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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SINDY F., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,
S.F., P.F., S.F., I.F., *Appellees*.

No. 1 CA-JV 16-0321
FILED 2-14-2017

Appeal from the Superior Court in Maricopa County
Nos. JD29611; JS18308
The Honorable Joseph C. Welty, Judge

AFFIRMED

COUNSEL

David W. Bell, Mesa
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

H O W E, Judge:

¶1 Sindy F. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her minor children S.F., P.F., S.F., and I.F. Mother argues that the juvenile court erred by finding that sufficient evidence supported the termination of her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 One night in December 2014, Mother and four-year-old I.F. were in a Wal-Mart in Phoenix. Store employees saw I.F. wandering around the store by himself for several hours. Store employees called the police who found Mother sitting at the McDonald’s inside the Wal-Mart. While police officers questioned Mother, she had trouble staying awake and at one point almost fell over. The police officers learned that Mother had other children and offered to take her home. Mother was hesitant to tell the officers where she lived, but after the officers explained that the Department of Child Safety (the “Department”) requested a welfare check on the children, Mother finally agreed.

¶3 When the police officers arrived at Mother’s trailer, they immediately noticed its poor condition. Mother told officers that a neighbor was watching the children, but the officers found only the children. The officers noted that the trailer had no running water, that the roof looked as if it had collapsed in and had cracks in it, and that the only source of electricity came from an extension cord connected to a neighbor’s trailer.

¶4 Later that night, a Department case worker arrived at the trailer and advised Mother that the trailer’s condition was unlivable. The case worker asked if Mother could take the children anywhere else, and Mother answered that they could all go to her mother’s house. Mother admitted to the case worker that she took several Percocet and muscle relaxer pills. The case worker asked Mother to take a drug test and also attend a Team Decision Meeting (“TDM”) the following day. The case

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worker left a brochure with Mother that had all of the contact information Mother would need about the TDM and drug testing. Mother agreed to come to the meeting and undergo the drug test.

¶5 Mother failed to attend the TDM or take the drug test. The Department took temporary custody of the children pursuant to court order and placed them with the maternal grandmother. For the next five months, Mother made no contact with the Department and failed to attend any court hearings.

¶6 In May 2015, a case worker went to the maternal grandmother's house to check on the children and found Mother there. The case worker told Mother that she needed to contact the Department so that she could start services and get information about her case. Mother told the case worker that she did not want to participate in services and refused to provide her contact information. The case worker told Mother that she would give all of the Department's contact information to Mother's brother so that Mother would have it. Although Mother made no contact with the Department, the case workers still referred her for drug testing.

¶7 In August 2015, the Department learned from its parent location service that Mother was in jail for child neglect charges stemming from the December 2014 incident. The juvenile court postponed its August report and review hearing to the end of September so that Mother could attend once released from jail. The criminal court released Mother without prejudice because it found her incompetent to stand trial. Although Mother knew that she needed to contact the Department once released, she failed to attend the September report and review hearing or contact the Department.

¶8 In November 2015, Mother attended a report and review hearing and met with the case worker afterward. The case worker told Mother that she would schedule a parent meeting and services for the following week. The Department referred Mother for a psychological evaluation, urinalysis testing, and provided a parent aide for supervised visitation. Mother failed to attend the parent meeting and both the parent aide and drug testing services ended for failure to participate. The Department moved to terminate Mother's parental rights on nine months in an out-of-care placement pursuant to court order under A.R.S. § 8-533(B)(8)(a).

¶9 Mother did not contact the Department until March 2016. The Department again referred Mother for drug testing. Mother completed

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required testing and tested negative for all substances from March until the severance hearing in May. Mother also completed a psychological evaluation in April. Mother's inconsistent responses invalidated many of the psychological tests, but a psychologist still diagnosed Mother with borderline intellectual functioning.

¶10 At the May 2016 severance hearing, the case manager testified that Mother's failure to keep in contact with the Department hindered her from formal visitation with the children. The Department often had to resort to its parent location services because Mother refused to give her contact information. The case manager also testified that Mother failed to complete any drug testing from December 2014 to March 2016. The case worker explained that since the Department first got involved, it wanted to provide services to keep the children in Mother's care and to have Mother drug tested before determining what other services she would need. Earlier involvement would have allowed the Department to work with Mother's diagnosis sooner. Each time case workers received contact from Mother, they would try to engage her in services.

¶11 The case manager further testified that the children had been in an out-of-home placement pursuant to court order for more than nine months. She testified that the maternal grandmother was meeting all of the children's needs, that the children had bonded with her, and that she was willing to adopt them.

¶12 The juvenile court terminated Mother's parental rights under the nine months in an out-of-home placement pursuant to court order ground and found that the Department had made diligent efforts to provide Mother with reunification services. The juvenile court noted that "had mother been at all cooperative in this matter and had made timely contact with the Department, appropriate services could have been put in place in a more timely fashion." The juvenile court also found that termination was in the children's best interests. Mother timely appealed.

