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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 04/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JACKIE O.,) 1 CA-JV 11-0193
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, JESSICA O.,) Ct.; Rule 28 ARCAP)
)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. V1300JD201080009

The Honorable David L. Mackey, Judge

AFFIRMED

Law Office of Florence M. Bruemmer, P.C. Anthem
By Florence M. Bruemmer
Tanya R. Imming
Attorneys for Appellant

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Economic Security

T H O M P S O N, Judge

¶1 Jackie O. (Mother) appeals from the juvenile court's order terminating her parental rights to Jessica O.¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY²

¶2 Jessica was born in 1996. In October 2009, Child Protective Services (CPS) received a report that Jessica had left home in order to avoid sexual abuse by Mother's male roommate Mike T.³ When a deputy returned with Jessica, Mother screamed at her and told her she was a liar. Jessica was placed in voluntary placement with CPS until January 2010.⁴ After she returned home, Mother continued to state that Jessica was lying and failed to get Jessica the services and counseling she needed. Mother refused to apply for services through DES-TANF, AHCCCS, and food stamps to provide for the basic needs of Jessica and her brother. Neither of the children had received

¹ Jerry O. (Father) is not a party to this appeal.

² We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, and we defer to the fact-finder's resolution of any conflicts in the evidence. See *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007); *Lashonda M.*, 210 Ariz. at 82, ¶ 16, 107 P.3d at 928.

³ Florida Department of Children and Families reports a history of nine investigations with this family. The last time they were removed they were placed with Father.

⁴ Mother did not participate in any services with Jessica during the voluntary placement.

eye, dentist, or medical exams outside of emergency needs. CPS received reports that Mother would insult Jessica in front of her friends and school personnel, calling her a f--king slut and a whore, and she told the school principal she was going "to make the child's life a living hell." Mother refused free tutoring offered by the school to help Jessica pass the eighth grade, and when Mother was informed that Jessica was cutting herself, Mother did not attempt to get Jessica counseling or help. In February, Jessica was again molested; Mike was arrested and admitted to sexually molesting Jessica over a period of time.

¶13 In May, the Arizona Department of Economic Security (ADES) took custody of Jessica and her brother on the grounds that Mother had failed to protect Jessica from sexual abuse by Mike, that Mother had neglected the children, and that Mother was unable to provide for their basic needs. At the preliminary protective hearing, the juvenile court warned Mother that her failure to attend future hearings without good cause could result in a finding that she had waived her legal rights and admitted the allegations, and that a hearing could go forward in her absence. In June, the children were adjudicated dependent as to Mother. Mother did not show up for the hearing, but her attorney informed the court that Mother did not want to continue to participate in the case because of financial reasons. She

could not "afford to take time off work," and she was "not willing to participate in services or work with CPS." Mother failed to appear at the report and review hearing in July; she informed the court through counsel that she was "unwilling to participate in services and is working to try to keep a roof over her head." At the report and review hearing in November, Mother again failed to appear. Counsel reported that she had minimal contact with Mother and that Mother "is not participating in the case plan at this time." The court approved ADES's concurrent case plan of family reunification and guardianship or adoption.

¶4 Through February 2011, Mother refused to participate in reunification services or the CPS case plan. She continued to blame everyone else, particularly the children, for CPS involvement, and she refused to take any responsibility for the family's dysfunction. Mother blamed Jessica for the molestations by Mike and for ruining Mike's life. The CPS case manager, the assistant attorney general for CPS, and the attorneys explained to Mother that if she refused to complete the case plan tasks then reunification could not occur. Mother stated that she understood and that she loved her children, but that she would not have a psychological evaluation or counseling. Jessica had been attempting to get Mother to participate in therapy with her, but Mother would say she would

come and then not show up. Jessica's counselor opined that this was "devastating to [Jessica] and she has a very difficult time understanding why her mother does not want to do whatever it takes to get Jessica back home with her."

¶15 Mother appeared at the permanency planning hearing in March and requested additional time to participate in services. Over the next three months, Mother participated in six therapeutic counseling sessions with Jessica, but she refused to participate in a psychological evaluation and continued to blame Jessica for CPS's involvement. These visits did not go well and more were not scheduled. During a therapy session, Mother told Jessica and the therapist that "she was not going to do anything that CPS and the Judge told her to do" because she had "done nothing wrong and [] is not a bad parent."

¶16 Mother failed to appear at the June report and review hearing. Counsel for Mother reported that she had not had contact with Mother in more than two months. The court affirmed ADES's case plan of severance and adoption. ADES filed a motion to terminate Mother's parental rights to Jessica alleging that termination of Mother's parental rights was justified on the grounds of abuse and neglect under A.R.S. § 8-533(B)(2) (Supp. 2011), and nine months out-of-home placement under A.R.S. § 8-533(B)(8)(a).

¶17 The juvenile court held an initial severance hearing on July 20, 2011. Mother failed to appear, but counsel informed the court that Mother had gone to the emergency room two days earlier. Counsel for Mother requested a continuance. The court found that Mother was advised that her failure to appear may result in the court proceeding with termination in her absence, and that Mother did not have good cause for her failure to appear. After taking testimony, the court found by clear and convincing evidence that ADES had met its burden in proving the grounds alleged, and that termination of Mother's parental rights was in Jessica's best interests.

¶18 Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007) and 12-120.21 (2003).

