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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

TANYA C., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, C.S., M.S., D.S.,
Appellees.

No. 1 CA-JV 13-0122

FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. JD20607
The Honorable Aimee L. Anderson, Judge

AFFIRMED

COUNSEL

Law Office of Anne M. Williams, P.C., Tempe
By Anne M. Williams

Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amanda Holguin

Counsel for Appellee ADES

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Andrew W. Gould joined.

S W A N N, Judge:

¶1 Tanya C. ("Mother") appeals from the juvenile court's order terminating her parental rights. For the following reasons, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of C.S., M.S., and D.S.[2] (collectively "Children"), born in 2004, 2007, and 2009 respectively. The Children's fathers (Cesar M. and John Doe) are not parties to this appeal.

¶3 In August 2011, Child Protective Services ("CPS") and Phoenix Police responded to reports that Mother was shaking, squeezing and scratching M.S.'s face to prevent her from choking on a doll that only Mother believed existed. Mother stated that she had a history of head trauma that caused her memory problems, and CPS noted symptoms of mental illness. Staff of the shelter where Mother and the Children were staying alleged, *inter alia*, that Mother had struck M.S. with a belt, allowed M.S. to put D.S. in a dryer and turn it on, let C.S. place M.S. in a "serious choke hold," and ignored the Children's "extremely unhygienic condition." Mother was arrested and incarcerated for nine days after police discovered that she had outstanding arrest warrants.

¶4 CPS took temporary custody of the Children upon Mother's incarceration because the shelter evicted her and no other family member was available at the time. Meanwhile, the Arizona Department of

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[1] We view the evidence in the light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

[2] The caption has been amended to safeguard the identity of the juveniles pursuant to Administrative Order 2013-0001.

Economic Security ("DES") filed a dependency petition alleging physical abuse, neglect due to incarceration and mental illness, and a history of domestic violence. The juvenile court found the Children dependent and ordered a case plan of family reunification with a concurrent case plan of severance and adoption.

¶5 DES thereafter began to offer Mother various rehabilitation and reunification services, including, for example, psychological, psychiatric, and neuropsychological evaluations; individual counseling; parent-aide services; supervised visits; and transportation to and from appointments. In November 2011, a psychologist diagnosed Mother with a narcissistic personality disorder with paranoid traits and a mood disorder, and recommended counseling, parent-skills training, and a psychiatric evaluation. The counselor who Mother began seeing reported communication difficulties as Mother refused to heed advice and frequently became upset and defensive.

¶6 In March 2012, Mother underwent a psychiatric evaluation and was further diagnosed with a major depressive disorder and a cognitive disorder not otherwise specified. The following month Mother missed two of five scheduled counseling sessions and arrived 90 minutes late to a third one. Mother's counselor referred her for a neuropsychological evaluation and concluded that additional counseling would be unproductive when she did not appear to internalize her treatment.

¶7 The CPS case manager explained to Mother that DES could not offer her the medication and monitoring she needed, but encouraged her to apply for coverage through the Arizona Health Care Cost Containment System Administration ("AHCCCS"). The case manager also explained that she could possibly obtain these services at a reduced rate through publicly funded regional health care. But every time the case manager would follow up on these suggestions, Mother would "just brush it off." The case manager had Mother repeat the phone number to call to schedule services and on one occasion had a taxi bring Mother to a CPS office to make calls and write down information together, yet Mother never informed the case manager whether she had obtained the help she required.

¶8 In November 2012, Mother received a neuropsychological evaluation and was diagnosed with significant memory impairment, a cognitive disorder with significant variability in overall cognitive functioning, and mood and personality disorders. The evaluating doctor

testified that Mother would likely live with her personality and mood disorders for an indeterminate period of time, possibly permanently, and would not be able to care for the Children in the interim.

