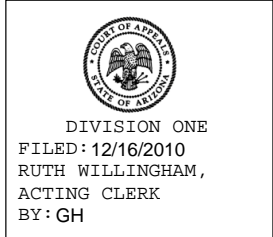


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



MONICA M.,) No. 1 CA-JV 10-0144
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, G.G., O.C., R.C.,) Ct.; Rule 28 ARCAP)
J.C., C.M.,)
)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD8992

The Honorable Dawn M. Bergin, Judge

AFFIRMED

David W. Bell, Attorney at Law
By David W. Bell
Attorney for Appellant

Mesa

Terry Goddard, Arizona Attorney General
By Eric Devaney, Assistant Attorney General
Attorneys for Appellees

Phoenix

B R O W N, Judge

¶1 Monica M. ("Mother") appeals the juvenile court's order terminating her parental rights to five of her children. For the following reasons, we affirm.

BACKGROUND

¶2 Mother is the biological mother¹ of G.G., born in 2000; O.C., born in 2003; J.C., born in 2005; R.C., born in 2006; and C.M., born in 2007 (collectively, the "children").²

¶3 In October 2007, the Arizona Department of Economic Security ("ADES") received a report that Mother's newborn child, C.M., tested positive for marijuana at the time of his birth. Mother acknowledged an ongoing drug problem and confirmed she had used drugs while she was pregnant. A specialist with Child Protective Services ("CPS") discussed with Mother the need to participate in urinalysis ("UA") testing and substance abuse treatment but did not set up services at that time.

¶4 In July 2008, ADES received a report alleging that Mother was abusing drugs and neglecting her children. ADES then referred Mother for services in September 2008, including substance abuse treatment at TERROS, family preservation, and

¹ Mother has another child, M.A., born in 1995, but he was not included in the severance action.

² On the court's own motion, it is hereby ordered amending the caption for this appeal as reflected in this decision. The above referenced caption shall be used on all documents filed in this appeal.

random UA testing, but Mother was only minimally compliant with these services. In October 2008, ADES received another report that Mother was neglecting the children. The report stated that C.M. sat in his own feces for forty minutes, his play pen was covered with feces, and Mother failed to provide proper medical care for the children, who were suffering from strep throat and diarrhea. Shortly thereafter, Mother tested positive for methamphetamine. Following a team decision meeting, ADES removed the children from Mother's care on November 6, 2008.

¶15 ADES filed a dependency petition alleging the children were dependent as to Mother due to substance abuse, neglect, and domestic violence. Mother denied the allegations and submitted the issue of dependency to the court. The court found the children dependent as to Mother and approved an ADES family reunification case plan incorporating the following services: a psychological evaluation, parent aide services, substance abuse assessment and treatment, random UAs, visitation, and transportation. Mother participated sporadically in these services and some were terminated due to her noncompliance.

¶16 ADES moved to terminate Mother's parental rights in September 2009, based on Mother's mental illness and her history of chronic drug abuse pursuant to Arizona Revised Statutes

("A.R.S.") section 8-533(B)(3) (Supp. 2009).³ The following month, ADES filed an amended motion, adding out-of-home placement of nine months under A.R.S. § 8-533(B)(8)(a). Mother contested the motion and a severance hearing commenced on February 8, 2010.⁴

¶7 Prior to the presentation of evidence, ADES made an oral motion to add out-of-home placement of fifteen months or longer as an additional ground for severance under A.R.S. § 8-533(B)(8)(c). Mother's counsel objected because fifteen months had not yet elapsed since November 2008, when the children were removed from Mother's care. A week later, ADES filed an amended motion, substituting out-of-home placement of fifteen months for the nine-month allegation. Mother did not object to the motion.

¶8 The remainder of the five-day severance hearing was held over the course of three months, concluding on April 29, 2010. ADES called Mother, the CPS specialist, and two licensed psychologists to testify. The juvenile court granted the motion to terminate, finding ADES had proven by clear and convincing evidence the grounds of chronic drug abuse and fifteen months

³ We cite to the most current version of the applicable statutes when they have not been substantively revised since the date of the underlying conduct.

