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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



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FILED: 09/09/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

MONA G.,) 1 CA-JV 10-0048
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, TORIE G.,) Not for Publication -
) (Ariz. R.P. Juv. Ct.
Appellees.) 103(G); ARCAP 28)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 16512

The Honorable Roger E. Brodman, Judge

AFFIRMED

Terry Goddard, Attorney General Tucson
by Jane A. Butler, Assistant Attorney General
Attorneys for Arizona Department of Economic Security

The Stavris Law Firm, PLLC
by Alison Stavris Scottsdale
Attorneys for Appellant

W E I S B E R G, Judge

¶1 Mona G. ("Mother") appeals from the superior court's order terminating her parental rights to her daughter, T.G., after Mother consented to the severance. She now argues that

insufficient evidence supported a finding that she was unable to remedy the circumstances that caused the child to be in an out-of-home placement. For reasons that follow, we affirm the court's order.

BACKGROUND

¶2 T.G. was born in October 2004 and was taken into temporary physical custody for the second time in February 2008 when Mother was so intoxicated and incoherent that she was hospitalized. In March 2008, Arizona Department of Economic Security ("ADES") filed a dependency petition alleging that Mother's substance abuse, physical abuse, and domestic violence interfered with her ability to parent. Although Mother previously had agreed to a ninety-day voluntary placement for T.G., the petition alleged that she had not participated in substance abuse treatments.

¶3 The court found T.G. dependent. It ordered ADES to provide parent aide services, counseling, substance abuse assessment and treatment through TERROS, twice weekly drug testing ("UA"), transportation, and a psychological evaluation.

¶4 At a report and review hearing in July 2009, the court noted that Mother had not been participating in services, that her whereabouts had been unknown, and that she had not visited T.G. since March 2009. The court changed the case plan to severance and adoption.

¶15 ADES filed a motion to terminate Mother's parental rights alleging that Mother was unable to parent due to chronic alcohol abuse, had not completed treatment and aftercare, and had not consistently provided UAs to demonstrate her sobriety. Additionally, ADES alleged that Mother had been unable to remedy the circumstances that had caused the out-of-home placement and was unlikely to be capable of effective parental control in the near future. Finally, ADES alleged that severance was in T.G.'s best interests and that she was in a foster adopt home.

¶16 At the severance hearing in January 2010, Mother testified that she began drinking as a teenager and continued drinking until her first pregnancy, was sober for seven years, and began drinking again in 2006. In September 2006, she had been hospitalized for alcohol treatment.

¶17 After Mother's alleged suicide attempt in November 2007, Child Protective Services ("CPS") removed T.G. and referred Mother to TERROS for substance abuse assessment and treatment. Mother received services from Family Preservation beginning January 19, 2008, attended outpatient substance abuse sessions, and had in-home visits with T.G.

¶18 In February 2008, T.G. briefly was returned to Mother's custody. Soon after, Mother was hospitalized but discharged herself. Six days later when she again sought treatment, her blood alcohol concentration ("BAC") was .229. In

April, Mother had a psychological evaluation. She later testified that she had lied throughout the evaluation, but that she had been truthful in a January 2010 evaluation.¹ Also in April 2008, CPS asked Mother to continue visits, submit to two random UAs per week, participate in substance abuse treatment, and attend Alcoholics Anonymous meetings seven times a week.

¶19 In June 2008, Mother was taken to an inpatient program at New Solution Hope House. She was discharged, however, in August for dishonesty, a "bad attitude," and failing to work with a sponsor. Her attendance at counseling from August through December 2008 was sporadic. In March 2009, she tested positive for methamphetamine. In April 2009, Families FIRST and TERROS terminated Mother for non-compliance. In May, she was arrested for marijuana possession, and in July she was admitted to the Community Bridges program, at which time she reported that she had been sober for four out of twelve months in 2008.

¹The evaluation stated that Mother's "behavioral and emotional functioning may significantly interfere with her ability to parent successfully. Even though she appears to have been sober for the past 6 months, she lacks adequate insight into what got her into this situation in the first place." Her failure "to take responsibility for her actions . . . and her overconfidence relating to her ability to stay sober, places her at risk for relapse." Although medicated "for depression and attentional problems, [she] has not participated in any therapy or counseling that would help her deal with psychological distress." Furthermore, her children have been "exposed to domestic violence and targeted as victims." The report concluded that "there are reasonable grounds to believe that [her] conditions will continue for a prolonged, indeterminate period of time."

When Mother moved into a halfway house in July 2009, she had a .156 BAC and tested positive for cocaine, methamphetamine, and marijuana. Also in July, Mother referred herself to TERROS seeking medication for attention deficit disorder and enrolled in a substance abuse program.

¶10 Mother testified at the severance hearing that she knew that submitting to UAs was a means of demonstrating sobriety and that she was supposed to call every day from December 2007 forward to find out whether she was to be tested that day. She did not call between February 2008 and April 18, 2008, and although she then began calling, she did not test when required. She missed seventeen tests between May and July 2008 and twenty-six more between July and December. She missed twenty-seven tests in 2009 until she tested once in July, and she missed twelve tests until she tested once in October and once in November. In March 2009, she tested positive for methamphetamine and in May for alcohol, and she did not test again until July 23. On October 26, 2009 she accepted her attorney's advice and began calling daily to ask about testing.

