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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

DANIELLE S., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, R.S., *Appellees*.

No. 1 CA-JV 13-0174
FILED 12-26-2013

Appeal from the Superior Court in Maricopa County
JD509933
The Honorable Brian K. Ishikawa, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris

Counsel for Appellant

Office of the Attorney General, Phoenix
By Amanda Holguin

Counsel for Appellee Arizona Department of Economic Security

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Kent E. Cattani joined.

G E M M I L L, Judge:

¶1 Danielle S. (“Mother”) appeals the juvenile court’s order terminating her parental relationship with minor child, R.S. (“Son”). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Son was born exposed to methamphetamine in 2012. He was taken into custody by the Arizona Department of Economic Security (“ADES”) soon after his birth. Several days later, Mother completed two urinalysis tests and the results were negative. Mother insisted she did not abuse drugs and claimed that someone caused her to ingest the methamphetamine while she was asleep.

¶3 After a dependency hearing in February 2012, Son was found to be dependent, and the case plan goal was family reunification with a target date of August 2012.

¶4 ADES provided Mother with various services to aid in the reunification case plan. Specifically, Mother was offered substance abuse treatment through TERROS, random urinalysis testing through Treatment Assessment Screening Center (“TASC”), a psychological evaluation, visitation, transportation, and parent aid services. Mother eventually completed her TERROS program and consistently tested negative on her TASC drug tests.

¶5 Son was returned to Mother’s care within six months. Eleven days later, Mother again tested positive for methamphetamine. Despite Mother’s positive test, ADES agreed to allow in-home placement with Mother to continue, conditioned on Mother demonstrating that she was drug free through subsequent drug testing. Mother did not comply, however, and failed to provide urine samples over the next three days. Mother claims she was unable to test on several occasions due to blood in

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her urine, but she did not produce a required doctor's note verifying this condition. In October 2012, ADES again removed Son from Mother's care.

¶6 After Son's removal, Mother was required to participate in several reunification services. Mother was instructed to find someone to act as a safety monitor, to acquire stable housing and income, enroll in TASC, enroll in an aftercare program,¹ and complete scheduled visitations. Mother only complied with a portion of her case plan, however. She did not obtain a safety monitor, and she did not complete the requisite drug testing.

¶7 By January 2013, Mother's participation in supervised visits began to wane. On March 15, 2013, Mother resumed her visits for a brief period, but began missing supervised visits again shortly thereafter.

¶8 In February 2013, ADES filed a motion to change the case plan to severance and adoption. After the court granted the motion, ADES moved to terminate Mother's parental rights. ADES alleged, under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(a),(b), that Son had been in an out-of-home placement for six or nine months or longer pursuant to court order and that Mother substantially neglected and willfully refused to remedy the circumstances that caused the out of home placement.

¶9 On May 22 and 24, 2013, the juvenile court conducted a Contested Severance Trial. Mother testified that, from November 2012 until March 2013, she was unable to participate in urinalysis through TASC because of her employment hours. Additionally, Mother explained that she did not test with TASC during that time because she "didn't know where to go." Instead, Mother requested a hair follicle test which ADES did not provide. Mother also testified that she did not avail herself of TASC's services from March 2013 to May 2013 because she was overwhelmed during that time, despite terminating her employment in March. Further, Mother also neglected to obtain a safety monitor to live with her as was required by her case plan. In June 2013, the juvenile court terminated Mother's parental rights as to Son.

¹ Originally, Mother was provided with TERROS services, but claimed "TERROS would not work for her" and that she would complete an aftercare program with her church.

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¶10 Mother timely appeals. We have jurisdiction under A.R.S. §§ 8-235, 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶11 The juvenile court may terminate a parent-child relationship only upon a finding that clear and convincing evidence supports at least one statutory ground for severance and that a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Mary Lou C. v. Arizona Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (citation omitted).

¶12 Mother raises two issues on appeal. She first argues that the juvenile court erred in terminating her parental rights based on the court's findings that Mother substantially neglected or willfully refused to remedy the circumstances that caused the child to be in an out-of-home placement for six or nine months or longer. Next, Mother asserts that the juvenile court erred in finding that ADES made reasonable efforts to provide appropriate reunification services to Mother. Mother is not challenging the best interests finding by the juvenile court.

