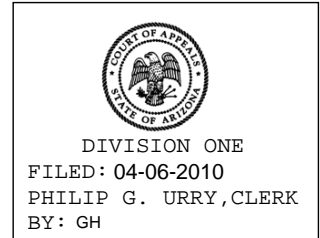


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
 EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
 See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
 Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE

TAMMY S.,)	No. 1 CA-JV 09-0172
)	
Appellant,)	DEPARTMENT C
)	
v.)	MEMORANDUM DECISION
)	
ARIZONA DEPARTMENT OF ECONOMIC)	(Not for Publication -
SECURITY, Z.S.,)	103(G), Ariz. R.P. Juv. Ct.,
Appellee.)	Rule 28, ARCAP)
)	
)	
)	
)	
)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. JD13214

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Gates Law Firm, L.L.C.
 By S. Marie Gates
 Attorney for Appellant

Phoenix

Terry Goddard, Arizona Attorney General
 By Kathleen Skinner, Assistant Attorney General
 Attorneys for Appellee

Mesa

B R O W N, Judge

¶1 Tammy S. ("Mother") appeals the juvenile court's termination of her parental rights to her son, Z.S.¹ For the following reasons, we affirm.

BACKGROUND

¶2 Mother and Justin S. ("Father") are the biological parents of Z.S., who was born in January 2007.² Two weeks after his birth, the Arizona Department of Economic Security ("ADES") took Z.S. into temporary custody and placed him in an emergency receiving home. ADES then filed a dependency petition alleging that Mother was unable to parent due to mental illness and domestic violence. The juvenile court granted the petition in May 2007 and approved a plan for family reunification.

¶3 Consistent with the court's order, ADES offered Mother reunification services, including psychological and psychiatric evaluation, individual counseling, medication monitoring, substance abuse assessment, substance abuse treatment, urinalysis testing, supervised visitation, and parent aide services. At a review hearing in May 2008, ADES moved to change the case plan to severance and adoption, which was denied by the

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal as reflected in this decision. The above referenced caption shall be used on all documents filed in this appeal.

² The juvenile court terminated the parental rights of Father on the first day of the severance hearing. His rights are not the subject of this appeal.

juvenile court to "give mother the opportunity to reengage and correct some of her issues." The court ordered ADES to discuss and identify the special needs of Z.S. so Mother could address them and gain appropriate skills if needed.

¶14 At the review hearing in August 2008, ADES asserted that no change had been made with regard to Mother's participation in services. Over Mother's objection, the juvenile court ordered that the case plan be changed to severance and adoption. ADES then filed its motion for termination, alleging that: (1) Mother was unable to discharge her parental responsibilities due to mental illness and there were reasonable grounds to believe the condition would continue for a prolonged, indeterminate period; (2) Z.S. had been in an out-of-home placement for fifteen months or longer, Mother was unable to remedy the circumstances that caused the out-of-home placement, and there was a substantial likelihood that Mother would be unable to exercise proper and effective parental care in the near future; and (3) Mother had her parental rights to other children terminated within the preceding two years for the same cause and was currently unable to discharge parental responsibilities due to the same cause.

¶15 At the three-day contested severance hearing, ADES presented the following evidence. Z.S. is Mother's seventh child. Mother's parental rights were terminated as to her other

six children in December 2006 and May 2007 for mental illness and instances of domestic violence between Mother and Father. Prior to the termination of her rights to the first six children, ADES tried to reunify Mother with her children by returning only some the children to her care at a given time. Mother had difficulty managing the children's behaviors; in one instance she returned the children to their foster placements.

¶16 Mother has suffered from bipolar disorder, anxiety disorder, major depression, personality disorder, and a mood disorder. She admitted to attempting suicide and "cutting" herself in the past. She used cocaine from August or September 2007 through May 2008, at which time she completed a two-week outpatient program for alcohol and cocaine abuse. Mother began smoking in May 2008 and continued to smoke even after becoming pregnant with another child in January 2009.

¶17 According to Mother's TERROS treatment plan, beginning September 2008, Mother was instructed to participate in two group counseling programs, one for eight hours a week for one year, and the other program for two hours a week for six months. Mother participated in the group counseling for a couple of weeks but never completed the program, and Mother instead decided to handle "it on [her] own."

¶18 Mother failed to complete the domestic violence counseling program and was also inconsistent with her individual

counseling. Though she participated in a majority of her parenting classes, she did not fully complete the program. Mother did participate in medication checks with TERROS, however, she admitted to failing to show for some of her appointments.