¶11 Mother's CPS case manager testified that she began working with Mother in December 2008. In August 2008, CPS had offered transportation for Mother three days a week so that she could attend TERROS meetings. By letters in February and October 2009, the case manager reminded Mother that she was to

submit UAs and attend TERROS. In February 2009, although Mother said that she didn't need TERROS, her counselor there recommended that she start over with the program. In May 2009, Mother said that she was willing to participate in services, but in June, reported that she was not doing well. In September, she had her first visit with T.G. since April.

¶12 The case manager opined that Mother likely would continue to suffer from substance abuse because she was "continually in denial" and had declined intensive in-patient therapy. In addition, Mother had been unable to keep a job or stable housing and was not able to safely care for T.G. The case manager testified that T.G.'s current placement was meeting her needs and that Mother could not do so.

¶13 On the third day of trial, Mother's attorney stated that Mother had chosen not to contest the petition because "it's in the best interests of her child to have her rights terminated." After questioning Mother, the court found that mother knowingly, intelligently, and voluntarily waived her right to a trial and that she understood the consequences of her decision. The court accepted her waiver and concluded that ADES had proved by clear and convincing evidence that pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533 (B)(3)(Supp. 2009) Mother was unable to discharge her parental responsibilities due to a history of chronic abuse of dangerous

drugs, controlled substances, and/or alcohol and that her condition would continue "for a prolonged and indeterminate period." The court also found that Mother had not "at all been consistent in fulfilling the services . . . and ha[d] not resolved the substance abuse issues" despite ADES's reasonable efforts to provide rehabilitative services.

¶14 Furthermore, the court found that ADES had established pursuant to A.R.S. § 8-533(B)(8)(c) that T.G. had been in an out-of-home placement for more than fifteen months and that Mother had been unable to remedy the circumstances that caused the placement. Mother had had "several significant relapses" and a substantial likelihood existed that she would not be capable of exercising effective parental control in the near future. Finally, the court found that ADES had proved by a preponderance that severance was in the child's best interests and would free her for adoption.

¶15 Mother timely appealed from the court's order, but she challenges only the finding that she was unable to remedy the circumstances that caused T.G. to be out of Mother's home. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007) and 12-2101(B) (2003).

DISCUSSION

¶16 Before ordering severance of parental rights, the superior court must find clear and convincing evidence of at

least one of the statutory grounds in A.R.S. § 8-533(B). *Michael J. v. ADES*, 196 Ariz. 246, 248-29, ¶ 12, 995 P.2d 682, 684-85 (2000). But if the evidence supports findings that ADES has established "any one" of the statutory grounds, as the statute provides, this court need not consider whether the evidence would support an alternative ground. *Id.* at 251, ¶ 27, 995 P.2d at 687. On appeal, we defer to the court's factual findings unless they are clearly erroneous, i.e., are unsupported by reasonable evidence. *Minh T. v. ADES*, 202 Ariz. 76, 78-79, ¶ 9, 41 P.3d 614, 616-17 (App. 2001).

¶17 Mother does not challenge the findings that she was unable to discharge her responsibilities due to chronic alcohol abuse and that her condition would continue for a prolonged and indeterminate period. Therefore, the court's conclusion that ADES had proved one statutory ground, when supported by reasonable evidence, would authorize the severance order. The record reveals reasonable evidence to support findings that Mother was unable to parent because of alcohol abuse and that the condition would continue for a prolonged, indeterminate time.

¶18 Mother asserts that the superior court also found pursuant to A.R.S. § 8-533(B)(8)(a) that she had substantially neglected or willfully refused to remedy the circumstances causing the out-of-home placement and that the evidence did not

support this finding. However, the court did not rely on this statutory subsection but instead on § 8-533(B)(8)(c), which requires that a parent "has been unable to remedy the circumstances that cause[d] the . . . out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." Mother argues that she participated in a variety of services, maintained employment, and admitted herself to many different programs in order to remain sober and accordingly that she did not neglect to remedy the circumstances that caused T.G.'s removal. Nevertheless, enrolling in programs is not equivalent to completion and moving into a "sober living residence" is not evidence of a long-term ability to maintain sobriety. Testimony at trial revealed that although enrolled for group counseling, Mother missed or was late for many of the sessions and that she failed to call or to submit to UA testing on numerous occasions over a two-year period. The superior court reasonably could conclude that Mother had not provided evidence of her sobriety and thus had not remedied the major cause of T.G.'s removal from her care and would not be able to parent in the near future.

CONCLUSION

¶19 We find no abuse of the superior court's discretion in ordering that Mother's parental rights be terminated. Accordingly, we affirm the order.

/s/ _____
SHELDON H. WEISBERG,
Presiding Judge

CONCURRING:

/s/ _____
PETER B. SWANN, Judge

/s/ _____
JON W. THOMPSON, Judge