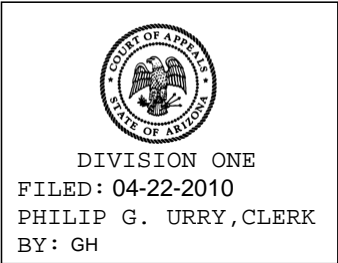


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



MENDY H.,)	1 CA-JV 09-0161
)	
)	
Appellant,)	DEPARTMENT D
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC)	Ariz. R.P. Juv. Ct.
SECURITY, HOLDEN R.,)	103(G); ARCAP 28)
)	
Appellees.)	
)	

Appeal from the Superior Court of Yavapai County

Cause No. JD 2008-0028

The Honorable Robert M. Brutinel, Judge

AFFIRMED

Law Office of Florence M. Bruemmer
By Florence M. Bruemmer
And Tanya R. Imming
Attorneys for Appellant

Anthem

Terry Goddard, Attorney General
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee ADES

Mesa

T H O M P S O N, Judge

¶1 Mendy H. (Mendy) appeals from the juvenile court's order severing her parental rights to the child, Holden. For the following reasons, we affirm.

¶2 In July 2009, the juvenile court held a pretrial hearing pertaining to the severance petition filed by the state. Mendy was represented by counsel. After hearing updates from the attorneys, the juvenile court took a recess and conducted a settlement conference with the consent of the parties. When the court went back on the record, the juvenile court stated that Mendy had agreed to waive her right to a severance trial and submit the issue of severance to the court based on the record. The court informed Mendy of her rights as follows:

THE COURT: Ma'am, I need to make sure that you understand your rights for the record. Do you understand that you have a right to go to trial in this matter and that we have set a trial and we will have that trial.

At that trial, you have the right to be represented by an attorney. You would have the right to be represented by an attorney. You would have the right to cross-examine witnesses called by the State to testify at that trial. You would have the right to call your own witnesses and to use the subpoena power of the court to get them here.

You would have the right to have me make a determination the State has proven by clear and convincing evidence the allegations of its petition and that severance is in Holden's best interests by a preponderance of the evidence, and that by submitting the matter on the record today,

you give up that right to a trial. Do you understand that?

THE MOTHER: Yeah.

THE COURT: And I understand this is very difficult for you and it's not what you want to do, but is that what you're willing to do?

THE MOTHER: Yes.

The juvenile court then took the testimony of the CPS case worker pertaining to Mendy's lack of compliance with the case plan and the reunification services offered. The case worker further testified that adoption was the case plan for Holden, that Holden was adoptable, and that Holden would benefit from termination of Mendy's parental rights. The juvenile court found that: Mendy had waived her right to trial; grounds for severance had been met; CPS had made reasonable efforts to provide Mendy with appropriate reunification services; Holden was adoptable; and severance was in Holden's best interests. The juvenile court then severed Mendy's parental rights.

¶3 Mendy first argues that the juvenile court erred in terminating her parental rights because her waiver of her right to trial "may not have been voluntary." Arizona Rule of Procedure for the Juvenile Court 66(D)(1) provides that a parent may waive her right to trial by admitting or not contesting the allegations in a termination motion provided that she

understands the rights being waived and that the admission or plea is knowingly, intelligently, and voluntarily made. In this case, Mendy argues that her waiver was based on promises that she would continue to have visits with Holden until he was placed in an adoptive placement; the case would proceed to a post-adoption mediation; an ICPC would take place to determine whether Holden could be placed with Mendy's aunt and uncle; and the therapist would issue a recommendation about whether visits could continue after Holden was placed in an adoptive placement. However, no evidence in the record supports a conclusion that any of the promises Mendy asserts were made to her have not been kept, nor does she even argue that any of the asserted promises were not kept. We find no error in the trial court's conclusion that Mendy's waiver of a severance trial was voluntary.

¶4 Mendy next argues that the trial court erred in severing her parental rights because termination was not in Holden's best interests. To establish that severance is in a child's best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the continuation of the relationship. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.* Here, the evidence was that

Holden was adoptable and that CPS had a case plan of adoption for Holden. We find no error.

¶15 For the foregoing reasons, the juvenile court's severance order is affirmed.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

DIANE M. JOHNSEN, Judge