¶9 Z.S. experienced developmental delays and was diagnosed with cerebral palsy. One of Mother's treatment goals was to participate in Z.S.'s medical appointments, but she failed to follow through with all of them. Most recently, she failed to attend Z.S.'s neurologist appointment in July 2009, even after a case manager had arranged for Mother's transportation. A majority of the visits between Mother and Z.S. took place in Mother's home, and she was generally consistent with the visits.

¶10 Mother was unemployed at the time of the severance hearing, and Mother's last full-time employment consisted of a two-week period in 2008. Mother also failed to meet her goal of acquiring her GED. She testified that her new husband, who she married in January 2009, paid the rent on their apartment.

¶11 Cynthia Vaughn, a case manager for ADES' Division of Developmental Disabilities ("DDD"), opined that there was a substantial likelihood that Mother would be unable to exercise proper and effective parental care and control in the near future. Vaughn's assessment stemmed from her concern over

Mother's mental health stability and because Mother had already had children removed from her care due to not being able to care for the children due to her "stress level of . . . having the children."

¶12 Dr. Bluth, a licensed psychologist, performed psychological evaluations of Mother in June 2007 and December 2008. He expressed concerns about whether Mother "could handle [Z.S.] and work and keep up with his and her own medical appointments[.]" Dr. Bluth also noted that Z.S. would "require a parent who is actually more than minimally adequate in order to parent him." Dr. Bluth opined that Mother had used drugs to "cope with her mental health needs[.]" and that Mother never fully addressed her dependence on cocaine.

¶13 The juvenile court found clear and convincing evidence supporting the termination of Mother's parental rights on all three grounds alleged in the motion. See Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3), (B)(8)(b), (B)(10) (Supp. 2009).^{3,4} The court also found that termination would be in the best interests of Z.S.

³ We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

⁴ Although the juvenile court's order states that it terminated Mother's parental rights pursuant to A.R.S. § 8-533(B)(8)(b), we find that the court intended to cite to A.R.S. § 8-533(B)(8)(c). Section 8-533(B)(8)(b), formerly the fifteen month out-of-home placement ground for termination, was

¶14 Mother filed her notice of appeal on September 25, 2009. The notice, however, refers to an order filed by the juvenile court on August 25, 2009, which applies only to the termination of the rights of Father. The order terminating Mother's rights was filed on September 22, 2009. Thus, Mother's notice of appeal does not reference the correct order. A mere technical error, however, should not prevent us from reaching the merits of an appeal when adequate notice of the appeal was given to the opposing party and no one was misled. *Hanen v. Willis*, 102 Ariz. 6, 9, 423 P.2d 95, 98 (1967) (finding an appeal to be timely even though the notice of appeal erroneously included the date of an earlier decision recorded in a minute entry); see also *Hill v. City of Phoenix*, 193 Ariz. 570, 572-73, 975 P.2d 700, 702-03 (1999) ("[W]here the record discloses an appellant's intent to appeal from a judgment . . . the notice of appeal should be construed as sufficient so long as the defect has neither misled nor prejudiced an opposing party."). There has been no indication here from ADES that the notice was inadequate or misleading; therefore, we accept Mother's appeal

renumbered in 2008 as § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2 (2d Reg. Sess.). A.R.S. § 8-533(B)(8)(b) provides for termination based on six months' out-of-home placement. It is clear from ADES' motion that it sought termination under § 8-533(B)(8)(c). Further, the court's order refers to a fifteen month out-of-home placement ground for termination but never references a six month out-of-home placement.

as timely. We have jurisdiction pursuant to A.R.S. § 8-235 (2007) and Ariz. R.P. Juv. Ct. 103(A).

DISCUSSION⁵

¶15 An order terminating parental rights must be supported by clear and convincing evidence showing at least one statutory ground for severance and by a preponderance of the evidence indicating that severance is 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 do not reweigh the evidence on review of the juvenile court's finding, and we view the facts in a light most favorable to affirming the court's order. *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002); *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

⁵ Mother's arguments are not supported by citations to authorities or references to the record, which could constitute abandonment and waiver of her claims. ARCAP 13(a) (requiring the appellant's brief to contain arguments that include "citations to the authorities, statutes and parts of the record relied on"); *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("[O]pening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim."). Considering the importance of Mother's rights at stake here, in our discretion we decide this appeal on its merits based on our own review of the record. See *Adams v. Valley Nat. Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (recognizing that courts prefer to decide each case upon its merits rather than dismissing on procedural grounds).

In addition, we "will not disturb the juvenile court's order severing parental rights unless [the court's] 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).

A. Fifteen Months' Out-of-Home Placement

¶16 Pursuant to A.R.S. § 8-533(B)(8)(c), the juvenile court can properly sever a parent's rights if (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood existed that the parent would not be able to properly care for the child in the near future. We consider "those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotes and citation omitted). To avoid severance, the parent must make more than trivial or de minimus efforts at remediation. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994).

