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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RASUNDRIEA B. ,) No. 1 CA-JV 11-0146
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103(G) Ariz. R. P.
SECURITY, A.H. ,) Juv. Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD507681

The Honorable Peter A. Thompson, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Mesa
By Eric Devaney, Assistant Attorney General
Attorneys for Appellee

Sandra L. Massetto, Attorney at Law Phoenix
By Sandra L. Massetto
Attorney for Appellant

B R O W N, Judge

¶1 Rasundriea B. ("Mother") timely appeals the juvenile court's order severing her parental rights to her biological

daughter, A.H. ("the child").¹ For the following reasons, we affirm.

BACKGROUND

¶2 In December 2008, when the child was four, Child Protective Services ("CPS") received a report that Mother had left the child and her infant brother at home alone. Police investigated and found the children alone in a dirty home without any food. Both children were taken into protective custody.

¶3 CPS later learned that Mother had left the children the night before with a male friend, B.H., whose parental rights to his own children had been terminated due to mental health issues. Prior to this incident, CPS had received numerous reports about Mother's substance-abuse problems and/or neglect of her children.

¶4 A few days later, the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging substance abuse, neglect and an unfit home. Mother denied the allegations but submitted the issue to the juvenile court. In January 2009, the court found both children dependent as to Mother. The

¹ 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.

brother was returned to the custody of his biological father and neither is a party to this appeal.

¶15 In furtherance of the family-reunification plan, ADES offered numerous services to Mother. She made minimal efforts, however, to participate in services for more than a year. In October 2010, the case manager reported to the juvenile court that, despite twenty-one months of services, Mother "has failed to remedy the cause that brought [the child] into CPS Care." While acknowledging that Mother had made "some progress," she believed it was minimal and that "in order for [Mother] to develop the qualities necessary to safely parent her child she would require[] extended services." But she also stated that "reunification services are not in [the child's] best interest" and that Mother's "issues will continue for a prolonged an[d] indeterminate amount of time." Thus, the case manager recommended severance and adoption.

¶16 After a four-day contested severance hearing, the juvenile court found that ADES had diligently provided a "host of services" to Mother throughout the case and that some had been repeated multiple times. The court recognized Mother's success in maintaining sobriety, but found she had "not demonstrated that same resolve in addressing the other barriers to reunification." The court explained:

[Mother] is not capable of providing safe, permanent and stable housing, economic support and properly parenting [the child]. Mother engages in a continued pattern of poor life choices and, more importantly, poor parenting choices. She is defiant, thoroughly entrenched and committed to defending her choices and lifestyle. She is highly resistant to change in areas related to parenting skills as evidenced by ongoing confrontations with the parent aides and her unwillingness to address the abrupt, harsh, critical interactions with her child. She has willfully lied and [misled] CPS and the Court on matters of paternity and her relationships with the men who would be in the home with her daughter after reunification. Mother seeks to justify her poor choices and is unwilling to adopt meaningful, long term solutions to her parenting deficiencies.

Accordingly, the court terminated Mother's parental rights based on out-of-home placement for a cumulative period of fifteen or more months under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2011).² The court also found that severance was in the child's best interests.³

² Absent material revisions, we cite the current version of the applicable statute.

³ Mother named four different men as the child's biological father, but paternity was never established. The trial court severed John Doe's parental rights to the child based on abandonment under A.R.S. § 8-533(B)(1). The father is not a party to this case.

DISCUSSION

¶7 Mother argues there was insufficient evidence to support severance under A.R.S. § 8-533(B)(8)(c). Because the court's findings are supported by the record, we disagree.

¶8 An order terminating parental rights must be supported by clear and convincing evidence of at least one statutory ground for severance, and 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). "We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous[.]" *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). Because the juvenile court is in the best position to weigh the evidence and judge the credibility of witnesses, we will accept the court's findings of fact unless no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶9 Pursuant to A.R.S. § 8-533(B)(8)(c), the court may terminate parental rights if: (1) the child "has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order[.]" (2) ADES "has made a diligent effort to provide appropriate reunification services[.]" (3) the parent "has been unable to remedy the circumstances that

cause[d] the child to be in" the placement, and (4) there exists "a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." In determining whether a parent has failed to remedy the circumstances which caused a child to be in an out-of-home placement, we consider the circumstances existing at the time of severance. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶10 Mother does not dispute that the child had been in an out-of-home placement for over fifteen months at the time of severance. Mother also does not challenge the finding that termination was in the child's best interests. We therefore accept these findings as correct.

¶11 Mother first contends the juvenile court erred in finding that ADES made a diligent effort to provide appropriate reunification services. Specifically, she argues she was not offered individual counseling until after ADES moved to terminate her parental rights. She asserts that "[b]ut for ADES's delay" in providing individual therapy, she "would have [made] much further progress in her ability to remedy the concerns voiced by the agency."

¶12 Although ADES "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," it is not obligated to

provide every conceivable reunification service or undertake rehabilitative measures that are futile. *Mary Ellen C. v. Ariz. Dep't. of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053 (App. 1999). ADES is only required to undertake measures that have a reasonable prospect of success. *Id.* at ¶ 34.