¶9 However, the doctor recommended that Mother see a neurologist for brain imaging because Mother believed she had suffered a stroke and complained of episodic headaches with accompanying "black outs" during which she would "flip out mad. . . . go crazy, talk to [her]self, and [feel] angry at the world [as] a way of letting out steam." The doctor testified that neurology treatment might improve Mother's memory impairment, provided that she actually had a seizure disorder, but could not rule out that Mother's self-diagnosed ailments were primarily psychological. The doctor further testified that even if brain imaging were to reveal a neurological disorder, it would take several months to stabilize her and repeat DES services at a point when the Children had already been in an out-of-home placement for more than 17 months. Despite the doctor's recommendation, Mother never underwent brain imaging.

¶10 While Mother received the above rehabilitation services, she also participated in supervised visits with the Children. Although the parent aide agreed to provide one-on-one parenting-skills training during Mother's weekly four-hour supervised visits, Mother did not make herself available for any additional such training and frequently lost, forgot, or failed to complete the associated homework. The parent aide reported that Mother would consistently fail to discipline the Children during the supervised visits, inappropriately discuss the case with them, and often cry in front of them. When the parent aide attempted to redirect Mother or offer advice, she would regularly become argumentative and defensive, and refused to take responsibility or follow visitation guidelines. The CPS case manager characterized Mother's participation as "above average," but eventually terminated her parent-aide services because he deemed her unable to redirect the Children's behaviors or parent them safely.

¶11 The CPS case manager testified that he considered severance to be in the Children's best interests because Mother had not made any progress since DES first initiated services, additional services would prove futile, and postponing severance would be detrimental to the stability and permanency the Children needed. The Children's placement at the time was meeting their needs, the Children were considered adoptable, and a CPS home study concluded that a paternal aunt was capable and willing to provide an adoptive home for the Children.

¶12 DES filed a severance motion in July 2012, and presented evidence and testimony supporting the facts set forth above during a three-day trial in February 2013. The juvenile court took the matter under advisement and terminated Mother's parental relationship. The court found that (1) pursuant to A.R.S. § 8-533(B)(3), Mother suffered from a mental illness or deficiency that rendered her unable to discharge her parental responsibilities and there were reasonable grounds to believe that her condition would continue for a prolonged indeterminate period; (2) under A.R.S. § 8-533(B)(8)(a), Mother substantially neglected or wilfully refused to remedy the circumstances that caused the Children to remain in an out-of-home placement for nine months or longer; and (3) severance would be in the Children's best interests.

¶13 Mother filed a late appeal with the juvenile court's permission under Rule 108(B) of the Arizona Rules of Procedure for the Juvenile Court.

STANDARD OF REVIEW

¶14 Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, we accept the juvenile court's findings of fact unless no reasonable evidence supports them. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234, ¶ 13, 256 P.3d 628, 631 (App. 2011). We will not reverse a severance order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

DISCUSSION

¶15 To terminate parental rights, a court must first find by clear and convincing evidence the existence of at least one statutory ground for severance. *See* A.R.S. § 8–533(B); Ariz. R.P. Juv. Ct. 66(C). Clear and convincing evidence is that which makes the alleged facts highly probable or reasonably certain. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 2, 210 P.3d 1263, 1264 (App. 2009). The court must also find by a preponderance of the evidence that severance is in the best interests of the child. A.R.S. § 8–533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶16 Mother raises three arguments on appeal: (1) the court failed to make all necessary findings to warrant severance under A.R.S. § 8-533(B)(8)(a) and DES presented no evidence to support such a finding; (2) DES failed to provide adequate reunification services and the court was required to wait 15 months before it could sever Mother's parental rights;

and (3) the record contains insufficient evidence to support the court's finding that severance was in the Children's best interests. We address each argument in turn.

I. REASONABLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT THE SEVERANCE REQUIREMENTS OF A.R.S. § 8-533(B)(8)(a) WERE MET.

¶17 A.R.S. § 8-533(B)(8)(a) allows a court to terminate parental rights when DES has made diligent efforts to provide appropriate reunification services, the children have been in an out-of-home placement for nine months or longer, and the parent has "substantially neglected or wilfully refused to remedy the circumstances that cause[d] the child[ren] to be in an out-of-home placement."

