DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SHANNON T.,	)	No. 1 CA-JV 10-0083
	)	
Appellant,	)	DEPARTMENT E
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, CONNOR T.,	)	103(G) Ariz. R.P. Juv. Ct.; Rule 28 ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD16384

The Honorable Samuel A. Thumma, Judge

AFFIRMED

Robert D. Rosanelli — Phoenix
Attorney for Appellant Mother

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

S W A N N, Judge

¶1 Shannon T. ("mother") appeals from the juvenile court's order terminating her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 In December 2006, mother was observed "violently shaking" one-and-a-half year old C.T. and biting him on the cheek hard enough to leave a mark. The police and Child Protective Services ("CPS") investigated. The result of the CPS investigation was "unsubstantiated" but CPS nonetheless provided family preservation services to C.T.'s parents. Mother was charged with child abuse.

¶3 In August 2007, mother and father asked father's cousin Deanna R., a licensed foster care provider, to take C.T. for the weekend because a no-contact order had been placed against mother due to her criminal charges. Mother told Deanna that the order would be resolved at a hearing set for the following Monday. C.T. "cried all the way" to Deanna's home and had a "hard time" the first couple of days. He threw things and "hit his face on the couch until his nose bled" when he was put in "time out". When the weekend visit turned into a week, Deanna called CPS to "make sure everything was okay and let them know where [C.T.] was placed." CPS told her "that was fine."

¶4 In January 2008, Deanna filed a dependency petition and alleged that mother was unable to parent C.T. because the

[1] We review the facts in the 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).

no-contact order remained in place.[2] The court appointed counsel for C.T. and mother, and placed C.T. in Deanna's temporary physical custody. The parties agreed to dismiss the petition pending the outcome of mother's criminal trial, and mother agreed to leave C.T. in Deanna's custody. Deanna sought counseling for C.T. because he hit or bit himself when stressed, awakened every 20 to 30 minutes throughout the night, and exhibited inappropriate sexual behaviors.

¶5 In May 2008, Deanna filed a second dependency petition and alleged mother was unable to parent due to an upcoming criminal trial and because she had been evicted from her apartment. The court appointed counsel for C.T. and again placed him in Deanna's temporary physical custody. At the initial dependency hearing, the Arizona Department of Economic Security ("ADES") moved to substitute itself as petitioner. The court granted ADES's motion, appointed counsel for mother, and made C.T. a temporary ward of ADES. ADES filed an amended dependency petition, which mother contested. During a September mediation with ADES, mother agreed to participate in parent aide services, a psychological evaluation, individual counseling, substance abuse testing, and supervised visitation with C.T.

[2] The petition also alleged C.T.'s father was unable to parent. Father's parental rights were later terminated, but he does not join in this appeal so we reference him only as necessary to develop the issues in mother's appeal.

The case plan called for family reunification. The issue of dependency was submitted to the court, which found by a preponderance of evidence that C.T. was dependent as to mother.

¶6 In August 2008, mother pleaded guilty to aggravated assault for the events of December 2006. She was sentenced to three years' probation. Under the terms of probation, contact with C.T. was prohibited unless approved by her probation officer. Mother was also required to participate in substance abuse and parenting counseling.

¶7 In October 2008, mother participated in a psychological examination. Testing demonstrated her overall IQ was 73. The psychologist opined that this "borderline range of intelligence" indicated that she would "have difficulty acquiring new information and generalizing what information she does have to new situations." The assessment evidenced depressive and personality disorders, including borderline and dependent traits that indicated "impulsivity and intense anger responses." The psychologist opined that mother would have "trouble focusing on her child's needs." Mother reported a history of drug abuse with five months of abstinence, and the psychologist rated her potential for relapse at moderate to moderately high. The psychologist indicated a "risk of abuse" if C.T. was placed in mother's care due to mother's history of aggressive responses, depression and substance abuse. He

recommended that mother participate in individual psychotherapy, a psychiatric evaluation, anger management skills training, and further parent skills training.

¶8 In March 2009, a Court Appointed Special Advocate ("CASA") reported that C.T. had: significant emotional, behavioral and medical needs that required "2-4 appointments per week with therapists and counselors"; "significant" environmental allergies; asthma; left-side weakness in his arm, hand, and foot, for which he received physical and occupational therapy; and visual impairments. After visits with his parents, C.T. exhibited sleep difficulty, excessive clinginess, and aggression, including smearing of feces. The CASA reported that both parents had an "inconsistent history of following through" with services and expressed concern that C.T. "would be at risk for physical harm if returned to his parents." She recommended that the primary case plan goal be severance and adoption. The ADES case manager reported that mother was unable to meet C.T.'s specialized needs and also recommended that the case plan be changed to severance and adoption.

