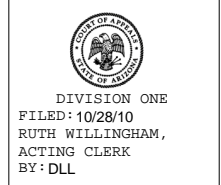


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DAREENA J.,) 1 CA-JV 10-0110
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, ANASTASIA J., ALEXXIS) Not for Publication -
L., PETER W., ZION W., ASJIAH W.) (Ariz. R.P. Juv. Ct.
AYANA W.,) 103(G); ARCAP 28)
)
Appellees.)

Appeal from the Superior Court in Maricopa County

Cause No. JD14702

The Honorable Roger E. Brodman, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Michael F. Valenzuela, Assistant Attorney General
Attorneys for Arizona Department of Economic Security

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

W E I S B E R G, Judge

¶1 Dareena J. ("Mother") appeals from an order terminating her parental rights to her six minor children.¹ For reasons that follow, we affirm.

BACKGROUND

¶2 In April 2008, the Arizona Department of Economic Security ("ADES") filed a dependency petition regarding the children who at that time ranged in age from nine to two and one-half years. The petition alleged that Mother was unable to parent due to substance abuse, domestic violence, neglect, and mental illness. In May, Mother was evicted from her apartment, and CPS removed the children. In June, the court granted a request to convert the case to an out-of-home dependency. In August, Mother failed to appear, but the court found the children dependent and noted Mother would be provided an assessment by Families First, drug treatment, urinalysis ("UA"), a psychological evaluation, and parent aide services.

¶3 Mother began accepting services in December 2008 and attended a drug abuse assessment. She completed intensive outpatient treatment in August 2009 and an aftercare program in November 2009. At trial in April 2010, however, Mother said that she had used marijuana three weeks prior and had used the drug every day between the ages of thirteen and twenty-four.

¹A seventh child was born in 2009 but is not at issue in this appeal.

She was twenty-five at the time of trial and conceded her continuing use even after completion of treatment. At the continued trial on April 30, 2010, Mother had failed to submit to UA testing on four occasions since the prior hearing on April 14.

¶4 Mother had been referred for a psychological evaluation in July 2008 and finally attended an evaluation in January 2009 and a follow up in March 2010. The psychologist testified that testing showed Mother's tendency to deny problems, make excuses, be self-centered, not listen to advice, have poor impulse control, lack emotional maturity, and be dependent. Thus, "her own . . . failure to accomplish certain developmental tasks . . . might impede or impair her ability to respond to these same issues in her children." In the follow-up evaluation, the psychologist still found Mother unable to parent even one child. She had recommended a psychiatric evaluation, and the case manager in November 2009 and January 2010 had asked Mother to jointly place a call to arrange an intake but Mother did not appear on either occasion.

¶5 Mother had been referred for parent aide services in August 2008 but was closed for noncompliance in October. The parent aide attempted to offer skills sessions in addition to performing observations, but Mother did not avail herself of the skills sessions. Mother had been re-referred in November 2008,

attended intake in January, and services ended in July 2009 because the visits "were very chaotic," Mother was not on time, not parenting, not disciplining, and not bringing appropriate snacks. Mother's subsequent visits were supervised by a case aide once a week for two hours. Mother said that she did not work with the parent aide because "there were so many of the kids that we could never really get anything done."

¶16 Because of Mother's minimal participation in services, in February 2009, ADES asked to change the case plan to severance and adoption. The court declined to do so. In October 2009, however, ADES filed a motion for termination of Mother's parental rights.²

¶17 At trial, the case manager testified that despite the drug treatment, Mother continued to use drugs; that Mother had not obtained stable housing or an income; that she lived with her mother, who had her own history with CPS; that she had contact with Peter Wright, who had engaged in domestic violence; that she was unable to manage the children during visits; that three of the children had mental health problems, and the visits were so disruptive that the visitation center wished to discontinue them. The case manager added, however, that five of

²In February 2010, the court terminated the parental rights of Peter F. Wright to five of the children. In April 2010, the court terminated the parental rights of Alex Langs to the eldest child.

the children were in adoptive homes and that the sixth child was "adoptable." The placements were meeting all of the children's needs, and if Mother's rights were terminated, the children would have stable homes with effective parenting, appropriate medical care, and necessary educational opportunities.

¶18 The guardian ad litem opined that "there's been little, if any progress made with regard to the circumstances that have led to these children being removed. And that was over two years ago." He noted Mother's recent positive UA and said that it was in the children's best interest to be adopted and have stability.

¶19 In its ruling, the court observed that the initial motion for termination had relied upon the children's out-of-home placement for more than fifteen months and the substantial likelihood that Mother would not be capable of proper and effective parental control in the near future. In March 2010, ADES had amended the motion to add substance abuse as a ground for termination. The court also noted that beginning in March 2002, CPS had investigated eleven reports of neglect and that an in-home intervention had been filed in March 2006 and dismissed in 2007.

¶10 The court cited Mother's long history of substance abuse, her failure to obtain steady employment or housing since April 2008, and her positive UA on March 22, 2010. From May

through December 2008, Mother failed to submit UAs at all and had tested positive in January 2009, was clean on ninety-two occasions between February 2009 and February 2010, but missed twelve tests and some of her counseling sessions. After testing positive in March 2010, she stopped testing for several weeks and failed to test on four occasions during trial for no valid reason. Mother's failure to keep appointments for a psychological evaluation "caused services to be delayed."

¶11 The parent aide reports indicated that Mother had made "no progress" on her objectives, was "unwilling to follow visitation guidelines," and only minimally interacted with the children. Mother also failed to attend any parenting classes.

¶12 The court noted the caseworker's concern that Mother was still living with Peter Wright in January 2010 despite their domestic violence history and his drug abuse. Moreover, Mother's psychological reports indicated a history of substance abuse, aggression, physical violence, mental health issues, and abuse and neglect of the children. Mother was "self-centered [and] display[ed] poor judgment and lack of insight." A follow-up evaluation stated that Mother was unable to parent one child, let alone six, and lacked "normal parenting knowledge" such as the normal body temperature of a child.

¶13 The court concluded that the children had been in foster care for twenty-three months but Mother was not capable

of exercising proper and effective parental control of her children. The court found that Mother had not remedied her substance abuse problem, had tested positive during the trial, and had failed to test on four more occasions. Mother had not completed parent aide services and was unable to have unsupervised visits.

¶14 The court also found that by seeking three additional months to participate in services, Mother acknowledged that she still was incapable of parenting the children. Thus, the court found by clear and convincing evidence that Mother was unable to parent now and would not be able to do so in the near future. The court declined, however, to find substance abuse as a ground for severance.

¶15 Finally, the court concluded that termination was in the children's best interests; five were in adoptive placements and the sixth was adoptable. The children were entitled to permanency, and "[l]eaving the window for remediation open indefinitely" was not in their best interests.

¶16 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007).

DISCUSSION

¶17 In order to sever a parental relationship, the superior court must find clear and convincing evidence of the existence of at least one of the statutory grounds listed in

A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Here, the court relied upon A.R.S. § 8-533(B)(8)(c)(2009).³ The court also must find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶18 Mother first argues that the court erred in finding that she had been unable to remedy the circumstances that caused her child to be out of the home and that pursuant to § 8-533(B)(8)(a), the court must find that she substantially neglected or willfully refused to remedy the circumstances that caused the children to be removed. She contends that she made "appreciable good faith efforts to participate in services." [Id. at 10] Neither ADES nor the court relied upon that statutory provision but instead cited § 8-533(B)(8)(c). This provision states in part that a "parent has been unable to remedy the circumstances that cause the . . . out-of-home placement and there is a *substantial likelihood* that the parent

³Under A.R.S. § 8-533(B)(8)(c), the court may terminate the parent-child relationship if "[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer . . . and 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 and effective parental care in the future."

will not be capable of exercising proper and effective parental care and control in the near future." ADES asserts that because Mother has cited case law interpreting § 8-533(B)(8)(a), she has conceded the propriety of the court's order under § 8-533(B)(8)(c) and waived her objection.

¶19 On appeal, we view the evidence in the light most favorable to upholding the court's ruling. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶2, 181 P.3d 1126, 1128 (App. 2008). We will not overturn a severance order unless we find the court's factual findings clearly erroneous. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶20 Despite Mother's belated and somewhat inconsistent attempts to participate in services, ample evidence from the psychologist, case manager, and parent aide showed that Mother had not remedied her lack of a stable home or income and had not remedied her lack of parenting skills. Therefore, the court's finding that a substantial likelihood existed that Mother would be unable to exercise effective parental care and control in the near future is supported by the evidence.

¶21 Next, Mother argues that the court erred in finding that severance was in the children's best interest. She contends that the court should have considered the "long term psychological effect" of severance on the children. Mother did

not raise this issue below. However, we find no abuse of discretion in the court's finding that severance was in the children's best interest. There was evidence that even during visitation, Mother was not parenting the children and visits were so chaotic that the psychologist recommended that two children spend one hour with Mother followed by two other children for one hour. Moreover, some of the children cried and did not want to leave their foster parent for visits.

¶22 "One factor the court may properly consider in favor of severance is the immediate availability of an adoptive placement." *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291. A second factor "is whether an existing placement is meeting the needs of the child." *Id.* Testimony established that all of the children's needs were met in their respective placements, that five of the six were in adoptive homes, the sixth was adoptable, and that all would benefit from living in stable, drug-free, nonviolent homes with supervision, medical care, and educational opportunities.

¶23 Finally, Mother contends that the court should have granted her oral request on the fourth and final day of trial for an additional ninety days in which to remain drug free and test as required. Mother cites no authority for the court to grant an oral request, and in response, the court noted that creating more uncertainty by "[l]eaving the window for

remediation open indefinitely" was not in the children's best interests. Mother had nearly two years in which to comply with services and failed to do so; what might transpire in three additional months is pure speculation. There was no error.

CONCLUSION

¶24 For the foregoing reasons, we affirm the severance order.

/s/ _____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ _____
PHILIP HALL, Presiding Judge

/s/ _____
PETER B. SWANN, Judge