¶17 Mother does not contest that Z.S. has been in out-of-home placement for longer than fifteen months. Rather, she asserts generally that ADES failed to make reasonable efforts to

offer services to her.⁶ We disagree. The court found that ADES "made a diligent effort to provide appropriate reunification services" that were "designed to improve her ability to parent" Mother does not explain why she believes the court's finding is in error. Based on our review of the record, Mother was given the time and opportunity to participate in a number of services directed at assisting her to reach the case plan goal of family reunification. Thus, we cannot say the court's finding on this issue is clearly erroneous.

¶18 Additionally, we find reasonable evidence in the record supporting the court's determination that Mother was unable to remedy the circumstances causing Z.S. to be in out-of-home placement and a substantial likelihood existed that she would not be able to properly care for him in the near future. In support of its determination, the court found that Mother did not complete the parent aide goals "nor did she complete the substance abuse treatment." The court also found that she has "on-going substance abuse issues" and she "relapsed on cocaine." Again, Mother does not contest these findings.

⁶ Mother argues that the juvenile court erred by terminating her rights based on *six months'* out-of-home placement. We need not address this argument as the court did not terminate Mother's parental rights on that ground. See *supra*, n.4. Rather, we construe Mother's argument as challenging the court's decision to sever her rights based on *fifteen months'* out-of-home placement.

¶19 According to the record, Mother has a history of substance abuse that she had been unable to remedy. She admitted she used cocaine for approximately ten months in 2007 and 2008. Thus, Mother began her cocaine addiction when Z.S. was approximately seven months old. She also admitted that she was dishonest about her drug abuse, denying it during a behavioral health intake and hiding it from her case manager and the court. Although Mother completed a two-week outpatient program for her alcohol and cocaine abuse, Dr. Bluth opined that she had never actually addressed her cocaine dependence. Additionally, following her detox program in May 2008, Mother began smoking and continued to smoke even after becoming pregnant again in January 2009.

¶20 Mother was instructed to participate in two group counseling programs, beginning in September 2008, but failed to complete either program. Instead, Mother decided she would address her problems "on [her] own." Mother also failed to fully complete the domestic violence counseling program and her parenting classes, and she was inconsistent with her participation in individual counseling. Although Mother generally participated in her medication checks with TERROS, she failed to attend all of her appointments.

¶21 Additionally, Mother has not shown that she is capable of taking care of Z.S.'s special needs. Due to developmental

delays and cerebral palsy, Z.S. requires extensive therapy and services. Mother failed to attend all of Z.S.'s medical appointments, including an important appointment with Z.S.'s neurologist in July 2009. She conceded that she was unaware of the extent of Z.S.'s daily needs. Dr. Bluth expressed concern about her ability to "handle [Z.S.] and work and keep up with his and her own medical appointments[.]" He believed Z.S. would "require a parent who is actually more than minimally adequate in order to parent him." Dr. Bluth noted that individuals, such as Mother, who have been diagnosed with Bipolar Disorder "are very sensitive to stress in their life and caring for a child with such significant problems would be stressful for a parent who does not have chronic mental health problems."

¶22 In sum, the record supports the juvenile court's decision to sever under A.R.S. § 8-533(B)(8)(c) (fifteen months' out-of-home placement).⁷

B. Best Interests

¶23 Although she does not argue the court's best interests' finding was erroneous, Mother appears to suggest that a bonding assessment could have made a difference in the court's

⁷ Based on our conclusion, we need not address whether the evidence supports the juvenile court's findings of severance based on mental illness or prior severance for the same cause. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("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.").

decision. Mother also asserts that no attempts were made to place Z.S. with a relative. To establish that severance of a parent's rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by 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). In making the determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004) (citations omitted).

¶24 Vaughn opined that Z.S. was adoptable and that a prospective adoptive placement who was already in the process of adopting two of Z.S.'s siblings, had already expressed interest in adopting Z.S. Vaughn also testified that the existing placement was trained to meet the special developmental needs of Z.S. and that he was receiving appropriate social, educational, and emotional care. This evidence was sufficient to support the court's decision regarding best interests. Thus, the absence of a bonding assessment and the failure of ADES to place the child with a relative, even if relevant to best interests, do not overcome the evidentiary support found in this record.

¶25 We conclude that the juvenile court did not err by finding that adoption would allow Z.S. "to have a permanent, safe and loving home that is able to meet all of his education, medical, social and developmental needs" and would be in his best interests.

CONCLUSION

¶26 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights to Z.S.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICK IRVINE, Presiding Judge

/s/

DONN KESSLER, Judge