DISCUSSION

¶19 Mother argues that the trial court erred in terminating her parental rights because she demonstrated good cause for her failure to appear at the initial severance hearing.

¶10 When a parent fails to appear at an initial severance hearing, the juvenile court may proceed in absentia and terminate parental rights "based upon the record and evidence presented" if the parent failed to appear "without good cause shown, the parent had notice of the hearing, and the parent "had been previously admonished regarding the consequences of failure

to appear." Ariz. R. Juv. P. 65(C)(6)(c). "In order to show good cause, the moving party must show that (1) mistake, inadvertence, surprise or excusable neglect exists and (2) a meritorious defense to the claims exists." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 304, ¶ 16, 173 P.3d 463, 468 (App. 2007). The juvenile court has broad discretion in determining what constitutes good cause for a party's failure to appear at a hearing. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15, 158 P.3d 225, 230 (App. 2007).

¶11 Mother contends her attorney presented evidence of excusable neglect for Mother's absence from the hearing. Excusable neglect exists if a reasonably prudent person would have acted similarly in like circumstances. *Id.* Here, Mother had gone to the emergency room two days prior to the severance hearing. The emergency room personnel indicated that her white blood cell count was low and that she may have had some kind of a virus. After reviewing the report, counsel for ADES argued that the emergency room report showed only that Mother had to stay home on July 18 to rest, but nothing indicated that she could not be at the hearing two days later.

¶12 Under the circumstances, we cannot find that Mother demonstrated good cause for her failure to appear. Mother failed to appear at almost all of the hearings in this case. When it was time for the severance hearing, Mother did nothing

more than present an emergency room report that showed she may have been sick two days before and that she needed some rest. She made no attempt to come to the hearing or make arrangements to appear telephonically. These are not the actions of a reasonably prudent mother seeking to gain back the custody of her child. Mother does not dispute that she had adequate notice that her presence was required and that the proceedings could occur in her absence. Accordingly, the juvenile court did not abuse its discretion in determining that Mother failed to demonstrate good cause for her failure to appear.

¶13 Mother argues there was evidence presented at the initial hearing that Mother has a meritorious defense to the allegations. She points to the fact that she participated in seven family therapy sessions and that at one point during the dependency case Jessica ran away from her foster placement and went to Mother's home. However, at the time of trial, Jessica had been in an out-of-home placement for fourteen months. The record includes clear and convincing evidence of Mother's inability or unwillingness to remedy the circumstances that brought Jessica into out-of-home placement. Mother refused to participate in this case for over eight months. Jessica encouraged her Mother to participate in counseling, but Mother failed to show up to the scheduled sessions. Even when Mother did finally do family therapy with Jessica, the sessions did not

go well and Mother continued to blame Jessica for CPS's involvement. At the initial severance hearing, Jessica expressed her frustration with her Mother's lack of effort and supported the motion to terminate. Furthermore, given her failure to personally appear, Mother was deemed to have admitted the facts asserted in ADES's petition. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 213, ¶ 28, 181 P.3d 1126, 1134 (App. 2008).

¶14 Mother also alleges that CPS failed to provide reasonable efforts to Mother to facilitate reunification of the family, pointing out that CPS only provided Mother with seven family therapy sessions during the entire case. ADES "must provide [the] 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. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). However, ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is ADES required to undertake futile rehabilitative measures. *Mary Ellen C.*, 193 Ariz. at 192-93, ¶¶ 37-38, 971 P.2d at 1053-54.

¶15 Mother informed the court repeatedly that she did not want to participate in the case, that she was "not willing to

participate in services or work with CPS," and that she was unwilling to do a psychological evaluation. Mother was warned that if she refused to complete the case plan tasks then reunification could not occur. Mother stated that she understood, but that she would not have a psychological evaluation or counseling. Even after she participated in the therapy sessions, Mother told Jessica and the therapist that "she was not going to do anything that CPS and the Judge told her to do." Considering Mother's refusal to participate or complete the services that were offered, we do not find that CPS failed to provide reasonable services to facilitate reunification. See *Maricopa County Juvenile Action Nos. JS-4118/JD-529*, 134 Ariz. 407, 409-10, 656 P.2d 1268, 1270-71 (App. 1982) (at some point "the trial court must decide whether the natural parent is making a good-faith effort to reunite the family"; "token efforts" will not preclude severance).

¶16 Mother further contends that severance of her parental rights was not in Jessica's best interests. The juvenile court is required to find that severance is in the best interests of the child by a preponderance of the evidence. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The evidence must support a finding that the child would receive "an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz.*

Dep't of Econ. Sec. v. Oscar O., 209 Ariz. 332, 334, ¶ 6, 100 P.3d 943, 945 (App. 2004); see *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008).

¶17 The case manager testified that Jessica was adoptable and that adoption was in Jessica's best interests because it would allow her "to become part of a family" in "a safe and healthy stable home without being abused." She further testified that Jessica's foster placement was meeting all of her needs, that she was safe, and that she had bonded with her foster parents. Moreover, the record demonstrated that Mother would be unable to protect Jessica from future abuse and that she was unable to meet Jessica's emotional needs because she continued to blame Jessica for CPS's involvement.

¶18 Because reasonable evidence supports the best interests finding, the court did not err.

CONCLUSION

¶19 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights.

/s/
JON W. THOMPSON, Judge

CONCURRING:

/s/
PETER B. SWANN, Presiding Judge

/s/
MICHAEL J. BROWN, Judge