⁴ During the hearing, ADES withdrew its allegation of mental illness.

out-of-home placement. See A.R.S. §§ 8-533(B)(3) and - 533(B)(8)(c). Mother timely appealed.

DISCUSSION

¶9 To justify termination of Mother's parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one statutory ground set forth in A.R.S. § 8-533. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Additionally, the court is obligated to find by a preponderance of the evidence that termination is in the best interests of the child. *Id.* We will reverse a severance order only if no reasonable evidence supports it, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002), and we consider the facts in the light most favorable to accepting the juvenile court's findings. *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

¶10 Under A.R.S. § 8-533(B)(8)(c), the juvenile court may properly sever a parent's rights if: (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood exists that the parent would not be able to properly care for the child in the near future. The court also considers the availability of reunification services to the parent and the

participation of the parent in those services, and must find that ADES made a diligent effort to provide such services.⁵ A.R.S. § 8-533(D); A.R.S. § 8-533 (B)(8).

¶11 Here, the juvenile court found that as of the last day of the severance hearing, the children had been in out-of-home placement for almost eighteen months because of Mother's substance abuse, her inability to provide for the children financially, and her inability to properly parent. The court found that these problems persisted. Thus, notwithstanding Mother's seven months of sobriety,⁶ the court found that she had been unable to remedy the circumstances causing out-of-home placement and she was substantially unlikely to exercise effective parental care in the near future.

¶12 Mother contends there is no evidence to support the court's finding that "she would be incapable of exercising

⁵ Mother does not assert that ADES failed to make a diligent effort to provide proper reunification services, nor does she contest that the children were in out-of-home placement for longer than fifteen months. She also does not argue that severance was not in the best interests of the children.

⁶ Mother testified that she abstained from methamphetamines for almost five months and marijuana for eight months, and successfully completed substance abuse treatment. Although Mother tested negative after September 2009, she missed numerous UAs and failed to test regularly during the month of October. She did not start testing regularly until November. Therefore, it is possible that Mother was not sober until that time. Notwithstanding this conclusion, we analyze Mother's arguments under the assumption she was sober for seven months prior to the conclusion of the severance hearing.

proper and effective parental control in the near future" because she was drug-free for seven months preceding the conclusion of the severance hearing. However, the record adequately supports the juvenile court's finding that Mother was unable to effectively parent in the near future due to her protracted drug use and history of relapse.

¶13 Temporary abstinence from drugs does not outweigh a parent's significant history of abuse or consistent inability to abstain during dependency proceedings. *In re Maricopa Cnty. Juv. Action No. JS-8441*, 175 Ariz. 463, 468-69, 857 P.2d 1317, 1322-23 (App. 1993) (concluding that a father failed to prove his ability to provide appropriate parental care in the near future where, despite father's recent attempts at counseling and alcoholics anonymous attendance, he was prone to relapses), *abrogated on other grounds by Kent K. v. Bobby M.*, 210 Ariz. 279, 110 P.3d 1013 (2005); *Cf. Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶¶ 27-29, 231 P.3d 377, 383 (2010) (pursuant to A.R.S. § 8-533(B)(3), termination was appropriate, despite father's four months of sobriety before the severance hearing, because a reasonable belief existed that drug abuse would continue for an indeterminate period due to father's use of drugs since his teens).

¶14 In this case, Mother's drug abuse started in her teens and spanned the course of approximately eighteen years. Mother

testified at trial that she maintained sobriety intermittently throughout that period, but ultimately relapsed every time.

¶15 After ADES removed the children in November 2008 due to Mother's positive UA results, Mother continued to test positive for methamphetamines and marijuana. Mother participated only sporadically in her UA tests from November 2008 to July 2009, and tested positive twice in June 2009—once for marijuana and once for both methamphetamines and marijuana.⁷ Mother's UAs were cancelled in August due to noncompliance. At trial, Mother admitted that she used methamphetamines regularly from March to September 2009. Moreover, although Mother started parent aid services and substance abuse treatment, these services were eventually discontinued due to Mother's lack of participation.