¶9 The court agreed with the recommendation and ADES moved to terminate mother's parental rights pursuant to:

- A.R.S. §§ 8-201(2) and -533(B)(2), alleging that mother willfully abused C.T. in December 2006;

– A.R.S. § 8-533(B)(3), alleging that mother was unable to discharge her parental responsibilities because of mental illness and reasonable grounds existed to believe that the condition would continue for a prolonged indeterminate period;

- A.R.S. § 8-533(B)(8)(a), alleging that C.T. had been in an out-of-home placement for a cumulative period of nine months or longer and mother had substantially neglected or willfully refused to remedy the circumstances that caused the out-of-home placement; and

- A.R.S. § 8-533(B)(8)(c), alleging that C.T. had been in an out-of-home placement for fifteen months or longer, that mother had been unable to remedy the circumstances that caused the child to be placed out-of-home, and there existed a substantial likelihood that mother would be incapable of exercising proper and effective parental care and control of C.T. in the near future.

¶10 Following a seven-day contested severance hearing, the court entered a 26-page Under Advisement Ruling that terminated mother's parental rights pursuant to A.R.S. § 8-533(B)(8)(a) and (c), but denied ADES'S motion to terminate based on abuse and

mental illness. Mother timely appeals. We have jurisdiction pursuant to A.R.S. §§ 8-235, 12-120.21(A)(1), and -2101(B).

DISCUSSION

¶11 Mother asserts that (1) the record contains insufficient evidence to support the trial court's finding pursuant to A.R.S. § 8-533(B)(8)(a), and (2) that the trial court's finding pursuant to A.R.S. § 8-533(B)(8)(c) was clearly erroneous and contrary to the substantial evidence in the record.

¶12 To terminate parental rights, a juvenile court must first find by clear and convincing evidence the existence of at least one statutory ground for termination.[3] *See* A.R.S. § 8-533(B); Ariz. R.P. Juv. Ct. 66(C). Clear and convincing evidence is that which makes the alleged facts highly probable or reasonably certain. *Denise R.,* 221 Ariz. at 93, ¶ 2, 210 P.3d at 1264. We will not reverse a termination order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.,* 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

[3] The court must also find by a preponderance of the evidence that the termination is in the best interests of the child. A.R.S. § 8-533(B); *Kent K. v. Bobby M.,* 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). Mother does not contest the court's best interest finding, so we do not consider that issue. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97,* 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

I. A.R.S. § 8-533(B)(8)(a)

¶13 Mother contends that she participated in all services referred by ADES except the best interest/bonding assessment and that with "[t]his type of cooperation" the trial court could not have reasonably determined that she substantially neglected or willfully refused to remedy the circumstances which caused C.T.'s out-of-home placement.[4]

¶14 Section 8-533(B)(8)(a) allows parental rights to be terminated when ADES makes a diligent effort to provide appropriate reunification services, the child has been in an out-of-home placement for nine months or longer, and the parent has substantially neglected or willfully refused to remedy the circumstances that caused the out-of-home placement. "[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties." *Maricopa County Juv. Action No. JS-501568,* 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). But when parents make only "sporadic, aborted attempts to remedy" the circumstances causing the out-of-home placement, "a trial court

[4] Mother does not challenge ADES's efforts in providing services or the length of C.T.'s out-of-home placement. We therefore do not discuss these issues. *See Schabel,* 186 Ariz. at 167, 920 P.2d at 47.

is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id.* "[C]ompliance under [§ 8-533(B)(8)(a)] sufficient to avoid severance requires, at a minimum, something more than trivial or de minimis efforts at remediation." *Id.* at n.1.

¶15 The record here, however, contradicts mother's assertion that she participated in services and instead demonstrates that she:

- Failed to complete parenting skills sessions;
- Completed an intake for individual counseling, but failed to attend subsequent appointments and attended her first counseling session one month before the service referral was set to expire;
- Attended seven of nine group substance abuse sessions;
- Failed to maintain stable housing;
- Missed nine supervised visits between September 2008 and January 2009, including three no-shows;
- Failed to participate in Child and Family Team meetings;
- Refused to participate in the bonding assessment without the presence of legal counsel or the guardian ad litem to protect her.

