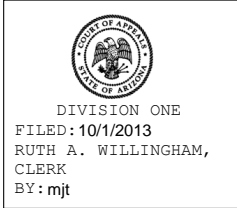


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



SUZANN T.,)	1 CA-JV 13-0074
)	
Appellant,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication-
ARIZONA DEPARTMENT OF ECONOMIC)	Ariz. R.P. Juv. Ct.
SECURITY, C.D.,)	88(G); ARCAP 28)
)	
Appellees.)	
)	
)	

Appeal from the Superior Court of Maricopa County

Cause No. JD 20985

The Honorable Joan Sinclair, Judge

AFFIRMED

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Scottsdale

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T H O M P S O N, Judge

¶1 Suzann T. (Suzann) appeals from the juvenile court's order severing her parental rights to her child, C.D.¹ For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Suzann discovered that she was pregnant with C.D. on February 16, 2011, when she was in jail on a charge that was later dismissed. She told a doctor in the jail that she had last used methamphetamine on December 31, 2010 and she was concerned about the baby's health. Suzann was arrested again in April 2011 while pregnant, after she broke into a trailer in the backyard of a residence looking for food and items to sell. She spent approximately two weeks in jail, and was charged with one count of third degree burglary, a class 4 felony.

¶3 In September 2011, Suzann was arrested on drug charges filed in 2011 alleging that she possessed and sold methamphetamine and possessed drug paraphernalia in 2009. She was released on October 8, 2011, and C.D. was born the next day. At the time of C.D.'s birth, Suzann was living with C.D.'s biological father, Lee.² Lee also had a history of using methamphetamine.

¹ The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

² The juvenile court also severed Lee's parental rights. He is not a party to this appeal.

¶4 Child Protective Services (CPS) received a referral concerning C.D. the day after his birth. C.D. was not born drug-exposed, but Suzann admitted having used methamphetamine when she was three to four weeks pregnant, prior to knowing she was pregnant.³ CPS recommended in-home placement for C.D., conditioned upon the presence of one of two persons designated a "safety monitor" in the home at all times. Police did a welfare check on October 27, 2011 and a safety monitor was not present in the home. C.D. was removed from Suzann's custody and placed in a foster home by the end of October 2011. CPS filed a dependency petition and, shortly thereafter, the juvenile court found that C.D. was a dependent child as to Suzann.

¶5 The juvenile court ordered concurrent case plans for C.D.: family reunification and severance and adoption. The court further ordered CPS to provide the following services to Suzann: 1) random urinalysis testing, 2) substance abuse

³ Suzann admitted to having used methamphetamine since 2008 but maintained that she stopped using methamphetamine on December 31, 2010. She admitted to a much longer history of marijuana use, beginning at the age of fourteen or fifteen. Suzann's drug use has caused her legal problems for more than half her life. Besides the conviction she was serving time for at the time of the severance trial, at age eighteen Suzann was arrested for possession of marijuana, at age twenty she was arrested for growing marijuana, at age thirty-nine she was charged with two counts of possession of marijuana, and in 2010 she was arrested for driving under the influence of methamphetamine and lost her driver's license.

assessment and treatment through TERROS, 3) parent aide services, 4) a psychological consultation and recommended services following the psychological consultation, 5) transportation, and 6) visitation.

¶6 Suzann missed her first urinalysis test on October 13, 2011 but testified that she had still been in the hospital after giving birth. She missed three more urinalysis tests on October 18, 24, and 27 of 2011. Thereafter, she did not miss any more requested urinalysis tests, and all of the tests came back negative, except that tests on November 2, 2011 and November 23, 2011 showed up as negative but diluted. Altogether, Suzann tested negative for drugs and alcohol without dilution on thirty-five occasions from October 19, 2011 to June 26, 2012, about an eight month period.

¶7 By the end of October 2011, CPS had made the referral for parent aide services and set up visitation. Suzann completed an assessment with TERROS and completed TERROS's substance abuse education program by December 2011. TERROS assigned Suzann a recovery coach, but she met with that individual just one time and rejected further assistance of a recovery coach, claiming that she had had "very little drug use." Suzann had a psychological consultation with Dr. Bluth in December 2011, and then a psychological evaluation with Dr.

Bluth in February 2012. At that time, Dr. Bluth recommended individual counseling for Suzann, and CPS put in a referral for counseling.

¶8 In her March 9, 2012 and May 21, 2012 reports to the juvenile court, Suzann's case manager noted that Suzann had been compliant with services, and that she had been regular in her attendance of visits with C.D. However, the case manager also wrote that Suzann still needed to demonstrate that she could provide a safe, stable, substance-free home for C.D., demonstrate an appropriate understanding of parenting skills, demonstrate that she had a stable income⁴, and "acknowledge the impact of her past history of substance abuse and address her mental health needs." CPS was also concerned that Suzann was continuing to live with Lee, who was not compliant with his case plan and had refused to participate in substance abuse

⁴ For the past eighteen to twenty years, Suzann's only employment had been itinerant work in the carnival industry.

treatment.⁵ In her July 2012 report, Suzann's parent aide noted that she did not have a steady job or independent housing. Although Suzann reported that she had separated from Lee, the parent aide believed that she was still associated with him and was concerned that she allowed Lee to manipulate her.

