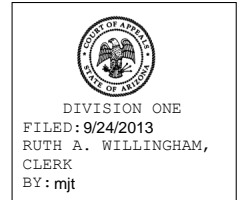


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

VERONICA A.,) No. 1 CA-JV 13-0077
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, R.A., D.A., A.R., T.R.,) Ct.; Rule 28 ARCAP)
V.R., R.L.,)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD-508567

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Mesa
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of
Economic Security

The Stavris Law Firm, PLLC Kingman
By Alison Stavris
Attorneys for Appellant

D O W N I E, Judge

¶1 Veronica A. ("Mother") appeals an order terminating her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother's five older children ("the Children") are R.A., born in September 1998; D.A., born in September 2001; A.R., born in September 2004; T.R., born in January 2006; and V.R., born in May 2008. R.A. has cystic fibrosis and requires multiple daily breathing treatments, use of an airway clearance device ("vest") at least twice a day, and daily medications.

¶3 Between 2000 and 2010, Child Protective Services ("CPS") received several reports about the family, including concerns that: (1) Mother was not meeting R.A.'s special needs; (2) the family home was "filthy" and infested with cockroaches; (3) Mother was using methamphetamine and marijuana; and (4) the Children were dirty, and had lice, rotten teeth, and insufficient food.

¶4 Mother participated in Family Builders services in 2006 and 2008. In early 2010, she voluntarily placed the Children with others because she was "overwhelmed." During that time, R.A. "improved physically, gained weight, and appeared healthier." After about a month, though, the Children returned to Mother.

¶5 CPS continued to receive "continuous concerns and calls" about the Children's safety, including Mother's failure

to attend to R.A.'s medical needs, and the Children having lice and missing excessive amounts of school. In April 2010, CPS noted that the family had been without water for more than a week. R.A.'s vest was broken "again," and a social worker expressed "continued concerns" about Mother's irresponsibility in caring for R.A. R.A.'s physician, Dr. Radford, advised that Mother expected R.A. to care for herself and failed to provide daily medical treatments. Mother also admitted smoking marijuana "a couple times a week."

¶6 In May 2010, CPS removed the Children from the home, which smelled strongly of marijuana and had cockroaches on the walls. R.A. had missed 95 out of 166 school days; D.A. had missed 55 out of 196 days; and A.R. had gone to kindergarten one week, was "sent away because of his discipline problems," and never re-enrolled. Dr. Radford advised CPS that Mother was so inconsistent with R.A.'s care that the child required antibiotics and/or hospitalization every couple of months. R.A.'s weight and lung function were not stable, reducing her life expectancy.¹ Meanwhile, V.R.'s foster mother took her to urgent care, where medical staff spent an hour removing wax and dirt from her ears.

¹ Dr. Radford explained that the average life span for someone with R.A.'s condition "is somewhere in the 40s" but that R.A. "would be lucky to get to her 30s."

¶17 On May 10, 2010, the Arizona Department of Economic Security ("ADES") filed a dependency petition, alleging Mother was unable to parent due to: (1) medical neglect of R.A.; (2) a chronic history of neglecting the Children; (3) neglect due to substance abuse; and (4) mental health issues. ADES agreed to provide services, including a parent aide, substance abuse assessment/treatment/testing, and mental health services. The case plan goal was family reunification.

¶18 Also in May, R.A. was admitted to the hospital because her lung capacity was down 30% and she needed intravenous antibiotics.² During a follow-up appointment, the physician noted dramatic improvement and released R.A. to her foster home, where she appeared to be "thriving."

¶19 CPS reported concerns about R.A. to the court, explaining that with vigilance, the child could "maintain the level of functioning she is at for a significant amount of time." However, should she need a lung transplant, R.A. would likely be denied based on her "lifestyle at home" and the family's demonstrated inability to provide consistent medical care. CPS also reported that R.A. was "extremely parentified,"

² Hospital staff explained that patients needing this type of treatment would typically be discharged after a week. In the past, though, medical staff were so concerned with R.A.'s "chaotic home situation" that they kept her hospitalized for up to a month to finish her medications.

believing "she has to protect and care for her mother rather than it being the other way around."

¶10 CPS additionally detailed concerns about the Children having head lice "for a significant amount of time," school absences that could prevent class promotions, the "roach infestation," serious hygiene issues with the three youngest children, and lack of follow through in obtaining services for behavioral and developmental issues. Both T.R. and A.R. had developmental delays and required extensive remedial dental work.

¶11 In May and June 2010, Mother submitted seven urinalysis samples, four of which were positive for THC. She began substance abuse treatment in July, and nine drug tests in July and August were negative. In June 2010, a parent aide began working with Mother, who made initial progress, though the aide voiced continuing concerns about her parenting skills. In October 2010, Mother was convicted of DUI (marijuana).