¶16 We find additional support for the juvenile court's finding in the psychological evaluations. Dr. Pyburn found that Mother demonstrated a "substance abuse disorder" and was "overly dependent on others." Pyburn stated that Mother's dependent personality created a risk of neglect and concluded that Mother could "possibly" parent her children if she maintained sobriety

⁷ From November 2008 to July 2009, Mother was scheduled to participate in approximately seventy-eight random UA tests. She only participated in ten of these tests, two of which revealed positive results.

for a minimum of one year and developed "coping skills as well as interpersonal relationship skills."

¶17 Mother asserts that "many experts" recommend a year of sobriety for chronic drug abusers and therefore, with seven months of sobriety, she was capable of providing effective parental care in the "near future." Mother's argument fails to recognize that the court relied upon additional grounds, including Mother's inability to provide financially or to properly parent the children. She does not contest either of those findings on appeal. Additionally, Dr. Menendez, a licensed psychologist, concluded that Mother would be unable to parent in the near future despite her sobriety. Menendez opined that concerns would still exist even if the children were returned to Mother after twelve months of sobriety due to Mother's substantial history of drug abuse.

¶18 Menendez conducted a three-hour psychological evaluation of Mother two days after the severance hearing began. Menendez administered two tests, a psychological survey and a parenting questionnaire, and also relied on numerous case records to supplement her findings. In her written report, Menendez found that Mother suffered from substance abuse in early remission, neglect of children, and dependent personality disorder. Menendez concluded:

Because of the additional complications of the parent's current status, that is, the amount of time required in participating in her recovery effort, the parent is unable to demonstrate her parenting skills within the foreseeable future, as this would put her at risk of relapse.

Menendez also testified that due to Mother's dependent personality and substance abuse, "[t]he children are more subject to violence of inadvertent dangers, [and] the environment[] is less safe for them."

¶19 Dr. Moe, another licensed psychologist, testified at trial that Mother was unable to "effectively interact" with the children and was unable to "parent them regarding redirecting their behaviors." Moe opined that severance was appropriate due to Mother's extensive drug history, stating, "that track record does not bode well for projecting whether she'll be able to stay clean in the future given multiple returns back to drug use after relatively long periods of sobriety."

¶20 Mother relies on *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 152 P.3d 1209 (App. 2007), in which this court recognized that "parents 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 the out-of-home placement even if they cannot completely overcome their difficulties." *Id.* at 331, ¶ 30, 152 P.3d at 1214 (quoting *Maricopa Cnty. Juv. Action No. JS-*

501568, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994)). Mother's reliance is misplaced because the court in that case was referring to severance under the nine-month statutory ground, A.R.S. § 8-533(B)(8)(a), which provides that the juvenile court can sever the parental relationship if the parent has "*substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.*" *Id.* at 329, ¶ 20, 152 P.3d at 1212 (emphasis added). Mother's rights were terminated based on fifteen months out-of-home placement, so her efforts to cure the circumstances that led to removal of the children are not a proper consideration. Instead, the determination turns on whether she was successful in making the changes necessary to remedy the circumstances of removal.

¶21 In sum, although Mother made concerted efforts beginning in September 2009 to remedy her drug abuse issues, the record contains sufficient evidence to support the juvenile court's conclusion that Mother would not be capable of exercising effective parental care in the near future due to her extensive drug abuse history, potential for relapse, and parenting issues. Therefore, the juvenile court did not err in severing Mother's parental rights under A.R.S. § 8-533(B)(8)(c).

¶22 Based on our conclusion, we need not address whether Mother's rights were appropriately terminated under A.R.S.

§ 8-533(B)(3) due to chronic substance abuse. See e.g., *Raymond F.*, 224 Ariz. at 376, ¶ 14, 231 P.3d at 380 (appellate court will affirm a severance order if any one of the statutory grounds has been proven).

CONCLUSION

¶23 Based on the foregoing, we affirm the juvenile court's order terminating Mother's parental rights.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

JOHN C. GEMMILL, Judge