**I. SUBSTANTIAL NEGLECT OR WILLFUL REFUSAL TO
REMEDY CIRCUMSTANCES CAUSING OUT-OF-HOME
PLACEMENT**

¶13 Mother claims the juvenile court erred in determining that she substantially neglected or willfully refused to remedy the circumstances that lead to severance. We disagree. In its June 2013 order, the juvenile court referenced several instances in which mother refused the necessary steps toward reunification despite having been continually warned of the importance of complying with the case plan, including drug testing. And although Son was initially returned to Mother after she made progress with reunification services, Mother was not as diligent pursuing those services after Son was removed a second time.

¶14 As part of her case plan, Mother was required to attend scheduled visitation and to complete drug testing through TASC. She did not do so, completing only fraction of her scheduled TASC urinalysis. At

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trial, Mother's caseworker testified that Mother missed eight tests in September following Son's second removal. Additionally, Mother tested positive for methamphetamine in October and missed seven tests in October and twelve tests in November.

¶15 Mother testified that she was unable to comply with required urinalysis from November 2012 until March 2013 because TASC's hours directly conflicted with her employment. Mother also testified that it "wasn't feasible" to drive to Phoenix from Mesa to test with TASC, despite having transportation. After Mother testified that she had terminated her employment in March 2013, she was asked why she was unable to attend TASC from March 2013 until May 2013. She answered that she was too "overwhelmed ..., sick and just bothered" during that time to test.

¶16 Mother also missed several scheduled visits with Son, contrary to her case plan. She was not at fault for some of the missed visits, including a visit incorrectly scheduled by ADES, and visits scheduled during a time when Son's foster parents took him to New York to tend to a family affair. But these instances accounted for only a small portion of Mother's missed visitations. At trial, Mother admitted that she canceled visits on January 24, January 31, and February 7, causing her to be placed on "call to confirm" status. Mother's caseworker also testified that Mother missed visits on March 29, April 12, April 19, and May 3, 2013. Because the record reflects that Mother did not substantially comply with visitation or scheduled urinalysis, we conclude that there is clear and convincing evidence to support the juvenile court's findings for termination.

II. REUNIFICATION SERVICES

¶17 Mother also contends that ADES failed to make reasonable efforts to provide appropriate reunification services. "ADES [is] obliged to prove by clear and convincing evidence that it had made a reasonable effort to provide [Appellant] with rehabilitative services or that such an effort would be futile." *Mary Lou C.*, 207 Ariz. at 49, ¶15, 83 P.3d at 49. "However, the Department's responsibility has limits. There always comes a point where the trial court must decide whether the natural parent is making a good-faith effort to reunite the family. If not, the best interests of the child require termination." *Matter of Maricopa Cnty. Juvenile Action Nos. JS-4118/JD-529*, 134 Ariz. 407, 409, 656 P.2d 1268, 1270 (App. 1982).

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¶18 We conclude that the evidence supports the juvenile court's finding that ADES made diligent efforts to provide services to Mother. *See Matter of Appeal in Maricopa Cnty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES provided numerous opportunities for Mother to take steps towards reunification with Son, including TASC drug testing and supervised visitation. After Son was returned to Mother in September 2012, Mother subsequently tested positive for methamphetamine. Even after this positive test, ADES provided Mother additional chances to complete urinalysis, but she missed several required drug tests from September 2012 until May 2013. ADES required Mother to acquire a safety monitor, find stable housing and income, enroll in TASC, enroll in an aftercare program, and participate in scheduled visitations, but Mother did not comply with most of these requirements.

¶19 Mother claims that ADES did not provide her with a hair follicle test when she had difficulty attending TASC due to her employment; however, ADES is not obligated to provide Mother with "every conceivable service" possible. *Juvenile Action No. JS-501904*, 180 Ariz. at 353, 884 P.2d at 239. The record reflects the availability of testing services, and ADES was not obligated to provide Mother with a hair follicle test. Further, Mother acknowledged that after her employment ended in March 2013, she had transportation to make it to TASC, yet chose not to attend.

¶20 ADES is required to make reasonable and diligent efforts, and the juvenile court found that requirement to have been satisfied here. We conclude that the evidence supports the juvenile court's finding that ADES made reasonable efforts to provide Mother with appropriate reunification services.

CONCLUSION

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



Ruth A. Willingham - Clerk of the Court
FILED: mjt