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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ADRIANE G., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.S., B.S., J.S.,
Appellees.

No. 1 CA-JV 17-0016
FILED 7-20-2017

Appeal from the Superior Court in Maricopa County
No. JD30010
The Honorable Roger E. Brodman, Judge

AFFIRMED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

The Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Peter B. Swann and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 Adriane G. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her three children, A.N.S., B.S., and J.S. on the grounds of chronic substance abuse under A.R.S. § 8-533(B)(3) and time in out-of-home placement for 15 months under A.R.S. § 8-533(B)(8)(c). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 One night in February 2015, Mother, A.N.S, and B.S. were found at Phoenix Sky Harbor airport and appeared to be homeless. Both children were dirty and running in the street. When Phoenix police arrived, Mother was high on methamphetamine and could not coherently respond to the officer’s questions. The officer contacted the Department of Child Safety (the “Department”) and the Department took the children into custody. During this time, Father¹ was incarcerated.

¶3 Later that month, the Department petitioned for dependency, alleging that the children were dependent as to Mother because of neglect, substance abuse, and mental-health issues. Mother denied the allegations but submitted the issue of dependency to the juvenile court, which found the children dependent. The Department offered Mother services including substance abuse testing through TASC, substance abuse assessment and treatment through Terros, parent aide services, a psychological evaluation, transportation, and supervised visitation.

¶4 In March 2015, Mother submitted to a hair follicle test that was positive for amphetamine, methamphetamine, cocaine, benzoylecgonine (“benzo”), and norcocaine. Over the next several months, Mother did not comply with her substance abuse and counseling services.

¹ The juvenile court also terminated Father’s parental rights to the children but he is not a party to this appeal.

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Mother's Terros referrals ended on two separate occasions due to Mother's nonparticipation.

¶5 In October 2015, Mother admitted to snorting Percocet that Father gave her. A month later, Mother gave birth to her third child, J.S., who was born substance-exposed to amphetamines and opiates. The Department subsequently took J.S. into custody. Around this time, Mother admitted herself into inpatient care at Lifewell Rehabilitation. Mother completed only two weeks at Lifewell, however, before checking herself out. The Department then petitioned for dependency, alleging that J.S. was dependent as to Mother because of Mother's substance abuse, mental-health issues, and neglect. Mother denied the allegations in the petition but submitted the dependency issue to the court, which found J.S. dependent as to her in January 2016. The juvenile court ordered Mother to participate in reunification services including parent aide services, substance abuse testing through TASC, Terros substance abuse treatment, Terros domestic violence component counseling, and a psychological evaluation.

¶6 The Department again referred Mother for these services. Shortly before Mother completed her Terros intake, she relapsed. During this relapse, Mother was two or three months pregnant with her fourth child, A.S. Mother's relapse caused her to test positive for amphetamine, cocaine, methamphetamine, benzo, cocaethylene, and norcocaine in March 2016. Around this time, Mother also began counseling to deal with her substance abuse and domestic violence issues. Mother refused to talk about the domestic violence in her counseling sessions and sought her own help to deal with this issue. In addition to drug testing and counseling, Mother also had a parent aide referral to assist her with parenting skills and domestic violence issues. Over the next couple of months, Mother missed several drug tests, was inconsistent in her counseling attendance, and missed several one-on-one sessions with her parent aide.

¶7 In May 2016, the Department moved to terminate Mother's parental rights on the chronic substance abuse ground under A.R.S. § 8-533(B)(3) for A.N.S., B.S. and J.S. and on nine months in an out-of-home placement under A.R.S. § 8-533(B)(8)(a) for A.N.S. and B.S. Meanwhile, Mother still had not fully complied with her reunification services. In July 2016, Mother participated in a psychological evaluation. Mother admitted to drinking alcohol and using cocaine at 14 years old. Mother further admitted to having a long history of domestic violence with Father and stated that "multiple police reports" have been made. The psychologist diagnosed Mother with stimulant-use disorder, adjustment disorder with

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anxiety, and borderline intellectual functioning but noted that if Mother could maintain her sobriety she should be able to take care of her children adequately. Because of Mother's long history of abusing substances and the potential risk for relapse, the psychologist recommended that Mother continue with individual counseling and undergo a psychiatric evaluation.

¶8 A couple months later, while at a supervised visit with the children, Father forcefully grabbed A.N.S. by the arm and Mother interjected. Shortly thereafter, as the parent aide, Mother, Father, and the children exited an elevator, Father punched Mother in the face. Father struck Mother while she was carrying J.S. and was nine months pregnant with A.S. Consequently, the Department suspended Father's contact with the children until he participated in a psychological evaluation and therapeutic visitation could be established. Mother continued to have visitation with the children.

¶9 The following month, Mother graduated from Terros's standard outpatient program. Because of Mother's significant substance abuse history and prior relapses, Terros recommended that Mother continue treatment in recovery maintenance. Although Mother initially agreed to participate in recovery maintenance, she ultimately decided not to. Shortly thereafter, Mother gave birth to A.S. The Department subsequently petitioned for dependency alleging that A.S. was dependent as to Mother because of Mother's substance abuse, domestic violence issues, and open dependency with the other three children. Mother denied the allegations in the dependency petition and the juvenile court set A.S.'s dependency adjudication hearing for the same time as the other children's termination hearing.