¶18 Mother claims that the court failed to find that she had "substantially neglected or wilfully refused to remedy the circumstances that cause[d] the [Children] to be in an out-of-home placement." For this contention, Mother relies on the court's minute entry from the severance trial, which states "THE COURT FURTHER FINDS that the State has proven, by clear and convincing evidence, the following grounds for severance of mother's rights: the nine month out-of-home care requirements, pursuant to A.R.S. § 8-533(B)(8)(a)." Mother appears to argue that because the juvenile court's minute entry lacks specific language indicating that it found Mother to have "substantially neglected or wilfully refused to remedy the circumstances that cause[d] the [Children] to be in an out-of-home placement," the court did not actually make such a finding.

¶19 In fact, the juvenile court's Findings of Fact, Conclusions of Law, and Order, reads as follows:

> Mother . . . has substantially neglected or willfully refused to remedy the circumstances that cause[d] the children to be in an out-of-home placement. A.R.S. § 8-533(B)(8)(a). Mother failed to fully cooperate in individual counseling and did not make progress in remedying her instability, ability to care for children, mental health or parenting issues.

"[O]ur supreme court, in discussing the difference between formal findings of fact and a minute entry, [has] stated: 'At most, we think the minute entry is evidence that the court ordered a judgment, *the terms thereof to be ascertained when it [is] written up and signed by the court.*'" *Flynn v. Cornoyer-Hedrick Architects & Planners, Inc.*, 160 Ariz. 187, 193, 772 P.2d

10, 16 (App. 1988) (citation omitted), *aff'd sub nom Jepson v. New*, 164 Ariz. 265, 792 P.2d 728 (1990). Should the juvenile court "fail[] to expressly make a necessary finding, we may examine the record to determine whether the facts support that implicit finding." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 17, 83 P.3d 43, 50 (App. 2004). Here, the court expressly found Mother to have "substantially neglected or willfully refused to remedy the circumstances that cause[d] the [Children] to be in an out-of-home placement."

¶20 Mother also asserts that "no facts were presented to support such a finding." We disagree. "[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties . . . ." *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). But when parents make only "sporadic, aborted attempts to remedy" the circumstances causing the out-of-home placement, "a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id.*

¶21 The record shows that Mother remained uncooperative during counseling, missed a significant portion of her sessions, and failed to internalize treatment, eventually leading her counselor to conclude that additional counseling would be futile. Moreover, the CPS case manager made numerous attempts to assist Mother in scheduling and receiving medication and monitoring. But Mother disregarded these efforts, failed to inform the case manager whether she ever obtained the help she needed, and never saw a neurologist for brain imaging despite the recommendation of an expert neuropsychiatrist.

¶22 Mother also refused offers to schedule additional one-on-one parenting skills training and regularly failed to complete the related homework. Mother's parent-aide services were terminated after more than a year because the case manager deemed her unable to redirect the Children's behaviors or parent them safely. The parent-aide reports reflect Mother's persistent failure to discipline the Children, her frequent arguments with the parent aide, and her refusal to follow visitation guidelines.

¶23 On this record, we conclude that reasonable evidence supports the juvenile court's finding that the requirements of A.R.S. § 8-533(B)(8)(a) were met.

II. REASONABLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT SEVERANCE WAS WARRANTED UNDER A.R.S. § 8-533(B)(3).

¶24 Mother asserts that DES failed to provide adequate reunification services. Specifically, Mother relies on A.R.S. § 8-533(B)(8)(c) to claim that because she was "actively engaged in services," DES could not move to sever her parental rights until it had provided her with at least 15 months of reunification services, which she further claims should have included a "simple MRI with follow up" that "the Department failed to . . . provide." We do not agree.

¶25 First, the juvenile court did not terminate Mother's parental rights pursuant to A.R.S. § 8-533(B)(8)(c),[3] but rather relied on § 8-533(B)(8)(a), which has a nine-month time requirement, and § 8-533(B)(3), which does not have a fixed time requirement. Section 8-533(B)(3) provides that a court may terminate parental rights when it finds a parent "unable to discharge parental responsibilities because of mental illness [or] mental deficiency . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period."