¶12 Mother completed the first cycle of parent aide services in November 2010. The aide reported that Mother had "worked to improve her parenting skills," but had "a way to go." Mother did not seem to "understand the seriousness of [R.A.'s] illness and that she needs to be supervised while using her treatments and medications." The aide was concerned that Mother

would "become overwhelmed if all children are placed back in the home" and recommended they not be returned "at this time."

¶13 In January 2011, Mother requested increased visitation and services. She claimed ADES had not furthered the case plan goal because, among other things, it discontinued parent aide services and failed to arrange a psychological evaluation or services to help her address R.A.'s medical needs. ADES responded that it had requested a new parent aide and scheduled an appointment for Mother to receive further education about R.A.'s condition. After a hearing, the court denied Mother's motion.

¶14 Mother participated in a psychological evaluation in January 2011. Dr. Thal diagnosed her with, *inter alia*, depressive disorder and personality disorder. He labeled her abilities "very limited" and stated it would be "exceedingly difficult for her to make the sorts of changes which would insure that her children's well being will not be an issue again in the future if reunification takes place." He cautioned ADES to "[p]roceed with reunification very carefully." He recommended that ADES assess R.A.'s health "while in a presumably normal environment" to establish a "baseline of healthy functioning," using this information when considering "reunification of a medically complex child with this parent."

Dr. Thal also suggested that individual therapy with a master's level counselor "might be useful" to Mother.

¶15 Mother began a new series of parent aide services in February 2011. She initially made "[m]inimal" progress, completing only one of two assignments and not displaying "an understanding of positive discipline." Mother, however, made significant progress in cleaning her home, providing appropriate meals, gaining employment, and demonstrating increased self-sufficiency. But the aide was concerned that Mother did not accept responsibility and minimized past living conditions.

¶16 In April 2011, the parent aide advised that Mother had made minimal progress, but the home remained clean. Mother was reportedly more concerned with how the case manager perceived her progress than with making changes. Additionally, Mother had lost her job. In May 2011, the parent aide reported safety issues in the home, including cockroaches and ants. The aide was concerned that Mother was "complying with services only to the degree of regaining custody" but was "unwilling or unable to change her style of parenting."

¶17 Mother participated in a psychiatric evaluation in May 2011. Dr. Rosengard diagnosed her with, *inter alia*, attention deficit disorder (hyperactive impulsivity aspect) and personality disorder with dependent and antisocial traits. He opined that Mother's condition would continue for a prolonged,

indeterminate period of time because it had persisted despite a decade of interventions, evaluations, and treatment. Dr. Rosengard stated that a child in Mother's care would be at risk of neglect. He identified services that could potentially improve Mother's condition, including therapy with a "masters degree level or higher" therapist, but he gave Mother a poor prognosis for being able to adequately parent in the foreseeable future, even with the suggested interventions.

¶18 Mother gave birth to R.L. in July 2011. ADES took custody of him, and the court found him dependent.

¶19 In September 2011, CPS informed the court Mother was participating in therapy with a "[m]asters or above therapist"; CPS approved 20 visits. In November 2011, the parent aide reported that Mother appeared "indifferent to the children's needs" and failed to properly supervise them or use information provided by the aide in interacting with them. Mother remained unemployed. In December 2011, CPS reported that Mother had not exhibited any change in behavior to indicate she "would not continue to neglect the children" if returned. Mother continued to demonstrate poor skills and little understanding of safe and appropriate parenting, despite parenting classes and months of parent aide services. The case manager opined that Mother's "pattern of chronic neglect" placed the Children at risk.

¶120 ADES changed the case plan to severance and adoption in January 2012, which the court approved. In February 2012, Dr. Thal re-evaluated Mother. He reported that she suffered from, *inter alia*, personality disorder and generalized anxiety. Dr. Thal concluded Mother had a "pattern of placing her needs ahead of her children" and that a child in her care would be at risk. He was uncertain whether Mother would be able to adequately parent in the foreseeable future or if "any proposed interventions, or those already in place" would adequately prepare her to parent in the foreseeable future. Dr. Thal recommended that Mother consider allowing some of the children, including R.A., to remain in their current placements.

¶121 In March 2012, ADES moved to terminate Mother's parental rights to the Children based on neglect, mental illness, time in care and an inability to remedy the circumstances that necessitated out-of-home placements. In May 2012, ADES amended the motion to include R.L.