¶10 During this time, Mother started attending Alcoholics Anonymous ("AA"). But while Mother was in AA, she missed two required drug tests and tested positive for benzo. A couple weeks after testing positive for benzo—and less than a week before the severance hearing—Mother tested positive for alcohol.

¶11 At the December 2016 severance hearing, the case manager testified that before March 2016, Mother either tested positive for drugs or did not test at all. She further testified that Mother sporadically missed drug tests between March 2016 and August 2016 even though Mother knew that the Department considered those missed tests as positive drug tests. The case manager acknowledged that Mother had tested clean and consistently from August 2016 to November 2016 but missed multiple tests in November and had two positive drug tests in November and December.

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Mother admitted to testing positive on both accounts but denied knowing how she tested positive for benzo. Mother testified that she was attending AA but that she did not try to contact her sponsor before drinking.

¶12 Further, the case manager testified that the Department provided Mother with several reunification services on more than one occasion. From the start of the dependency, the Department referred Mother to Terros for substance abuse assessment and treatment three times and to TASC seven or eight times. Additionally, the Department referred and Mother participated in a psychological evaluation, supervised visitation, parent aide services, and transportation services. Mother agreed that the Department had provided her with every service she had requested. Finally, the case manager testified that Mother had been referred for a psychiatric evaluation but that the referral was still pending at the time of the severance hearing.

¶13 Regarding the children, the case manager testified that the children were adoptable and that J.S.'s foster parents would be willing to adopt the children should parental rights be terminated. She testified further that the foster parent would be able to meet all the children's educational, emotional, physical, and social needs. The case manager also stated that severance would be in the children's best interests because they would no longer be put at risk from the substance abuse and domestic violence issues that had not been resolved.

¶14 At the end of the hearing, the Department orally moved to amend the termination motion to conform to the evidence at trial. Specifically, it requested that the court amend the nine months in an out-of-home placement ground for A.N.S. and B.S. to 15 months in an out-of-home placement. None of the parties objected and the juvenile court granted the Department's motion.

¶15 The juvenile court terminated Mother's parental rights under the chronic substance abuse ground for all three children and under the 15 months in an out-of-home placement ground for A.N.S. and B.S. The court found that the Department made reasonable and diligent efforts to provide Mother services to assist her in overcoming her substance abuse issues. The court also found that the children would benefit from the termination and that they would be harmed if the relationship continued. Specifically, the court found that the children would no longer be exposed to substance abuse or domestic violence, are adoptable and can be placed together, and the children will be able to obtain permanency. Mother timely appealed the termination of her parental rights.

DISCUSSION

¶16 Mother raises several issues on appeal relating to the juvenile court's order terminating her parental rights to A.N.S., B.S., and J.S.² Mother argues that insufficient evidence existed to support termination, that the Department failed to make reasonable efforts to provide reunification services, and that severance is not in the children's best interests.³ Because sufficient evidence supports the termination order, the juvenile court did not err.

1. Statutory Ground for Termination

¶17 Mother argues that the juvenile court erred by terminating her parental rights because the Department failed to prove by clear and convincing evidence the statutory elements of the chronic substance abuse ground. 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 (App. 2015). Further, we accept the juvenile court's factual findings unless no reasonable evidence supports them, and we will affirm a severance order unless it is clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 506 ¶ 1 (App. 2008).

¶18 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground under A.R.S. § 8-533 and by a preponderance of the evidence that termination would be in the child's best interests. A.R.S. § 8-533(B); Ariz.

² Mother also argues in her opening brief that the juvenile court erred by finding her fourth child, A.S., dependent. Mother's notice of appeal expressly provides, however, that she appeals the termination of her parental rights, not the juvenile court's order finding A.S. dependent. Thus, this Court lacks jurisdiction to hear that argument. *See In re Marriage of Thorn*, 235 Ariz. 216, 218 ¶ 5 (App. 2014).

³ Mother also contends that the juvenile court erred by granting the Department's oral motion to amend the termination motion to conform to the evidence presented at trial. But because we affirm the court's order on the chronic substance abuse ground, we need not decide whether the trial court erred by granting the Department's motion. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 3 (App. 2002) ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

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R. P. Juv. Ct. 66(C). As pertinent here, to terminate parental rights for chronic substance abuse, the juvenile court must find that: (1) the parent has a history of chronic substance abuse; (2) the parent is unable to discharge parental responsibilities because of her chronic substance abuse; and (3) reasonable grounds exist to believe that the abuse will continue for a prolonged indeterminate period. A.R.S. § 8-533(B)(3). Additionally, termination under this ground requires that the court find that the Department made reasonable efforts to provide reunification services to the parent. *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453 ¶ 12 (App. 2005).

