

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHRISTINA T., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, I.T., *Appellees*.

No. 1 CA-JV 16-0416
FILED 3-21-2017

Appeal from the Superior Court in Yavapai County
No. P1300JD201500041
The Honorable Anna Young, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffman
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

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THOMPSON, Judge:

¶1 Christina T. (Christina) appeals from the juvenile court's order severing her parental rights to her son, I.T. For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 I.T. was born in November 2010. In June 2015, the Yavapai County Sheriff's Office (YCSO) was searching a home in Black Canyon City and discovered that I.T., then four years old, had been living in the backyard in a tent with his maternal grandfather after Christina left him there. The home was unsafe and unsanitary, and two of the adult residents were subsequently convicted of downloading child pornography at the residence. YCSO notified DCS, and DCS removed I.T. from the home and placed him in foster care.

¶3 DCS filed a dependency petition, and the juvenile court found in March 2016 that I.T. was a dependent child as to Christina. DCS put into place a case plan of family reunification, and asked Christina to participate in a variety of services. Christina's participation in services and visitation was inconsistent.

¶4 DCS filed a severance motion in June 2016. The court held a contested severance trial in August 2016. The court terminated Christina's parental rights pursuant to Arizona Revised Statutes (A.R.S.) sections 8-533(B)(8)(a) (nine months' time in care) and 8-533(B)(2) (neglect).¹ (I. 70 at 2). Christina timely appealed. (I. 71). We have jurisdiction pursuant to A.R.S. §§ 8-235 (2014), 12-120.21(A)(1) (2016), and -2101 (A)(1) (2016).

DISCUSSION

¶5 On appeal, Christina argues that insufficient evidence supported the juvenile court's findings concerning both statutory grounds for severance (nine months' out-of-home placement and neglect). She does not appeal from the juvenile court's best interest finding.

¶6 "We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998)

¹ The juvenile court also terminated I.T.'s father's parental rights; he is not a party to this appeal.

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(citations omitted). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, because "[t]he juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if DCS proves by clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

A. Nine Months' Out-of-Home Placement

¶6 Under A.R.S. § 8-533(B)(8)(a), the juvenile court may terminate a parent-child relationship if DCS "made a diligent effort to provide appropriate reunification services," the child was in an out-of-home placement for nine months or longer, and the parent substantially neglected or willfully refused to remedy the circumstances that caused the child to remain out of the home. DCS "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). DCS fulfills its statutory mandate to diligently provide appropriate reunification services when it "provide[s] [a parent] with the time and opportunity to participate in programs designed to help [the parent] become an effective parent." *Id.* "To 'substantially [neglect] or willfully [refuse] to remedy a circumstance,' a parent must be aware that [DCS] alleges that the circumstance exists and is one that, if it continues to exist at severance, may result in the termination of [the parent's] parental rights." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 332, ¶ 35, 152 P.3d 1209, 1215 (App. 2007) (citation omitted).

¶7 At the time DCS filed its severance motion in June 2016, I.T. had been in an out-of-home placement for approximately one year, and by the trial he had been in care for approximately fourteen months. During the dependency, DCS requested that Christina participate in an intake assessment at a behavioral health clinic, counseling, random drug testing, parenting classes, parent-aide services, and visitation.

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¶14 Christina did not engage in an intake assessment, counseling, or parenting classes during the dependency. Nor did she submit any of her random scheduled urinalysis tests, and the agency providing the testing closed her out for non-compliance. Although DCS provided her with transportation to parent-aide supervised visitation with I.T., she cancelled or missed those visits frequently, which caused I.T. distress.

¶15 Based on all the evidence, the juvenile court concluded that I.T. had been cared for in an out-of-home placement for more than nine months and that Christina substantially neglected or willfully refused to remedy the circumstances causing I.T. to remain in care. The evidence was sufficient to support the severance order under A.R.S. § 8-533(8)(a). While Christina made some minimal and inconsistent efforts to comply with the case plan, those efforts were “too little, too late.” *See Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994).

¶16 Because we affirm the court’s order granting severance on the basis of nine months in an out-of-home placement, we need not address Christina’s argument concerning A.R.S. § 8-533(B)(2).

CONCLUSION

¶17 For the foregoing reasons, the juvenile court’s severance order is affirmed.



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