¶16 Mother's lack of follow-through was noted throughout the record. For example, a March 2009 CASA report summarized that both parents

> seem to have difficulty applying what they have been taught in their parenting classes to their interactions with [C.T.]. They seem unable or unwilling to make changes in their lives to support [C.T.'s] return. They have an inconsistent history of following through with recommended and required services. They have emotional and psychological needs and have been inconsistent in seeking treatment for them. They have missed urine tests, counseling, sessions, visits with [C.T.] and frequently place blame for these failures on the system.

¶17 During the severance hearing, mother testified that she originally refused to participate in counseling because she believed she did not need it. Although she did eventually participate in counseling, one psychologist testified at the severance hearing that "her issues would have required lengthier treatment than what she did" because "[s]he has a personality disorder; and by nature, personality disorders are enduring." That personality disorder, he opined, posed a "risk of physical abuse" to C.T. that would "continue to be a risk if [mother] were to parent" C.T.

¶18 Mother also testified about the services she had completed and offered explanations for her failure to participate in others. On appeal, however, we do not reweigh

evidence; rather, we consider whether the court "had before it evidence upon which an unprejudiced mind might reasonably have reached the same conclusion." *Denise R.,* 221 Ariz. at 94, ¶ 6, 210 P.3d at 1265. We conclude that this record contains substantial evidence upon which the court could reasonably determine that mother substantially neglected to remedy the circumstances that caused C.T.'s out-of-home placement.

II. A.R.S. § 8-533(B)(8)(c)

¶19 Mother asserts the trial court erred because the "only" condition she had not remedied was C.T.'s special needs and that no credible evidence in the record supported the court's finding that she would be unable to effectively parent in the near future.

¶20 Section 8-533(B)(8)(c) allows parental rights to be terminated when ADES makes a diligent effort to provide appropriate reunification services, the child has been in an out-of-home placement for a cumulative period of fifteen months or longer, the parent has been unable to remedy the circumstances that caused 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.

¶21 In this section of her brief, mother merely asserts facts, without citation to the record, to support her contention

that she "has attempted to put herself in a position to better parent" C.T.; her only cited legal authority is A.R.S. § 8-533(B)(8)(c). "We will not consider arguments posited without authority." *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007). A party must present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the record. *See* ARCAP 13(a)(6). The failure to present an argument in this manner usually constitutes abandonment and a waiver of that issue. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004).

¶22 Mother implies that the only reason the court terminated her parental rights is because C.T. has special needs.[5] In fact, the record provides substantial evidence for termination based on A.R.S. § 8-533(B)(8)(c). As we discussed *supra,* the record contains substantial evidence of mother's failure to participate in services. But it also contains substantial evidence that mother was unable to effectively parent even when she *did* participate in services. Although the record details that mother made "some progress" during individual counseling sessions and was able to admit her poor

[5] The record indicates that C.T. had "significant" emotional, behavioral and medical needs. One psychologist testified that C.T. had "high needs" that required "secure caregiving relationships that are responsive to his needs."

parenting decision to bite her infant son's cheek, it also noted that "she was unable to accept responsibility for other parent problems such as providing a stable home and other basic necessities. She saw herself as a victim and often justified her lack of foresight, lack of emotional regulation and personal responsibilities as beyond her 'control.'" A case manager noted that even though mother knew of C.T.'s specific allergies to oranges, cranberries and nuts, she provided him snacks containing those items "[o]n several occasions." The CASA reported that mother made comments that indicate "doubts about the significance" of C.T.'s needs.

¶23 Almost a year after mother agreed to participate in services, the CASA reported that the pattern of behavior during parent-child visitation had "not improved" and that there was "almost no interaction" between the parents and C.T. during the visits. This lack of interaction had not resolved in January 2010, when a case manager noted that C.T. and mother watched television during their visits, sitting side-by-side with no physical contact. January 2010 reports noted that C.T.'s behavior continued to "escalate" after parent visits, and daycare and preschool teachers reported that he was "hitting, pushing, stealing, vomiting" on the days after parent visits.

¶24 Finally, contrary to mother's assertion otherwise, the record does contain evidence that mother would be unable to

effectively parent in the near future. In addition to numerous reports from case managers, the CASA, and service providers that detailed mother's ineffective parenting skills, three psychologists involved with the case specifically testified that mother would be unable to effectively parent C.T. in the foreseeable future. The juvenile court was in the best position to "weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.,* 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

CONCLUSION

¶25 For the foregoing reasons, we affirm the termination of mother's parental rights.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PHILIP HALL, Presiding Judge

/s/
_____
SHELDON H. WEISBERG, Judge