

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



DIVISION ONE
FILED: 05/18/10
PHILIP G. URRY, CLERK
BY: JT

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

MARY M.,) 1 CA-JV 09-0193
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz.R.P.Juv.Ct.
ARIZONA DEPARTMENT OF ECONOMIC) 103(G); ARCAP 28)
SECURITY, JOSHUA M., ISSAC M.,)
WILLIAM M.,)
)
Appellees.)

Appeal from the Superior Court in Maricopa County

Cause No. JD 16405

The Honorable Samuel A. Thumma, Judge

AFFIRMED

Lisa M. Timmes
Attorney for Appellant

Scottsdale

Terry Goddard, Attorney General
by Eric Devany, Assistant Attorney General
Attorneys for Appellees

Mesa

I R V I N E, Presiding Judge

¶1 Mary M. ("Mother") appeals the juvenile court's order terminating her parent-child relationship with Joshua M., Issac M., and William M. (collectively, the "children"). For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY¹

¶2 William, Issac and Joshua were born in 1999, 2000 and 2002, respectively. William came into the custody of the Arizona Department of Economic Security ("ADES") in January 2008 after Mother left him at a shelter and did not return at the agreed upon time. Mother's whereabouts could not be determined for several months, at which time ADES also took custody of Issac and Joshua. ADES alleged that the children were neglected in that Mother failed to provide the basic necessities of life including food, clothing, shelter and medical care. The children were living with Mother in her vehicle, did not attend school, and were not receiving medical and dental care. In May 2008, the children were found to be dependent and the juvenile court adopted a case plan of family reunification. Services for Mother would include parent aide, a psychological evaluation, counseling, substance abuse testing, and transportation.

¶3 Over the next year, Mother participated in services. All drug tests were negative, so ADES informed Mother they would no longer be required. Mother also completed parenting classes.

¶4 Supervised visitations were arranged, but Mother was consistently late and sometimes did not show up at all. In

¹ The juvenile court terminated the parental rights of the children's father in the same proceeding as the Mother's. The father was represented at the severance trial, but did not appear. He has not appealed.

December 2008, ADES decided all future visitations would be therapeutic. This decision followed a psychologist's recommendation based on Mother's missed appointments and general noncompliance with offered services. In 2009 the therapeutic visits continued, but Mother's attendance and tardiness continued to be an issue. The family therapist testified that during the visits Mother expressed a lack of empathy for the children, attributed her circumstances to William's behavior, and noted that the boys exhibited negative behaviors in the foster home after the visits.

¶15 Mother was evaluated by a psychologist in August 2008, and the psychologist prepared a report dated September 26, 2008. The report stated:

The bottom line is that [Mother] unfortunately was fairly inadequate in terms of caring for her children let alone herself. I suspect there are characterological issues at work here that prevent her from exercising adequate judgment. The interventions, although rather standard, cannot be anymore specific based on the limited information that I have concerning her.

The report recommended that services be offered "and see how she responds. Yet, I am concerned about the chronicity of her behavior." As to her prognosis, the report concluded: "At this point it must be guarded at best."

¶6 Mother underwent a psychiatric evaluation in January 2009. The psychiatrist recommended individual therapy for Mother, and stated the following conclusions:

Based upon the assessment of the Parent, the Parent cannot adequately and safely care for her children at this time.

. . . .

A child in the care of this Parent is likely to be at risk for neglect in terms of taking care of the child's social, educational, emotional, nutritional and residential needs. A child in the care of this Parent is likely to be subjected to suboptimal housing, frequent moves and contact with others that could be less than optimally supportive of appropriate growth or, indeed, place the children at risk for emotional and physical abuse.

¶7 Mother began individual therapy in early-2009. Mother was late to numerous appointments and some had to be cancelled. Mother also denied her need for therapy. By August 2009, however, the therapist found Mother had met her therapeutic goals and was more open to therapy.

¶8 Mother did not provide proof of stable employment or housing. At the time of the severance trial, she was living in a Budget Suites room paid for by her current boyfriend's parents. At that time she was also pregnant, which made it difficult for her to obtain employment.