¶26 In *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 191, ¶ 31, 971 P.2d 1046, 1052 (App. 1999), we held that DES must make a reasonable effort to provide reunification services before seeking to terminate parental rights under A.R.S. § 8-533(B)(3). This means that DES must reasonably attempt to rehabilitate the parent by offering services designed to improve the parent's ability to care for the child. *Id.* at 192, ¶¶ 33–34, 971 P.2d at 1053. However, DES is not required to provide every conceivable service, *Maricopa Cnty. Juv. Action No. JS–501904,* 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), or to provide futile services, *Pima Cnty. Severance Action No. S–2397,* 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989); *see also Maricopa Cnty. Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984)

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[3] Section 8-533(B)(8)(c) allows a court to terminate parental rights when DES has made diligent efforts to provide appropriate reunification services, the children have been in an out-of-home placement for 15 months or longer, "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."

(holding that DES's failure to provide ongoing psychotherapy did not foreclose severance of parental rights).

¶27 Here, DES made a reasonable effort to provide reunification services before it sought to terminate Mother's parental rights. The array of services that DES offered Mother between August 2011 and February 2013 included psychological, psychiatric, and neuropsychological evaluations; individual counseling; parent-aide services; supervised visits; and transportation to and from appointments. During this time, Mother was diagnosed with a personality disorder, a mood disorder, a major depressive disorder, a cognitive disorder, and significant memory impairment.

¶28 An expert neuropsychiatrist testified that Mother's personality and mood disorders would likely persist for an indeterminate period of time, possibly permanently, during which she would be unable to care for the Children. Mother still never obtained the brain imaging that the neuropsychiatrist recommended, which potentially could have led to treatment of her memory impairment if she actually had a seizure disorder. And although DES did not provide Mother with such brain imaging, the CPS case manager explained to her how to apply for coverage through AHCCCS and how she might be able to obtain needed services through publicly funded regional health care. The case manager also arranged for a taxi to bring Mother to his office to ensure that she had accurate contact information for suitable health care providers. But Mother repeatedly disregarded the case manager's assistance and never informed him whether she obtained help.

¶29 Additionally, even though Mother often became upset, defensive, ignored advice, and failed to attend sessions, DES continued to provide counseling before the counselor decided that additional treatment would be futile. And while Mother participated in supervised visits weekly, she never once made room in her schedule for additional one-on-one parenting skills training that DES offered. The parent aide had to give Mother multiple copies of the same parenting-skills homework assignments and Mother consistently failed to complete them.

¶30 Despite substantial and persistent difficulties, DES continued to offer parent-aide services for more than a year until Mother was deemed incapable of redirecting the Children's behaviors or parenting them safely. The CPS case manager testified that despite all of DES's efforts, he did not think Mother had made any progress in the 17 months that the Children had remained in an out-of-home placement.

¶31 We conclude that reasonable evidence supports the juvenile court's severance of Mother's parental rights under A.R.S. § 8-533(B)(3).

III. REASONABLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT SEVERANCE WAS IN THE CHILDREN'S BEST INTERESTS.

¶32 Mother contends that the juvenile court erred in finding that severance was in the Children's best interests when "[n]o true adoptive home ha[d] been identified for these children." She further argues that severance was unjustified because "there was no benefit identified, only speculated upon by the Case Manager, and no possible harm was identified by the continuation of the parent-child relationship." Again, we disagree.

¶33 "[A] determination of the child's best interests 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 730, 734 (1990). "In combination, the existence of a statutory ground for severance and the immediate availability of a suitable adoptive placement for the children frequently are sufficient to support a severance order." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 335, ¶ 8, 100 P.3d 943, 946 (App. 2004). The court may also consider whether the present 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).

¶34 Here, a CPS case manager testified that severance would be in the Children's best interests because Mother had failed to make any progress in remedying the circumstances that caused CPS to remove them, and because it would provide them with needed stability and permanency. The case manager further testified that the Children's placement at the time was meeting their needs, the Children were adoptable, and a recent home study, admitted into evidence, concluded that a paternal aunt was willing and suitable to provide an adoptive home for the Children. Contrary to Mother's assertions, we find that reasonable evidence supports the juvenile court's determination that severance was, by a preponderance of the evidence, in the Children's best interests.

CONCLUSION

¶35 For the foregoing reasons, we affirm.