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



DIVISION ONE
FILED: 01/05/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DEANNA P.,) 1 CA-JV 11-0119
)
Appellant,) DEPARTMENT B
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, ROBERT S.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD504698

The Honorable Raymond P. Lee, Judge

AFFIRMED

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Scottsdale

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By Eric Devany, Assistant Attorney General
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Mesa

K E S S L E R, Judge

¶1 Deanna P. ("Mother") appeals the juvenile court's order terminating her parental relationship with her son, R.S. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and Robert S. ("Father") are the biological parents of R.S., born in January 2003.¹ Mother was arrested on September 13, 2008, and left R.S. at home in Father's care. Father, a level-three sex offender, was not to have any contact with children. Consequently, R.S. was taken into custody by Child Protective Services ("CPS").²

¶3 In September 2008, the Arizona Department of Economic Security ("ADES") filed a dependency petition. The juvenile court later found R.S. to be dependent in January 2009, and set the case plan to family reunification. ADES provided Mother with a variety of services including substance abuse assessments, random urinalysis testing, parent aide services, psychological evaluations, and visitation. As R.S. was diagnosed with autism, at least two of the parent aide referrals were provided to address parenting a special-needs child, and the case manager provided Mother with information on local autism workshops.

¶4 In November 2010, ADES moved to terminate Mother's parental rights alleging she was unable to perform her parental responsibilities due to mental illness and she was unable to

¹ Father's parental rights were also terminated, but are not at issue in this appeal.

² This family has three prior CPS referrals and one prior dependency with successful family reunification.

remedy the situation that caused R.S. to remain in out-of-home placement for fifteen months or longer. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (B)(8)(c) (Supp. 2011). A contested severance hearing was subsequently held in May 2011.

¶5 At the hearing, the current CPS case manager testified that she believed substance abuse was an issue for Mother. Drug testing records from the Treatment Assessment Screening Center, Inc. ("TASC") revealed numerous diluted urinalysis samples, positive results for opiates for which she failed to present prescriptions,³ and a positive test result for methamphetamine in December 2010. In addition, she testified that for over two years Mother had been unable to provide proof of employment.

¶6 The juvenile court also heard testimony from Dr. James Thal and Dr. Glenn Moe, two licensed psychologists. As part of

³ In a psychological evaluation, Mother claimed she did not abuse Percocet, and denied taking any other narcotics. She claimed to be under the care of a pain specialist for bone spurs in her neck. Mother tested positive for hydrocodone (October 27, 2008, October 29, 2008, December 8, 2008, February 27, 2009, November 18, 2009, November 24, 2009, December 9, 2009, December 18, 2009, January 4, 2010, January 22, 2010, December 23, 2010, February 24, 2011, and March 10, 2011), hydromorphone (October 27, 2008, November 18, 2009, November 24, 2009, December 9, 2009, December 18, 2009, January 4, 2010, and March 10, 2011), nordiazepam (October 27, 2008), oxazepam (October 27, 2008, October 29, 2008, and November 4, 2008), temazepam (October 27, 2008, October 29, 2008, and November 4, 2008), lorazepam (October 27, 2008), oxycodone (October 29, 2008, December 18, 2009, January 22, 2010, July 14, 2010, and March 10, 2011), oxymorphone (December 18, 2009, January 22, 2010, July 14, 2010, and March 10, 2011), morphine (November 4, 2008), phenobarbital (November 4, 2008), butalbital (November 4, 2008), and alpha-hydroxyalprazolam (December 30, 2008 and February 20, 2009).

his evaluation, Dr. Thal testified that he examined numerous records including a prior psychological evaluation with Dr. Ellen Diana in June 2009. Dr. Diana's report states that Mother had recently learned of R.S.'s diagnosis of autism, but had "no information on the disorder and was unable to cite any developmental information about [R.S.] which could indicate that she had any insight into the severity of his disorder." She further noted that "[Mother] will have difficulty meeting [R.S.]'s needs" and "will require extensive parent aide services as well as parenting classes to perform even adequately." Dr. Diana diagnosed Mother as having an adjustment disorder with mixed anxiety and depressed mood, and a personality disorder, not otherwise specified, with primary obsessive-compulsive traits and secondary histrionic traits. She further noted that these traits may negatively impact her ability to parent:

Individuals who are compulsive have a single-minded insistence on order and structure. They divide behavior into right and wrong, seek perfectionism, and attempt to control their surroundings Dealing with children, however, requires flexibility, tolerance for differences and a calm and nurturing presentation; all of these are apt to prove challenging for the compulsively oriented parent. Individuals who are histrionic pursue change and stimulation Consistency and security, elements that are required for successful parenting, are difficult for someone with histrionic traits to sustain. Thus, the child of an individual with histrionic traits is apt to develop some anxiety over the lack of structure and to have difficulty developing emotionally.