¶9 In May 2009, the case plan was changed to severance and adoption. ADES filed its Motion for Termination of Parent-

Child Relationship on June 8, 2009, and a First Amended Motion on September 9, 2009. The severance trial began on September 15, 2009. Mother was present throughout the proceeding and at the end was informed that the trial would resume at 3:00 p.m. on September 18. When Mother did not appear at the reconvened trial the court found Mother had waived her rights and was deemed to have admitted the allegations in the Motion to Terminate. The court then continued to hear evidence and ultimately entered an order terminating Mother's parental rights. Shortly after the trial concluded, Mother arrived at court, which reconvened to consider Mother's reason for not appearing. The court concluded Mother had not shown good cause for her failure to attend and reaffirmed its prior orders.

II. DISCUSSION

¶10 In Arizona, the termination of parental rights is governed by Arizona Revised Statutes ("A.R.S.") section 8-533(B) (Supp. 2009).² *Pima County Juv. Severance Action No. S-114487*, 179 Ariz. 86, 95, 876 P.2d 1121, 1130 (1994). The juvenile court must find by clear and convincing evidence that at least one of the statutory grounds under A.R.S. § 8-533 is met, see A.R.S. §§ 8-537(B) (2007) and 8-863(B) (2007), and by a preponderance of the evidence that the termination is in the best interest of the

² We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

child. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Because the juvenile court is in the best position to weigh the evidence, we "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

A. A.R.S. § 8-533(B)(8)(a) and (c)³

¶11 The trial court terminated Mother's parental rights under A.R.S. § 8-533(B)(8)(a) and (c). Proof of one of these provisions is required for termination. The statute reads in relevant part:

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to

³ The trial court also terminated parental rights as to William for abandonment under A.R.S. § 8-533(B)(1). Mother also appeals that finding. ADES does not, however, address abandonment in its brief, pointing out that only one ground for termination is necessary to affirm the trial court. Because we affirm the juvenile court's findings under A.R.S. § 8-533(B)(8)(a) and (c), we need not address abandonment.

court order or voluntary placement pursuant to § 8-806 and the parent has substantially neglected or wilfully refused to remedy the circumstance that cause the child to be in an out-of-home placement.

. . . .

- (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper effective parental care and control in the near future.

A.R.S. § 8-533(B)(8)(a) and (c). The trial court found that each of the elements required by these alleged grounds had been proven, including length of time in out-of-home placements, diligent efforts at reunification, Mother substantially neglected or willfully refused to remedy the circumstances, Mother has been unable to remedy the circumstances, and there is a substantial likelihood that Mother will not be capable of exercising proper and effective parental care and control in the near future.

¶12 The record supports the court's findings. Although Mother has shown some improvement, her income and housing continue to be unstable. Additionally, her lack of consistency in attending therapy, classes, visitations, and even the

severance trial itself, show that her ability to care for the children in a consistent and effective manner is highly questionable. Taking all these factors into account, the juvenile court reasonably concluded that the statutory grounds for termination were met. Therefore, we find no error.

B. Best Interests

¶13 Mother also argues that the record does not support the juvenile court's severance order that severance was in the children's best interests. We disagree.

¶14 In considering the children's best interests, the court must determine how the children would benefit from the severance or be harmed by the continuation of their relationship with the parent. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6-7, 804 P.2d 730, 735-36 (1990). This may be demonstrated by proving the existence of an adoption plan, by showing the children are adoptable, or that the children's existing placement is meeting their needs. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶15 The juvenile court found: "The Children are adoptable. They are placed together in a potential adoptive home that is meeting their physical, social, education, medical, psychological, and emotional needs. A termination of these parental rights would further the plan for adoption." These

findings were based on the testimony of the case manager, and are not seriously disputed. On this record, we conclude that reasonable evidence exists to support the court's determination that termination was in the children's best interests.

III. CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights.

/s/

PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

DONN KESSLER, Judge