's yard with a knife, leaned over the fence, and attempted to stab the dog. One of the neighbors stated that he was afraid of being stabbed while trying to pull his dog away from the fence. The police report also indicates that Mother stated she had consumed a couple of beers that night and that alcohol had clouded her judgment. Mother was arrested and subsequently pled guilty to disorderly conduct with a dangerous instrument, a class 6 felony. Mother was sentenced to prison, and still incarcerated when her rights were severed.

¶10 In September 2012, ADES filed a motion to terminate Mother's parental rights, alleging she was unable to discharge her parental responsibilities because of a chronic abuse of dangerous drugs, controlled substances and/or alcohol, and there

were reasonable grounds to believe the condition would continue for a prolonged period of time. ADES further alleged that termination was in H.J.'s best interest as adoption would promote permanence and stability in the child's life. A contested hearing was held and the juvenile court granted the motion.

¶11 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2007), 12-120.21(A) (1) (2003), and 12-2101(A) (1) (Supp. 2012).

ISSUES AND STANDARD OF REVIEW

¶12 Mother argues the court erred by finding that (1) she was unable to discharge her parental responsibilities on the ground of chronic substance and alcohol abuse under A.R.S. § 8-533(B) (3) (Supp. 2012), and (2) termination was in the best interest of H.J.

¶13 As the juvenile court is in the best position to weigh evidence and judge credibility, "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, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence, but "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).

DISCUSSION

¶14 A parent's right to custody and control of his or her own child is considered to be fundamental, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), but not absolute, *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). To justify the severance of a parental relationship, one of the statutory grounds provided in A.R.S. § 8-533(B) must be found by clear and convincing evidence. *Id.* at 249, ¶ 12, 995 P.2d at 685. In addition, the court must find by a preponderance of the evidence that severance of the relationship is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

A. The juvenile court did not err in finding that Mother was unable to discharge her parental responsibilities on the ground of chronic alcohol abuse under A.R.S. § 8-533(B) (3), and that there were reasonable grounds to believe her condition would continue for a prolonged indeterminate period.

¶15 Mother argues there was insufficient evidence for the juvenile court to find she was unable to discharge her parental responsibilities on the ground of chronic substance and alcohol abuse under A.R.S. § 8-533(B) (3). Mother argues that the evidence shows she developed the tools necessary to be successful after completing the substance abuse program at A

Woman's World, and she had not submitted a dirty urinalysis since January 2012.

¶16 Chronic substance abuse is defined as "lasting a long time, long-continued, lingering, and inveterate." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 16, 231 P.3d 377, 381 (App. 2010) (citing *The Compact Edition of the Oxford English Dictionary* at 409 (1971)). Substance abuse need not be constant to be regarded as chronic. *Id.*

¶17 Although Mother remained sober throughout her second stay at A Woman's World, there is no evidence that she remained sober after leaving. First, she refused to participate in UA testing after she left A Woman's World. Then, a month after graduating, Mother and her boyfriend had a physical altercation in May 2012, and the police report indicated that Mother was slurring her speech, her eyes were bloodshot and watery, and she smelled of alcohol. The following month, after she attempted to stab her neighbor's dog, the police were called and Mother told police she had consumed a couple of beers that night and alcohol had clouded her judgment. The court found Mother's testimony to be less credible.

¶18 In regard to whether there were reasonable grounds to believe Mother's condition would continue for a prolonged indeterminate period of time, "a good prediction of the future conduct of a parent is to look at the past conduct." *In re*

N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). “Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *Raymond F.*, 224 Ariz. at 378, ¶ 25, 231 P.3d at 382.

¶19 In this case, the record shows that Mother had been struggling with an alcohol addiction for approximately 20 years and was unable to sustain sobriety in uncontrolled environments. Her temporary abstinence from alcohol while in treatment does not outweigh her significant history of abuse and failure to remedy her dependence despite knowing the loss of H.J. was imminent. “[T]he interests in permanency for [H.J.] must prevail over [Mother’s] uncertain battle with [alcohol].” *In re N.F.*, 579 N.W.2d at 341. As a result, there was sufficient evidence for the juvenile court to have reasonably concluded that Mother was unable to discharge her parental responsibilities on the ground of chronic substance abuse under A.R.S. § 8-533(B)(3).

B. The juvenile court did not err in finding that termination of Mother’s parental rights was in H.J.’s best interest.

¶20 Mother argues that the juvenile court abused its discretion by finding that termination was in H.J.’s best interest. “[I]f the constitutional rights at stake are to be

adequately protected, a determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 733, 734 (1990). In considering a child's best interest, the court may look to a variety of factors, including the child's adoptability or potential adoptive placement. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). Even if a current adoptive plan is not in place, the juvenile court may consider whether the child would psychologically benefit from the severance, see *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994), or whether the current placement is meeting the child's needs, *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291.

¶21 At the termination hearing, the case manager testified that H.J. was adoptable, that an adoptive placement had been identified, that termination was appropriate to provide H.J. with "permanency and stability as soon as possible," and that Mother's continued substance abuse places H.J. at risk of harm. There was also evidence that H.J. had been living with her foster parents for a majority of the dependency, that H.J. had bonded with the current placement, and that the foster parents maintained a close relationship with H.J.'s maternal

grandparents. Furthermore, the case manager testified that even if Mother was released from incarceration within the next six months, she would need to participate in additional reunification services for at least another year before H.J. could be returned to her care. As a result, the evidence supports the juvenile court's decision that severance was in the child's best interest.

CONCLUSION

¶22 Having found there is sufficient evidence to support the juvenile court's findings, we affirm its order to terminate Mother's parental rights to H.J. pursuant to A.R.S. § 8-533(B)(3).

/s/
DONN KESSLER, Presiding Judge

CONCURRING:

/s/
MAURICE PORTLEY, Judge

/s/
PETER B. SWANN, Judge