DISCUSSION

1. Statutory Ground for Termination

¶13 Mother argues that the juvenile court erred by finding that she substantially neglected or willfully refused to participate in reunification services and that the Department made diligent efforts to provide her with reunification services. We review a juvenile court's termination order for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9, 344 P.3d 842, 844 (App. 2015). We accept the juvenile court's

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factual findings unless no reasonable evidence supports those findings, and we will affirm a severance order unless clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1, 200 P.3d 1003, 1005 (App. 2008). The juvenile court did not abuse its discretion by terminating Mother's parental rights under the nine months in an out-of-home placement and finding that the termination was in the children's best interests.

¶14 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one of the statutory grounds for termination, and find by a preponderance of the evidence that termination is in the children's best interests. *See* A.R.S. §§ 8-533(B), -537(B); *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 283, 287 ¶ 15, 378 P.3d 725, 729 (App. 2016). As relevant here, to terminate parental rights for nine months in an out-of-home placement pursuant to court order, the juvenile court must find that (1) the children have been in an out-of-home placement for a cumulative period of nine months or longer pursuant to court order and that (2) the parent has substantially neglected or willfully refused to remedy the circumstances that caused the children to be in an out-of-home placement. A.R.S. § 8-533(B)(8)(a). In its determination, the juvenile court "must consider the availability of reunification services to the parent and the participation of the parent in these services." A.R.S. § 8-533(D).

¶15 Here, sufficient evidence supports both requirements of the statutory ground for nine months in an out-of-home placement pursuant to court order. By the time of the severance hearing, the children had been in an out-of-home placement for 18 months, meeting the first requirement for termination. The record shows that Mother willfully refused to participate in services, meeting the second requirement for termination. Although Mother agreed to participate in the initial TDM and drug test, she failed to attend either one. Five months later, when the case worker told Mother that she needed to participate in services, Mother stated that she did not want to. When the case worker met with Mother at the November report and review hearing, the case worker re-referred services for Mother, including a psychological evaluation, and scheduled Mother for a parent meeting the following week. Mother did not participate in the services or the psychological evaluation until March 2016. Thus, sufficient evidence exists to support the juvenile court's finding that Mother substantially neglected or willfully refused to remedy the circumstances that caused the children to be in an out-of-home placement.

¶16 Mother counters that because the criminal court found her incompetent to stand trial and the psychologist diagnosed her with borderline intellectual functioning, she should have been given more time

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to remedy the circumstances that led to the children's removal. Mother, however, was not diagnosed until April 2016, more than 15 months after the Department placed her children with the maternal grandmother. Case workers instructed Mother to contact the Department following her release from jail so that services could be initiated, but Mother waited two months before making any type of contact. The case worker testified that had Mother attended the TDM or contacted the Department sooner, the Department could have worked with Mother's diagnosis. Arizona Revised Statutes section 8-533(B)(8)(a) requires that the court focus its analysis on the "level of the parent's effort to cure the circumstances rather than the parent's success in actually doing so." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 329 ¶ 20, 152 P.3d 1209, 1212 (App. 2007). The record shows that Mother put no effort into maintaining contact with the Department or participating in any services until March 2016 – almost 15 months after the Department removed the children. *See Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (finding mother's successful efforts at recovery were not enough when she substantially neglected to remedy her addiction for more than a year while the child was in an out-of-home placement).

¶17 Mother next contends that the Department failed to make diligent efforts to provide reunification services. But as the juvenile court found, the Department had made diligent efforts to provide Mother with reunification services even though Mother had not kept in contact with the Department. The court found that Mother was uncooperative and failed to make timely contact with the Department and that had Mother made earlier contact, the Department could have put services in place sooner. Although Mother failed to keep in contact with the Department, it still referred her for services.

¶18 The Department referred services in December 2014, May 2015, November 2015, and finally in March 2016. Mother failed to participate in the drug testing for 15 months. The case manager testified that had Mother taken the initial drug test, the Department would have then sent Mother for an assessment to determine what other services Mother might need. Additionally, the Department referred Mother for a supervised visitation parent aide, which would have allowed Mother to visit the children. Finally, once Mother contacted the Department in November 2015, the Department referred Mother for a psychological evaluation. Had Mother made any contact with the Department at the beginning of the case, the evaluation could have been completed sooner. Thus, the record supports the juvenile court's finding that the Department made diligent efforts to provide Mother with reunification services.

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Accordingly, the juvenile court did not err by finding by clear and convincing evidence the nine months in an out-of-home placement ground under A.R.S. § 8-533(B)(8)(a) and by finding that the Department made diligent efforts to provide Mother with reunification services.

2. Best Interests

¶19 Mother does not challenge or otherwise discuss the best interests finding, but the record shows that termination of Mother's parental rights was in the children's best interests. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20, 319 P.3d 236, 241 (App. 2014). In determining whether the child will benefit, relevant factors to consider include whether the current placement is meeting the child's needs, an adoption plan is in place, and the child is adoptable. *Tina T. v. Dep't of Child Safety*, 236 Ariz. 295, 300 ¶ 19, 339 P.3d 1040, 1045 (App. 2014); *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288 ¶ 26, 257 P.3d 1162, 1168 (App. 2011).

¶20 Here, the record supports the juvenile court's finding that termination was in the children's best interests. The case manager testified that the maternal grandmother is meeting all of the children's needs and that the children have a strong bond with her. The case manager further testified that the maternal grandmother was an adoptable placement and that the children were willing to be adopted. Thus, the juvenile court did not err by finding termination to be in the children's best interests.

CONCLUSION

¶21 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA