DIVISION ONE
FILED: 02/21/2012
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KAREN P.,	)	No. 1 CA-JV 11-0110
	)	
Appellant,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, M.J., A.S.,	)	Rule 103(G), Ariz. R. P. Juv. Ct., Rule 28 ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD508145

The Honorable Peter A. Thompson, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellees

Robert D. Rosanelli, Attorney at Law Phoenix
By Robert D. Rosanelli
Attorney for Appellant

B R O W N, Judge

¶1 Karen P. ("Mother") appeals from the juvenile court's order terminating her parental rights to two of her minor children. For the following reasons, we affirm.

BACKGROUND

¶2 Mother is the biological mother of M.J., born in May 2001, and A.S.,[1] born in August 2007 (collectively "the children").[2] Child Protective Services ("CPS") initially removed the children from Mother's care in September 2009 after Mother had consumed prescription medication and alcohol and lost consciousness in her driveway, leaving the children, then ages eight and two, unsupervised. The court found the children dependent and the Department of Economic Security ("the Department") initially pursued an in-home dependency. The Department provided Mother with various family preservation services, including substance abuse treatment, counseling, and assistance with parenting skills, but Mother did not significantly comply with any of the tasks assigned to her during October and November 2009.

¶3 CPS then removed the children from Mother's physical custody and placed them in out-of-home placement after being unable to contact Mother or verify the children's well-being. Mother was scheduled for a psychological evaluation in January 2010, but she failed to attend. The Department also continued

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[1] We amend the caption in this appeal to refer to the children solely by their initials.

[2] Mother's rights to B.L., born in February 1999, were also terminated. However, she did not appeal the severance order as to B.L.

to provide Mother with family reunification services, including referrals for substance abuse treatment, mental health treatment, parenting classes, parent aide services, and visitation. Although Mother attended visits with the children fairly regularly, she did not substantially participate in any of the other services offered to her. Mother was also required to report for drug testing once per week. Her first four tests were positive for marijuana and other drugs. Mother then missed several tests and, in September 2010, she gave birth to another child, R.P., who tested positive for methamphetamine and marijuana at birth.[3] In November 2010, the juvenile court approved the Department's request to change the case plan for the children to severance and adoption. The Department then filed a motion to terminate Mother's rights to the children, alleging nine and fifteen months out-of-home placement under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(a) and (c) (Supp. 2011), and substance abuse under § 8-533(B)(3).[4] Notice of the motion to terminate was provided to the Pueblo of Zuni and Pueblo of Laguna Tribes pursuant to the Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901-1963.

[3] R.P. was not a party to this severance action.

[4] The initial motion included only the nine-months and substance abuse grounds, but at the beginning of trial the motion was amended to add the fifteen-months ground.

¶4 Between November 2010 and February 2011, Mother successfully participated in drug testing and became "actively engaged in her substance abuse treatment." Also, in January 2011, Mother completed a psychological evaluation and was diagnosed with several disorders including borderline intellectual functioning, with an IQ of 75. Following her evaluation, Mother began participating in individual counseling. Mother continued to actively engage in services until the severance hearing. Following a two-day hearing, the juvenile court found the Department had proven all three grounds alleged and that severance was in the best interests of the children.[5] Mother timely appealed.

DISCUSSION

¶5 Termination of the parent-child relationship is appropriate if at least one of the statutory grounds alleged is supported by clear and convincing evidence and the termination is in the best interests of the child. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶¶ 3-4, 53 P.3d 203, 205 (App. 2002). We "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we

[5] The court also found that the Zuni Tribe, through its designated representative, agreed that the Department made active efforts to "provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts were unsuccessful."

will affirm a severance order unless it is clearly erroneous." *Id.* at 280, ¶ 4, 53 P.3d at 205.

¶6 Mother argues that the Department failed to make sufficient efforts to reunify and preserve her family because "it did not provide [her] with services appropriate for a parent with Borderline Intellectual Functioning."[6] Under § 8-533(B)(8)(a) and (c), the Department must prove it "has made a diligent effort to provide appropriate reunification services." Similarly, § 8-533(B)(3) requires that the Department show "it has made a reasonable effort to preserve the family." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 33, 971 P.2d 1046, 1053 (App. 1999). The Department fulfills its duty to provide services when it gives a parent "the time and opportunity to participate in programs designed to help [him or] her become an effective parent." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). The Department is not required, however, to "provide every conceivable service or to ensure that a parent participates in each service it offers." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ___, ¶ 15, 256 P.3d 628, 632 (App. 2011).

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[6] Mother does not challenge the court's findings regarding best interests, compliance with the ICWA, or the other elements necessary for termination under § 8-533(B)(3), (8)(a), and (8)(c). Therefore, we need not address these issues.

¶7 For more than a year prior to filing its motion to terminate Mother's parental rights, the Department offered Mother parent-aide services, substance abuse treatment, mental health services, and counseling. Mother argues on appeal that these services should have been "tailored to her level of intelligence" because her low IQ "impairs her understanding of instructions[.]" Even assuming the Department was responsible to provide Mother with a different type of services because of her low mental functioning, the Department was not obligated to do so because it was not aware of Mother's IQ until January 2011, three months after the case plan had been changed to severance and adoption. Additionally, Mother's failure to attend the scheduled psychological evaluation in January 2010 severely undermines her argument that the Department should have done more to take into consideration her mental status. By the time the evaluation was actually conducted, the children had already been in out-of-home care for more than a year and Mother had failed to meaningfully participate in the services offered to her.

¶8 Moreover, Mother's argument is belied by her testimony at the severance hearing. Mother stated that she understood what tasks she was required to perform and what services she was required to participate in. She also testified that she understood the consequences of failing to participate in

reunification services. When asked what additional services might have helped her, she cited only more assistance with housing and transportation. Further, although Mother had been actively participating in services from late 2010 until the severance hearing, she admitted at the hearing that she did not do as much as she could have during the first year of the dependency, stating "I could have done what I [am] doing now."

¶9 In sum, we conclude there is sufficient evidence in the record to support the court's implicit finding that the Department made appropriate efforts to provide reunification services and preserve Mother's relationship with her children.

CONCLUSION

¶10 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights to M.J. and A.S.

/s/
_____
MICHAEL J. BROWN, Judge

CONCURRING:

/s/
_____
PETER B. SWANN, Presiding Judge

/s/
_____
JON W. THOMPSON, Judge