¶13 ADES cannot be faulted for any delay in providing Mother with mental health services. As Mother acknowledges on appeal, she was "slow to participate in services." In August 2009, Mother completed a psychological consult and was referred to Magellan for further counseling and medication, if needed. By October 2010, the case manager reported that Mother "had not complied with going to Magellan."

¶14 The case manager testified that Mother received two parent-aide referrals, visitation, parenting classes, classes at Fresh Start Women's Center, TERROS substance abuse assessment, urinalysis testing, transportation, and individual therapy. These services are well documented in the record. Accordingly, the juvenile court did not err in finding that ADES made a diligent effort to provide timely, appropriate services.

¶15 Mother also challenges the juvenile court's finding that she failed to remedy the circumstances that caused the child to be in an out-of-home placement. Mother argues that she remedied all these circumstances by completing substance abuse

treatment, by establishing a stable home from November 2010 until June 2011, and by working as a florist.

¶16 Although Mother argues that she has remedied her substance abuse problems, this was not in dispute. The case manager testified that Mother had resolved her substance abuse issue by August 2010. Consistent with that testimony, the juvenile court commended Mother for resolving this issue and thus it was not a basis for the court's ruling.

¶17 As for Mother's housing and employment situation, Mother provided very little verifiable information to ADES. While Mother argues she had stable housing, the case manager testified that Mother has had many different residences, including seven addresses since the dependency proceedings began and three addresses within the six-month period before trial. The case manager also stated that Mother gave inconsistent information about her rent, she had long periods of homelessness, and her address from July to September 2010 was unknown. When asked to explain why she would not give ADES full information about her housing situation, Mother told ADES that it was none of its business where she lived.

¶18 Similarly, Mother provided limited, unverifiable information to ADES about her employment. At trial, Mother testified that she worked full time at a healthcare center before becoming a florist in December 2010, but she could not

provide paystubs from either employer. The only proof of employment ADES received was a letter from the mother of one of the alleged fathers, stating that she believes Mother works at a floral shop.

¶19 Additionally, reasonable evidence supports the conclusion that Mother was either unemployed or working as a prostitute while reunification services were being offered. In 2009, she was arrested for prostitution. In September 2010, Mother placed an advertisement for "Busty Adult Companionship" on a website under the category of "phoenix adult entertainment." The case manager reported that Mother provided no verifiable income from June 2010 until October 2010. In an October 2010 report, the case manager stated that Mother reported she was unemployed and babysitting for money and using student financial aid to pay her rent, but she believed that Mother was working as a prostitute.

¶20 The case manager further testified that the child was taken into CPS custody because Mother demonstrated poor judgment as a parent by neglecting the child and leaving her with inappropriate supervision. The record indicates that Mother had failed to remedy those issues at the time of the severance hearings.

¶21 One of ADES's major concerns was that Mother exposed the child to men with substance abuse problems and criminal

backgrounds. Despite acknowledging that her past relationships with such men placed the child at risk, Mother did not believe that any of the men she named as the child's father were a problem. Two of the men that Mother alleged to be the child's father, however, were either in prison or had a criminal background. While the case was pending, Mother moved in with A.W., who also has a criminal history. Mother alleged that A.W. abused her and that she had obtained an order of protection against him for domestic violence.

¶22 Moreover, about three months before the severance trial, Mother married A.B., who also has a history of drug use and several prior felony convictions. A.B. has a mental illness, but Mother stated she did not know his specific diagnosis. Although ADES was concerned that Mother might relapse because she had been addicted to cocaine and A.B. used cocaine, Mother refused to cooperate with ADES in evaluating him as a risk. Consequently, the evidence supports the finding that Mother has exposed and would continue to expose the child to risks caused by her personal relationships with inappropriate men.

¶23 Finally, Mother argues that the juvenile court could not properly find that there exists a substantial likelihood she would be incapable of exercising effective parental care in the near future. We disagree.

¶24 At the time of severance, the case manager testified that she believed the child could not be safely returned to the home. The case manager stated that Mother left the door of her apartment open and allowed other adults to come and go freely. When the case manager asked Mother to identify the adults living in her home, she was uncooperative and told ADES to mind its own business. The case manager testified that Mother's therapist informed her that individual counseling had not remedied ADES's concerns.

¶25 We are also not persuaded by Mother's assertion that a psychological evaluation conducted by Dr. Carroll in July 2010 proves that she has adequate parenting skills. Dr. Carroll's report explains that she believed Mother has no "psychological factors which would interfere with her ability to adequately parent her child." Although Dr. Carroll opined that Mother can adequately care for the child, Dr. Carroll based her opinion in part on Mother's "self report [that] she has found stable employment and housing." As noted above, Mother failed to establish appropriate housing and employment.

CONCLUSION

¶26 Because reasonable evidence supports the juvenile court's findings, we affirm the court's order terminating Mother's parental rights to the child.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge