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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/21/2010
RUTH WILLINGHAM,
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ALICHIA N. ,)
) No. 1 CA-JV 10-0126
 Appellant,)
) DEPARTMENT B
 v.)
) **MEMORANDUM DECISION**
 ARIZONA DEPARTMENT OF ECONOMIC)
 SECURITY, ZYON C., KYNDLE J.,) (Not for Publication -
) 103(G) Ariz.R.P. Juv. Ct.;
 Appellees.) Rule 28 ARCAP
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD507612

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Sandra L. Massetto
Attorney for Appellant

Phoenix

Terry Goddard, Attorney General
By Amanda Holguin, Assistant Attorney General
Attorney for Arizona Department of Economic Security

Mesa

G E M M I L L, Judge

¶1 Alichia N. ("Mother") appeals the juvenile court's termination of her parental rights. For the following reasons, we affirm.

DISCUSSION

¶2 Kyndle J., born in 2003, and Zyon C., born in 2005, are the biological children of Mother. In November 2008, Child Protective Services ("CPS") received a report that Mother had left Zyon C. with an unidentified man for four days. The unidentified man had contacted Mother's aunt and asked the aunt to pick up the child because he could no longer care for him. At the time, Kyndle J. was in the care of a family member, and Mother's whereabouts were unknown. Mother had a history of drug use, and Zyon C. had tested positive for drugs at the time of his birth. CPS served a temporary custody notice for Zyon C. and Kyndle J. and took temporary custody of Zyon C. After Mother learned of CPS' involvement, however, she took Kyndle J. from her family member's home.

¶3 The Arizona Department of Economic Security ("ADES") filed a dependency petition, alleging that Mother was unable to parent Kyndle J. and Zyon C. due to abandonment, neglect, and substance abuse. The juvenile court ordered that Kyndle J. and Zyon C. were temporary wards to be placed in the physical custody of ADES. The court also ordered that any person having physical custody of Kyndle J. deliver her to a representative of ADES.

¶4 ADES offered Mother the following services: parenting services; substance abuse assessment; intensive outpatient

services; parent aide services; transportation; random drug testing; psychological consultation; and visitation.

¶15 ADES referred Mother to Magellan to address her mental health issues, because, at the time, CPS was not offering psychological or behavioral health services to clients who had not demonstrated at least two months of sobriety. Mother, however, did not engage in the Magellan services. Mother also did not successfully complete substance abuse treatment or her individual counseling sessions. Mother continued to deny that she had a substance abuse problem, and she attended only one substance abuse group session because she felt uncomfortable with the other members of the group. Additionally, Mother tested positive for methamphetamines in December 2008, and Mother admitted to using methamphetamines in March 2009 when she could not obtain her ADD medications.

¶16 In September 2009, ADES moved to terminate Mother's parental rights to Zyon C., alleging that Mother was unable to discharge her parental responsibilities, alleging a history of chronic abuse of dangerous drugs, controlled substances and/or alcohol and reasonable grounds to believe that the condition would continue for a prolonged indeterminate period. ADES also alleged that Zyon C. had been in out-of-home placement for a cumulative period of nine months, and Mother had substantially neglected or willfully refused to remedy the circumstances that

caused Zyon C. to be in an out-of-home placement. In December 2009, ADES moved to terminate Mother's parental rights as to Kyndle J., for the same aforementioned reasons.

¶17 Following a five-day hearing held in March and April 2010, the juvenile court found that ADES had made a diligent effort to provide appropriate reunification services to Mother. The court concluded that, despite the services offered, Mother was unable to remedy her substance abuse issues and mental health concerns, nor was she able to secure stable employment or housing. The court found Mother unable to remedy the circumstances that caused the children to be in an out-of-home placement and concluded that there was a substantial likelihood that she would not be capable of proper and effective care in the near future. Additionally, the court found that ADES had proven, by a preponderance of the evidence, that termination of Mother's parental rights would be in the children's best interest. The court noted that severance would further the plan for adoption and adoption would provide the children "with much needed permanency and stability." The court ordered Mother's parental rights to Zyon C. and Kyndle J. terminated.

¶18 Mother timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235 (2007).

ANALYSIS

¶9 An order terminating parental rights must be supported by clear and convincing evidence showing at least one statutory ground for severance and by a preponderance of the evidence indicating that severance is in the child's best interests. A.R.S. § 8-533(B) (Supp. 2009); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We do not reweigh the evidence on review of the juvenile court's findings, and we view the facts in a light most favorable to affirming the court's order. *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002); *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). In addition, we "will not disturb the juvenile court's order severing parental rights unless [the court's] factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶10 On appeal, Mother makes two arguments. We address first her argument that the juvenile court erred in finding that ADES made reasonable efforts to provide her with appropriate reunification services. ADES must make a "diligent effort" to provide appropriate reunification services to the parent. A.R.S. § 8-533(B)(8). Specifically, ADES must provide the

parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not required, however, "to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.* Nor is ADES required to undertake futile rehabilitative measures. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34, 971 P.2d 1046, 1053 (App. 1999).

¶11 As documented in the record, Mother was offered numerous services by ADES. She did not, however, complete all of the services offered. Specifically, Mother did not successfully complete substance abuse treatment or individual counseling sessions. Although Mother was referred to Magellan for mental health services, CPS Case Manager Bonnie Harris testified that Mother never engaged in the services. Additionally, while Mother stated that she had just begun engaging in Magellan services at the time of the severance hearing, she admitted that she never provided Harris with any documents regarding her participation. Finally, Mother conceded that her failure to complete or accomplish her case plan goals was not CPS' fault, but rather her own fault because CPS "did schedule [the services]."

¶12 While Mother argues that a psychological evaluation was never completed, Harris testified that it was the policy of CPS to not conduct evaluations on parents who were "either self medicating or abusing drugs." This was a recent policy change due to budget cuts. Mother admitted to using methamphetamines as recently as March 2009. Further, Dr. DiBacco, a CPS agency consultant, had concluded that Mother needed to maintain sobriety before receiving an evaluation, otherwise the evaluation "would not be of benefit."

¶13 The record sufficiently supports the court's finding that ADES made "diligent and repeated efforts" to reunify Mother with her children.

¶14 Mother's second argument is that the juvenile court erred in finding that termination was in the best interest of the children. The court must make a "finding as to how the child would benefit from a severance or be harmed by the continuation of the [parental] relationship" when considering the children's best interest. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (citations omitted) (emphasis in original). Evidence showing that a child is adoptable supports a finding of termination of the parental relationship. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶15 Harris testified that severance and adoption were in the children's best interest because Mother had not "grown"; rather, Mother "consistently maintained the same attitude and the same disposition." She also testified that the children's current placement, with a maternal aunt and uncle, was meeting the children's educational, medical, and social needs. Lastly, Harris opined that the children were adoptable, and she informed the court that the maternal aunt and uncle intended to adopt the children.

¶16 The record contains sufficient evidence to support the court's finding that severance is in the children's best interest.

CONCLUSION

¶17 After consideration of both of Mother's arguments on appeal, we find no abuse of discretion by the court in terminating Mother's parental rights. We therefore affirm the termination.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSEN, Presiding Judge

_____/s/_____
MICHAEL J. BROWN, Judge