¶19 The juvenile court did not err by finding that the Department proved termination under the chronic substance abuse ground by clear and convincing evidence. Mother does not dispute the juvenile court's findings that she had a history of chronic substance abuse or that her substance abuse rendered her unable to discharge her parental responsibilities. In our review, we note that the record supports these findings. First, Mother admitted that she began drinking and using cocaine when she was 14 years old. Mother's substance abuse continued through the birth of her three children. Aside from a four-month period, Mother's substance abuse continued during the length of the dependency. She also had two positive drug tests within one month of the severance hearing.

¶20 Additionally, sufficient evidence supports the court's finding that Mother was unable to discharge her parental responsibilities. The term "parental responsibilities" does not refer to any exclusive set of factors and is capable of being understood as the duties and obligations that a parent has to her children. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 378 ¶ 20 (App. 2010). This standard gives the juvenile court flexibility to consider the specific facts of the case at hand. *Id.* Here, eight months after the Department first referred Mother for substance abuse and counseling services, J.S. was born substance-exposed to amphetamine and opiates. Mother admitted that the month before J.S.'s birth, she snorted Percocet. Mother acknowledged that her efforts at becoming clean during the first year of the dependency were minimal. Even after Mother agreed to participate in Terros in March 2016, she relapsed the week before completing her intake. Mother knew that she needed to demonstrate and maintain sobriety but had two positive drug tests within a month of the severance hearing. Thus, Mother's chronic substance abuse rendered her unable to discharge her parental responsibilities.

¶21 The record also supports the juvenile court's finding that reasonable grounds existed to believe that Mother's abuse would continue

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for a prolonged indeterminate period. In making this determination, the juvenile court “could consider the evidence of Mother’s prior substance abuse . . . includ[ing] the length and frequency of Mother’s substance abuse, the types of substances abused, . . . prior efforts to maintain sobriety, and prior relapses.” *Jennifer S. v. Dep’t of Child Safety*, 240 Ariz. 282, 287 ¶ 20 (App. 2016). Here, Mother has a long history of substance abuse. Mother abused substances while pregnant with all four of her children. Although A.S. was not born substance-exposed, Mother tested positive for several drugs while three months pregnant with A.S. Mother admitted at her Terros intake that before March 2016, her longest time being clean was one month. Although Mother tested clean and consistently for several months before giving birth to A.S. in October 2016, she then tested positive for benzo—a drug she tested positive for in March 2015 and 2016. This evidence supports the juvenile court’s finding that at the time of the severance hearing Mother had not overcome her dependency on drugs. *See Raymond F.*, 224 Ariz. at 379 ¶ 29 (“Father’s failure to remedy his drug use; despite knowing the loss of his children was imminent, is evidence he has not overcome his dependence on drugs and alcohol.”).

¶22 Finally, the record shows that the Department made reasonable efforts to provide Mother with reunification services. The Department makes reasonable efforts to provide reunification services if it provides a parent with “the time and opportunity” to participate in reunification services. *Matter of Appeal in Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). Throughout the dependency action, the Department referred Mother to Terros for substance abuse treatment three times and substance abuse testing at TASC seven or eight times. Additionally, the Department referred Mother for parent aide services, supervised visitation, and two psychological evaluations throughout the dependency proceedings.

¶23 Mother counters that the Department failed to make a reasonable effort to provide appropriate reunification services because the Department failed to timely refer her for a psychiatric evaluation. But Mother failed to participate in the psychological evaluation when the Department initially referred that service. The case manager testified that had Mother participated in the psychological evaluation earlier, she would have likewise received the psychiatric evaluation earlier. At the time of the severance hearing, that referral was still pending. The Department is not required “to provide every conceivable service or to ensure that a parent participates in each service it offers.” *Christina G. v. Ariz. Dep’t of Econ. Sec.*, 227 Ariz. 231, 235 ¶ 15 (App. 2011). That one referral had yet to start by the time of the severance trial does not negate the juvenile court’s finding that

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the Department made reasonable efforts to provide reunification services. Thus, the juvenile court did not err by finding that the Department made reasonable efforts to provide Mother with reunification services.

2. Best Interests

¶24 Mother next argues that the juvenile court erred by finding that terminating her 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. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20 (App. 2014). In determining whether the child will benefit from the termination, 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 (App. 2014); *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288 ¶ 26 (App. 2011). Additionally, the juvenile court need only find that termination is in the child's best interests by a preponderance of the evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005).

¶25 Here, the juvenile court found that the children would both benefit from the termination and would be harmed if the relationship continued. The record supports this finding. The case manager testified that J.S.'s foster parents were willing to adopt all three children and that they would be able to appropriately provide for all of the children's needs. Additionally, the case manager stated that severance would be in the children's best interests because they would no longer be exposed to substance abuse or domestic violence. Finally, A.N.S. and B.S. have been in an out-of-home placement for 22 months and J.S. had been in custody since her birth and severance would provide the children with permanency. Thus, the juvenile court did not err by finding termination to be in the children's best interests.

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CONCLUSION

¶26

For the foregoing reasons, we affirm.



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