Dr. Thal testified that although he could not confirm Dr. Diana's personality disorder diagnosis, he agreed that Mother exhibited "a habitual . . . [and] maladaptive way of relating, behaving . . . thinking and feeling." Despite this assessment, Dr. Thal stated that Mother would not benefit from individual counseling as these "deeply resistant and entrenched personality issues . . . are unlikely to be modified by psychotherapy."

¶7 Dr. Thal further stated in his psychological evaluation report that "[c]are and caution should be exercised before proceeding with any planned reunification" as Mother had not appeared to make any progress or seem prepared to parent R.S. He stated that Mother was not assimilating the information obtained from parenting classes and recommended she "take additional parenting instruction, especially that which is aimed at parents of children with developmental disabilities." In his report, Dr. Thal concluded that "[s]everance and adoption may be the appropriate case plan if [Mother] is unable to rectify the circumstances that brought her child into care."

¶8 Dr. Moe conducted an assessment of attachment and best interest in April and May 2011. He testified that R.S. had an anxious attachment with Mother:

This type of attachment occurs when a child's needs are met on an inconsistent basis, leaving the child prone to anxiety in the relationship as well as unmet needs for nurturance, security, and

safety. [R.S.]'s comments that are consistent with this anxious attachment include the fact that he indicates having comfort in visiting [Mother]; while indicating he has no desire to return to [Mother]'s care. He provided reasoning including concerns about [Mother] leaving him alone again if she were to be arrested. He also expressed feelings of anxiety about [Mother] being injured in the past in domestic violence situations, something that continues to be a source of anxiety for him. [R.S.] also referenced continued anxiety he has . . . in the form of nightmares that he associates with scary movies he watched within the biological home. All of these anxious concerns leave [R.S.] willing to have a visitation relationship with [Mother], but not one where he feels comfortable returning to her care.

Dr. Moe concluded that R.S. was an adoptable child who would be able to adapt and move on if Mother's parental rights were severed.

¶19 In June 2011, the juvenile court terminated Mother's parental rights on the following grounds: (1) Mother was "unable to discharge her parental responsibilities because of mental illness," and (2) Mother was "unable to remedy the circumstances that cause[d] [R.S.] to be in out-of-home placement" for fifteen months or longer. A.R.S. § 8-533(B)(3), (B)(8)(c). Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(1) (Supp. 2011).

STANDARD OF REVIEW

¶10 As the juvenile court is in the best position to weigh evidence and judge credibility, “we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence, but “look only to determine if there is evidence to sustain the court’s ruling.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

DISCUSSION

¶11 A parent’s right to custody and control of his or her own child is considered to be fundamental, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), but not absolute. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). To justify the severance of a parental relationship, one of the statutory grounds provided in A.R.S. § 8-533(B) must be found by clear and convincing evidence. *Id.* at 249, ¶ 12, 995 P.2d at 685. In addition, the court must also find by a preponderance of the evidence that severance of the relationship is in the child’s best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). Although the juvenile court severed Mother’s parental rights

pursuant to two statutory grounds, under A.R.S. § 8-533(B), "[i]f clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds." *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

OUT-OF-HOME PLACEMENT

¶12 Mother argues that there is insufficient evidence to support the juvenile court's ruling terminating her parental rights based on fifteen months of out-of-home placement.⁴ We disagree because there is sufficient evidence to show CPS

⁴ Section 8-533(B)(8)(c) provides:

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

8. That the child is being cared of in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, 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 and control in the near future.

provided adequate reunification services, Mother was unable to remedy the circumstances causing placement, and there is a substantial likelihood Mother will not be capable of exercising effective care and control of R.S. in the near future.

A. REUNIFICATION SERVICES

¶13 Mother contends that CPS failed to provide appropriate reunification services. "Arizona courts have recognized that parental rights should be terminated only when concerted effort to preserve the relationship fails. Towards this end, [A]DES has an affirmative duty to make all reasonable efforts to preserve the family relationship." *Maricopa Cnty. Juv. Action No. JS-6520*, 157 Ariz. 238, 241, 756 P.2d 335, 338 (App. 1988) (internal citation omitted). "Although CPS need not provide every conceivable service, it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 186, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999) (internal quotation marks and citation omitted).

¶14 The record shows that CPS offered Mother substance abuse services through TERROS in October 2008 and February 2009. Mother, however, denied the need for services and no treatment was provided. Despite her claim, drug testing records from TASC revealed numerous diluted urinalysis samples, positive results

for opiates for which she failed to present prescriptions, and a positive test result for methamphetamine in December 2010. This evidence suggests that Mother underreported her current substance use, and failed to take advantage of the services offered.

¶15 Moreover, Dr. Thal's psychological evaluation report indicates that Mother would not benefit from individual counseling, as her "deeply resistant and entrenched personality issues . . . are unlikely to be modified by psychotherapy." The record shows that Mother was referred to counseling through Jewish Family and Children's Services, but no progress was made as Mother reported she did not need counseling.

¶16 ADES ultimately provided Mother with a variety of services including substance abuse assessments, random urinalysis testing, parent aide referrals, psychological evaluations, and supervised visitation. Accordingly, there was sufficient evidence to support the juvenile court's conclusion that ADES made diligent efforts to provide appropriate reunification services to Mother.

B. INABILITY TO REMEDY CIRCUMSTANCES

¶17 Mother also contends that there is insufficient evidence to support the juvenile court's finding that Mother was unable to remedy the circumstances that caused R.S. to remain in out-of-home placement. We disagree.

¶18 "To substantially neglect or willfully refuse to remedy a circumstance, a parent must be aware that ADES alleges that the circumstance exists and is one that, if it continues to exist at severance, may result in the termination of her parental rights." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 332, ¶ 35, 152 P.3d 1209, 1215 (App. 2007) (internal quotation marks and alterations in original omitted).

¶19 Reunification required clean urinalysis results, proof of prescriptions, proof of employment, and safe and secure housing. Although Mother was aware of these requirements, the circumstances remained unchanged. Drug testing records from TASC revealed Mother's inability to remain sober. Although she tested positive for narcotic medication on multiple occasions, Mother continually failed to provide proof of prescriptions. In addition, despite numerous requests, Mother also failed to provide proof of employment for over two years. Accordingly, we find there was sufficient evidence to support the juvenile court's conclusion that Mother was unable to remedy the circumstances that caused R.S. to remain in out-of-home placement.

C. ABILITY TO PARENT IN NEAR FUTURE

¶20 Mother further contends that there is insufficient evidence to support the juvenile court's finding that she will

be unable to exercise proper parental care in the future. We disagree.

¶21 At the hearing, Dr. Thal testified that Mother admitted to a history of drug abuse, and expressed concern that Mother was currently underreporting her substance use. He stated that her use of methamphetamines at this point in the case suggests that she is careless, irresponsible, and "unaware of the seriousness of using" methamphetamines. He further testified that pain relievers, tranquilizers, and sedatives pose a risk of addiction and lethality, and the inability to produce prescriptions suggests concealment and deception. In addition, Dr. Moe testified that addiction to pain medication affects a person's ability to make a proper decision as well as parent.

¶22 Dr. Thal further testified that Mother was not assimilating the information obtained from parenting classes, and expressed concern that over the course of two years she failed to take an active role in seeking information about autism. He concluded that any child in her care would be at risk of abuse and neglect. Accordingly, we find there was sufficient evidence to support the juvenile court's conclusion that Mother will be unable to exercise proper parental care in the future.

¶23 As we find that the court did not err in terminating Mother's parental rights under A.R.S. § 8-533(B)(8)(c), we do

not address the additional ground for termination under A.R.S. § 8-533(B)(3).

CONCLUSION

¶24 Having found there is sufficient evidence to support the juvenile court's findings, we affirm its order to terminate Mother's parental rights to R.S. pursuant to A.R.S. § 8-533(B)(8)(c).⁵

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
MARGARET H. DOWNIE, Presiding Judge

/s/
PETER B. SWANN, Judge

⁵ We deny as moot ADES's motion to accelerate this appeal.