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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

TIRIKA C., *Appellant,*

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, K.C., H.T., I.C.,
T.J., *Appellees.*

No. 1 CA- JV13-0163

FILED 12-12-2013

Appeal from the Superior Court in Maricopa County
No. JD18908
The Honorable Joan M. Sinclair, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael Valenzuela

Counsel for Appellee Arizona Department of Economic Security

John L. Popilek, PC, Scottsdale
By John L. Popilek

Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge Donn Kessler and Judge Michael J. Brown joined.

G O U L D, Judge:

¶1 Tirika C. (“Mother”) appeals from the juvenile court order terminating her parental rights to K.C., H.T., I.C., and T.J., her four minor children. Mother challenges the statutory grounds for severance and the court’s conclusion that severance was in the children’s best interests. Because we disagree with Mother, we affirm.

Facts and Procedural History

¶2 Mother has a total of six children. Two of her children are over 18; this appeal addresses her four minor children ranging from age 13 to age 3.

¶3 On August 17, 2011 police found Mother’s younger two children, a one-year-old and a three-year-old, home without adult supervision. The home was dirty and disorganized and Mother tested positive for marijuana; as a result, her four minor children were taken into temporary physical custody. Following a preliminary protective hearing on August 31, the children were found dependent with a case plan of family reunification.

¶4 At first, Mother participated in services provided by the Arizona Department of Economic Security (“ADES”). She was referred to TERROS for substance abuse treatment, she participated in random urinalysis testing, and she was sent to individual counseling. However, Mother was removed from aftercare and placed back in treatment at TERROS because she continued to test positive for Phencyclidine (“PCP”). Despite having had four referrals to TERROS, Mother never successfully completed treatment and made no progress with individual counseling because of her inconsistent attendance.

¶5 As a result, ADES filed a petition to terminate Mother’s parental rights to her four minor children. The petition alleged that Mother was unable to discharge her parental responsibilities because of her history of chronic PCP abuse and that the children had been in an out-

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of-home placement for a cumulative total period of fifteen months or longer.

¶6 At the start of the severance trial, Mother requested a continuance to allow her more time to locate witnesses to testify on her behalf and to demonstrate sobriety in order to better represent herself. The court denied Mother's request. Following the trial, the court found that ADES had met its burden of proof on both the grounds alleged for severance, and that it was in the best interests of the children to terminate Mother's parental rights. The court terminated Mother's parental rights; Mother now appeals.

Discussion

¶7 On appeal Mother argues the court improperly denied her request for a continuance. The court has broad discretion to grant or deny a motion for a continuance. *See Avila v. Ariz. Dep't of Econ. Sec.*, 160 Ariz. 246, 249, 772 P.2d 600, 603 (App. 1989). The court denied Mother's motion, made orally on the day of trial, as untimely. *See Ariz. R.P. Juv. Ct. 66(B)* (stating that a motion for continuance shall be filed within five days of discovering extraordinary circumstances necessitating extra time). Mother's attorney first requested a continuance in order to permit Mother to demonstrate sobriety, and when that request was denied, Mother herself requested a continuance so that she could gather witnesses. The motion was untimely, and Mother did not make an offer of proof that would permit us to determine whether Mother was prejudiced by the denial. We find that the court did not abuse its discretion.

¶8 Next, Mother challenges the statutory grounds for terminating her parental rights. We note that Mother has not adequately challenged the fifteen months' time in care statutory ground for severance. Her argument is relegated to a two-sentence footnote unsupported by citations to the record or to relevant legal authority. *See* ARCAP 13(a)(6) (requiring "citations to the authorities, statutes and parts of the record relied on"); *Ariz. R.P. Juv. Ct. 106(A)* (stating that ARCAP Rule 13 applies in juvenile court appeals). Accordingly, we deem the issue waived. *See Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (stating that failure to present significant arguments supported by authority on the issue will constitute abandonment and waiver of the claim). Mother's waiver aside, the record supports the court's conclusion that ADES proved the statutory grounds for termination by clear and convincing evidence. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz.

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246, 249, ¶ 12, 995 P.2d 682, 685 (2000) (stating that the court need only find one of the statutory grounds for severance).

¶9 On appeal we review the juvenile court's findings for clear error, and we view the evidence in the light most favorable to affirming its decision. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 376, ¶ 13, 231 P.3d 377, 380 (App. 2010). To terminate parental rights under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3), the court must find by clear and convincing evidence that "1) [the] parent has a history of chronic abuse of controlled substances or alcohol; 2) [the] parent is unable to discharge parental responsibilities because of [that] chronic abuse of controlled substances or alcohol; and 3) there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." *Raymond F.*, 224 Ariz. at 377, ¶ 15, 231 P.3d at 381.

¶10 Clear and convincing evidence supports the court's ruling. Mother's long history of substance abuse, specifically PCP, has been punctuated by only brief episodes of sobriety. Despite being faced with the removal of her children, and provided a number of drug-abuse services, Mother has continued to chronically use PCP. Throughout the dependency Mother consistently tested positive for PCP and never successfully completed a TERROS treatment program. At the severance trial, the court heard testimony that due to Mother's drug use she is not even a minimally adequate parent. The psychologist who evaluated Mother stated that it was reasonable to believe her substance abuse would continue for a prolonged period of time.

¶11 Mother next challenges the court's finding that termination of her parental rights was in the children's best interests. After finding that clear and convincing evidence supports one of the alleged statutory grounds for termination, the court must find by a preponderance of the evidence that termination of the parent-child relationship is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, ¶ 1, 288, ¶ 41, 110 P.3d 1013, 1014, 1022 (2005). "Whether severance is in the child's best interests is a question of fact for the juvenile court to determine." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002). We will only set aside the juvenile court's findings of fact if no reasonable evidence supports them. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). We will not reweigh the evidence. *Id.*

¶12 The best interests inquiry focuses primarily on the interests of the child. At the point in the proceedings when the court turns to best

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interests, it has already concluded the parent is unfit; “the court must balance this diluted parental interest against the independent and often adverse interests of the child in a safe and stable home life.” *Kent K.*, 210 Ariz. at 286, ¶ 35, 110 P.3d at 1020. “To prove that the termination of parental rights would be in a child’s best interests, ADES must present credible evidence demonstrating ‘how the child would benefit from a severance or be harmed by the continuation of the relationship.’” *Lawrence R. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 8, 177 P.3d 327, 329 (App. 2008) (citation omitted). “This reasoning reflects an unspoken assumption that a parent, even an inadequate one, is better than no parent at all unless the child can somehow benefit from losing his natural parent.” *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990).

¶13 The CPS case manager testified that the children would be harmed by remaining in ADES’s care for a period of time long enough for Mother to attain sobriety. He stated that severance was in the children’s best interests because it would provide them permanency. Although no current adoptive plan was in place, the grandmother testified that she would be willing to continue to provide foster care so that an adoptive family could be found. *See Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008) (stating that a specific adoptive plan is not a prerequisite to termination; “the juvenile court may rely on evidence that the child is adoptable and the existing placement is meeting the child’s needs”).

Conclusion

¶14 For the foregoing reasons, we affirm the court’s termination of Mother’s parental rights.



Ruth A. Willingham · Clerk of the Court
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