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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



DIVISION ONE
FILED: 10-07-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CAROL B.,) 1 CA-JV 10-0082
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
ARIZONA DEPARTMENT OF ECONOMIC) ARCAP 28)
SECURITY, MICHAEL B.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD17490

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Virginia S. Matté Phoenix
Attorney for Appellant

Terry Goddard, Attorney General Phoenix
By Carol A. Salvati, Assistant Attorney General
Attorneys for Appellees

W A R N E R, Judge

¶1 Carol B. ("Mother") timely appeals the juvenile court's order terminating her parental relationship with Michael B. ("Son"). On appeal, Mother challenges the sufficiency of the

evidence supporting the termination order. Because substantial evidence supports the order, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Mother has suffered from chronic substance abuse since childhood. She served two years in prison in the early 2000s for three drug related felonies, and resumed using methamphetamine in June 2006. Although Mother stopped using methamphetamine for a time, she began using again while she was pregnant with Son.

¶3 Son was born prematurely in June 2008 with a number of medical problems. He weighed 2.6 pounds and tested positive for methamphetamine and barbiturates. Mother admitted using methamphetamine less than a week before Son's birth, and agreed to place Son in foster care when he left the hospital. The Arizona Department of Economic Security ("ADES") filed a dependency petition in November 2008 and moved to terminate Mother's parental rights in July 2009.

¶4 Son remained in out-of-home placement from his birth in June 2008 through the trial in early 2010, initially under voluntary placement and later involuntary placement. During this time, Mother was afforded multiple substance abuse

¹We view the evidence in a light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

treatment services and participated in several programs, but none was successful in getting her off of drugs. Mother tested positive for drugs 11 times during the pendency of this matter, and failed to test many times. Her last positive test was on December 29, 2009, less than three weeks before trial, and she failed to test as late as January 2010.

¶5 The juvenile court terminated Mother's parental rights, finding that Mother is unable to discharge parental responsibilities due to a history of chronic substance abuse, and that termination is in Son's best interests. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3) (Supp. 2009). Termination is also justified, the court found, under A.R.S. § 8-533(B)(8)(a) (out-of-home placement for nine months or more) and A.R.S. § 8-533(B)(8)(c) (out-of-home placement for 15 months or more).

DISCUSSION

¶6 To sever a parent-child relationship, the juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists, and must find by a preponderance of the evidence that severance is in the child's best interests. A.R.S. § 8-533(B); *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010). The court's findings will be set aside only if clearly erroneous, and its decision to terminate parental rights is

reviewed for abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶7 Mother challenges the sufficiency of the evidence for termination, claiming she was making appreciable efforts at the time of the severance trial to remedy the circumstances that led to Son's out-of-home placement. She points to her two months of sobriety while attending in-patient treatment and her efforts to seek out further substance abuse treatment.

¶8 The juvenile court found that "Mother has a serious addiction to methamphetamine and despite some efforts during the dependency, she has been unable to overcome it"; and that Mother is "unable to care for [Son] at this time and for the foreseeable future." The record supports these findings. In particular, the findings detailed at paragraphs 15 through 31 of the juvenile court's order, all of which are supported by the evidence, show Mother's failure to maintain sobriety despite being offered multiple services, and show that all efforts to preserve her relationship with Son have failed. Rather than a path to recovery marked by occasional slips or relapses, the record supports a finding that Mother is a chronic drug abuser who has occasional periods of sobriety.

¶9 The record also supports the juvenile court's findings under A.R.S. § 8-533(B)(8)(c).² It is undisputed that Son was in an out-of-home placement for more than 15 months. The evidence further supports the finding that Mother was unable to remedy her drug abuse, which was the cause of the placement, and that because of her failure to address her substance abuse problem, there is a substantial likelihood that she will not be capable of exercising proper and effective parental care and control in the near future. See A.R.S. § 8-533(B)(8)(c).

²Because Son was in out-of-home placement for more than 15 months, it is unnecessary to address the more stringent requirements for termination based on a nine-month out-of-home placement. A.R.S. § 8-533(B)(8)(a).

CONCLUSION

¶10 Substantial evidence supports the juvenile court's findings, and the court did not abuse its discretion by terminating Mother's parental rights. We therefore affirm the termination order.

/s/

RANDALL H. WARNER, Judge*

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICK IRVINE, Judge

*Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Randall H. Warner, Judge of the Arizona Superior Court, to sit in this matter.