¶122 Mother's therapist recommended that counseling be discontinued in May 2012, stating:

Although [Mother] presents as deeply invested in getting her children back, in the past many months of working with her, she has gained little insight as to what would be helpful for her to process or learn in therapy that would be beneficial for her going forward.

Instead, almost the entirety of her time in therapy is spent expressing frustration that she doesn't understand what CPS is asking or expecting of her as she feels she's already done it, revisits experiences with her case manager or parent aide and defends her actions, or blames the system for this predicament.

The therapist attributed Mother's conduct to a "lack of insight," versus willful non-cooperation.³

¶23 A contested severance trial was held in February 2013. Drs. Thal and Rosengard testified consistently with their reports. Dr. Rosengard's view of Mother's "poor prognosis" was even stronger at the time of trial because Mother had had additional opportunity to deal with her problems but had not been successful. Dr. Thal testified that information about Mother's lack of progress caused him to alter his opinion about her ability to adequately parent in the foreseeable future from "uncertain" to "negative." Dr. Thal also testified that severance and adoption was the most appropriate plan.

¶24 A parent aide and the case manager both testified that Mother failed to take responsibility for the circumstances necessitating the out-of-home placements and failed to master parenting skills. The case manager also testified that the

³ Dr. Thal testified at the severance trial that the counselor's decision to terminate therapy was consistent with Mother's personality disorder diagnosis -- which causes "deeply entrenched" views and a corresponding inability to change behaviors and thoughts.

older children had become "the parent, in many ways, to help control the chaos." Dr. Radford testified that R.A.'s health declined in Mother's care but improved significantly in foster care; she would have concerns if R.A. were returned to Mother.

¶125 The juvenile court found that Mother was unable to discharge her parental responsibilities due to mental illness; that she had neglected her children's basic needs and R.A.'s special needs; and that the five older children had been in an out-of-home placement for 15 months or longer, and Mother was unable to remedy the circumstances requiring that placement despite ADES's diligent efforts in providing services. The court terminated Mother's parental rights to all six children.

¶126 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235.

DISCUSSION

¶127 "We will affirm a juvenile court's order based on findings of clear and convincing evidence unless no reasonable evidence supports those findings." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). "We will not reverse the juvenile court's order unless it is clearly erroneous." *Id.*

¶128 The juvenile court may terminate the parent-child relationship when it finds by clear and convincing evidence that a parent is unable to discharge parental responsibilities due to

mental illness and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period. A.R.S. §§ 8-533(B)(3), -537(B).⁴ The record here supports the termination order based on mental illness. As such, we need not address the other independent grounds for the order. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (to affirm severance order, appellate court need only determine that clear and convincing evidence supports any one ground for termination).

¶29 Among other things, Mother has been diagnosed with personality disorder and depressive disorder. According to Dr. Thal, her "dependent traits have resulted in a pattern of placing her needs ahead of her children." Dr. Rosengard opined that Mother's dependent personality disorder traits led to "impulsive behavior or self-destructive behavior that could negatively impact her children." He stated that Mother's mental health issues could cause her to be "less diligent than she needs to be," placing the children at risk. Both doctors testified that Mother's mental health issues would continue for a prolonged indeterminate period.

⁴ Termination must also be in the best interests of the child, but Mother has not challenged the best interests finding, so we do not address it. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191, ¶ 27, 971 P.2d 1046, 1052 (App. 1999) (citation omitted).

¶130 The doctors' opinions were bolstered by other evidence of record. CPS documented Mother's failure to provide her children with safe and adequate food and shelter, medical attention, and physical care, as well as her failure to make changes necessary to adequately parent, notwithstanding years of services. The evidence linked Mother's mental health issues to her neglect of the children. A parent's duty to support his or her child includes "providing the child with food, shelter, and medical attention." *Maricopa County Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 185, 692 P.2d 1027, 1034 (App. 1984). "[A] child's right to proper parental care include[s] the right to good physical care" *Id.*

¶131 We disagree with Mother's contention that CPS denied her the "time and opportunity to participate in programs designed to improve" her parenting because her case was open for eight months before a psychological evaluation was scheduled. CPS provided Mother with significant services immediately after the Children were removed, including drug treatment, visitation, and parent aide services. Mother cites no authority suggesting that ADES cannot prioritize services within the case plan; nor is the agency required to provide "every conceivable service." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 37, 971 P.2d at 1053. Considering the totality of circumstances, the juvenile court

did not err in concluding that ADES "made reasonable efforts to provide Mother with rehabilitative services."

CONCLUSION

¶32 For the foregoing reasons, we affirm the termination of Mother's parental rights.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
LAWRENCE F. WINTHROP, Presiding Judge

/s/
JON W. THOMPSON, Judge