¶9 On June 27, 2012, Suzann signed two plea agreements to resolve her pending criminal charges. She resolved the 2009 drug charges by pleading guilty to one count of solicitation to commit possession of dangerous drugs for sale, a class 4 felony. Suzann admitted that this conviction was the result of her shipping methamphetamine to fellow carnival workers out of state. She also pled guilty to one count of third degree attempted burglary, a class 5 felony. She was incarcerated on July 9, 2012, and on August 8, 2012 Suzann was sentenced to a term of 1.5 years in prison, with credit for 48 days of presentence incarceration on the drug conviction, to be served concurrently with a one-year sentence on the attempted burglary

⁵ In March 2012, Lee was charged with possession of methamphetamine and possession of drug paraphernalia after a bus station security guard found methamphetamine and a glass pipe in Lee's luggage on March 5, 2012. He was arrested on April 7, 2012, at Suzann's residence, which was also his known residence. Police found methamphetamine in Lee's pocket at the time of his arrest and prescription pills, glass pipes, and a scale inside the house. Lee was incarcerated on April 7, 2012 and remained so at the time of Suzann's severance trial. The CPS case manager testified that CPS believed the reason that Suzann was no longer with Lee was due to his incarceration rather than by choice.

conviction. In September 2012, ADES filed a motion to terminate Suzann's parental rights. At the time of the severance trial, Suzann's scheduled early release date from prison was July 18, 2013, when she would be eligible for community supervision after serving eighty-five percent of her sentence. Her maximum end release date was December 20, 2013.

¶10 Prior to going to prison, Suzann was unable to participate in counseling as recommended by Dr. Bluth. She testified that by the time the referral for counseling had been made she knew she was going to prison and the counselor was therefore unwilling to take her as a patient.

¶11 Towards the beginning of her imprisonment, Suzann signed up for a weekly treatment group entitled "Confronting Addictive Behaviors." Later, in December 2012, Suzann was accepted into a six-month long substance abuse group treatment program in the prison, "Women in Recovery," and at the time of trial had completed about two months of the program.

¶12 In January 2013, Suzann hired psychologist Dr. Julio Ramirez to complete a second psychological evaluation.⁶ Suzann told Dr. Ramirez that she had broken up with Lee in January 2012 and claimed to have had no contact with him since March 2012 (even though he had been arrested with methamphetamine at her

⁶ Dr. Ramirez testified at the severance trial but Dr. Bluth did not.

residence in April 2012). Based on Suzann's representations, Dr. Ramirez concluded that the risk posed to C.D. by Suzann continuing a relationship with Lee was minimal. Dr. Ramirez recommended that Suzann participate in substance abuse treatment and individual counseling and that she receive parenting support and vocational training after being released from prison.

¶13 The juvenile court held a two-day severance trial in February 2013. The juvenile court terminated Suzann's parental rights pursuant to Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (2007) (parent's history of chronic abuse of dangerous drugs), and A.R.S. § (B)(8)(c) (Supp. 2012) (fifteen months time in care). The court also found that severance was in C.D.'s best interests. The court declined to sever Suzann's parental rights on the basis of nine months time in care pursuant to A.R.S. § 8-533(B)(8)(a) (child in an out-of-home placement for nine months or longer and parent substantially neglected or willfully refused to remedy circumstances causing child to be in out-of-home placement). Suzann timely appealed. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 8-235 (2013).⁷

⁷ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

DISCUSSION

¶14 On appeal, Suzann argues that the juvenile court abused its discretion by terminating her parental rights pursuant to A.R.S. § 8-533(B)(3) and (B)(8)(c), and that severance was not in C.D.'s best interests. She does not argue that ADES failed to provide her with appropriate reunification services.

¶15 "We will not disturb the juvenile court's order severing parental rights unless its factual findings 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). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, because "[t]he 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 make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if ADES proves by clear and convincing

evidence at least one of the statutory grounds set forth 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 court must also find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

Fifteen Months Time in Care

¶16 Suzann argues that ADES failed to produce clear and convincing evidence that she had failed to remedy the circumstances that caused C.D. to be in an out-of-home placement pursuant to court order for at least fifteen months and that there was a substantial likelihood that she would not be capable of exercising proper and effective parental care and control in the near future, as required by A.R.S. § 8-533(B)(8)(c). The statute provides, in relevant part:

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

. . . .

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide

appropriate reunification services and that one of the following circumstances exists:

. . .

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

A.R.S. § 8-533(B)(8)(c). We construe the "circumstances" in A.R.S. § 8-533(B)(8)(c) to mean the circumstances that exist at the time of the severance that prevent a parent from appropriately providing for his or her child. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, 152 P.3d 1209, 1213 (App. 2007) (citations omitted).

¶17 Reasonable evidence supported the juvenile court's finding that ADES had proven the fifteen months time in care ground. By the time of the severance trial in February 2013, C.D. had been in an out-of-home placement for more than fifteen months, nearly all of C.D.'s life. And, by the time of trial, Suzann had failed to obtain stable housing suitable for a small child or stable employment. Her incarceration prevented her from obtaining individual counseling, from completing parent aide services, and from demonstrating one year of clean

urinalysis tests. Suzann's CPS case manager testified that those were all services that she would need to complete after her release from prison before C.D. could be returned to Suzann. Additionally, CPS's concerns about Suzann's dependence on Lee were supported by the record. On this record, the juvenile court properly could conclude that ADES met its burden for severance on the fifteen months time in care ground.

¶18 Because we affirm the court's order granting severance on the basis of fifteen months in an out-of-home placement, we need not address Suzann's argument concerning A.R.S. § 8-533(B)(3). See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

Best Interests

¶19 Suzann further argues that the trial court erred in finding that severance was in C.D.'s best interests. To establish that severance is in a child's best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the continuation of the relationship. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.* Here, the evidence was that C.D. was adoptable and that CPS had a current case plan of adoption for C.D. C.D.'s foster placement, who had parented him since his birth, was willing to

adopt him and provide him with a stable, permanent home. Accordingly, we find no error in the juvenile court's finding that severance was in C.D.'s best interests.

¶20 For the foregoing reasons, the juvenile court's severance order is affirmed.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

SAMUEL A. THUMMA, Presiding Judge

/s/

KENT E. CATTANI, Judge

