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



DIVISION ONE
FILED: 05/31/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SHEENA M. ,) No. 1 CA-JV 11-0210
)
) DEPARTMENT E
Appellant,)
) MEMORANDUM DECISION
v.)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
ARIZONA DEPARTMENT OF ECONOMIC) ARCAP 28)
SECURITY, ARIZA F. ,)
)
)
Appellees.)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JD20050060

The Honorable David L. Mackey, Judge

AFFIRMED

Craig Williams
Attorney for Appellant

Prescott

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General
Attorneys for Appellees

Tucson

H A L L, Judge

¶1 Sheena M. (Mother) appeals the juvenile court's order severing her parental rights to Ariza F. For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶2 Mother is the biological mother of Ariza, born in 2010.² Both Mother and Ariza tested positive for methamphetamines at Ariza's birth. As a result of Ariza's methamphetamine exposure, she exhibited withdrawal symptoms of crying, twitching, tremors, jerking, involuntary muscle spasms and muscle rigidity, sensitivity to sound and touch, irritability, and also had an immature gastrointestinal tract. In its dependency petition, the Arizona Department of Economic Security (ADES) alleged that Mother was neglecting Ariza due to substance abuse and substance abuse contributed to the removal of her other four children. ADES also alleged that Mother's non-compliance with services in the removal of her other four

¹ We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

² It is unknown who Ariza's father is and the juvenile court terminated the parental rights of John Doe or any other male claiming to be her father. Mother is also the biological parent of four other children who have been removed from her care and the subject of two prior dependency cases. One son was adopted in 2005, another son is living with Mother's mother, and two daughters are in the care of their biological father.

children as well as her lack of coping skills to care for an infant contributed to her neglect.

¶13 The juvenile court made Ariza a ward of the court, dependent as to Mother, and placed Ariza in the care, custody, and control of ADES. The court found the case plan of family reunification appropriate and Ariza was placed with a licensed foster family. Mother was offered the following services by ADES: substance abuse program, parenting classes, Arizona Families First substance abuse assessment, random urinalysis (UA) and hair testing, parent aide, transportation, visitation, a psychiatric evaluation, and a psychological evaluation.

¶14 In November 2010, Mother was arrested and subsequently charged with two counts of burglary in the third degree, class 4 felonies, possession of a dangerous drug (methamphetamine), a class 4 felony, and possession of drug paraphernalia, a class 6 felony. Mother entered into a plea agreement and pled guilty to one count of third-degree burglary and one count of possession of drug paraphernalia related to methamphetamine. The court suspended imposition of sentence and placed Mother on four years' probation for the burglary count and three years' probation for the paraphernalia count.

¶15 In December 2010, John P. DiBacco, Ph.D., conducted a psychological evaluation of Mother. Mother disclosed to Dr. DiBacco that she had started her methamphetamine use at age

thirteen. Dr. DiBacco diagnosed Mother with amphetamine dependence, and possible adult antisocial disorder, depressive disorder (not otherwise specified), anxiety disorder (not otherwise specified), and personality disorder (not otherwise specified). Dr. DiBacco concluded that Mother "presents as an extremely high-risk parent and presently does not appear to have the stability or ability to care for her child or children. Unfortunately, she has been offered services before and has marginally cooperated and now she is in another similar situation similar to past events." Dr. DiBacco recommended that Mother participate in an in-patient drug program or an intense out-patient drug program. Dr. DiBacco concluded that if Mother failed to participate in the services offered, that an alternative permanency plan to family reunification should be considered. Dr. DiBacco further stated that Mother's "chronic drug problem is significant [] to the extent that she has compromised all of her children" and "[u]nfortunately the prognosis is poor that [Mother] will be able to come up to speed to take care of her child."

¶16 In February 2011, Child Protective Services (CPS) specialist Billi Jo Stedman submitted a report to the juvenile court stating that:

[Mother] has not fully engaged in services and is not submitting UA's as required therefore there is no way to determine her length of sobriety to date. . . . her

participation [in services] continue[s] to be inconsistent. [Mother] continues to minimize her [methamphetamine] use stating that "meth does not affect me like it does most people." [Mother] continues to be unable to recognize how her meth use has interfered with her ability to parent.

¶17 Stedman filed another progress report with the juvenile court in May 2011, stating that "[a]lthough [Mother] has made some progress and has engaged in treatment that she never had before, [Mother] is not sober and continues to struggle with her commitment and her priorities." She concluded that severance and adoption were in Ariza's best interest.

¶18 Mother entered into a month-long chemical dependency in-patient treatment program in May 2011, but checked out after only five days stating, "I don't even want to be here" and "I want to leave, I don't want to be here." Mother also continued to either fail to take her random UA tests or test positive for alcohol during this period of time. After leaving the treatment program, Mother failed to obtain stable employment or housing.

¶19 In June 2011, ADES petitioned for termination of Mother's parental rights to Ariza, arguing that Mother neglected Ariza, was unable to discharge her parental responsibilities due to a history of chronic abuse of dangerous drugs, controlled substances, or alcohol, and that Ariza had been in an out-of-home placement for six months or longer. Ariz. Rev. Stat. § 8-533(B)(2), (3), and (B)(8)(b) (Supp. 2011).

¶10 At the initial termination hearing, the juvenile court provided Mother with a Form 3 Notice to Parent in Termination Action³ and changed the case plan to severance and adoption. Despite receiving the Form 3 notice, Mother failed to attend the September 2011 contested severance hearing. The court found that Mother did not show good cause for her failure to appear and proceeded with the trial in her absence. Mother's counsel subsequently informed the court during trial that she had spoken with Mother and Mother indicated she had overslept and did not have transportation to get to court. After hearing this explanation, the court again found that it did not constitute good cause.

¶11 CPS specialist Stedman testified that Mother neglected or failed to protect Ariza based on her prior dependencies and "inability and refusal to remedy the situation that caused

³ Form 3 states in pertinent part:

You are required to attend all termination hearings. If you cannot attend a court hearing, you must prove to the Court that you had good cause for not attending. If you fail to attend the Initial Termination Hearing, Termination Pre-trial Conference, Status Conference, or Termination Adjudication Hearing without good cause, the Court may determine that you have waived your legal rights and admitted the grounds alleged in the motion/petition for termination. The Court may go forward with the Termination Adjudication Hearing in your absence and may terminate your parental rights to your child based on the record and evidence presented.

[Ariza] to come into care." Stedman also testified that Ariza was born exposed to methamphetamine and amphetamine and had adverse effects as a result of this exposure. Stedman stated that from the end of June 2011 through the September 2011 severance hearing, Mother failed to comply with services, did not participate in treatment, and failed to submit random UA testing. Stedman noted that Mother did participate in visitations, but was unprepared and did not have a diaper bag or basic necessities to care for Ariza. Stedman further testified that Ariza had been in an out-of-home placement for more than six months and Mother substantially neglected or willfully refused to remedy the circumstances which caused Ariza's out-of-home placement.

¶12 Stedman testified without objection that Mother was unable to parent because of her chronic substance abuse and there were reasonable grounds to believe that Mother's condition would continue for a prolonged, indeterminate period of time. Stedman based this conclusion on Mother's extensive history with methamphetamine, her continued abuse of substances, her inability "to put the needs of her child above that of her own," and her financial and housing instability. Stedman further concluded that adoption was in Ariza's best interest; Ariza was adoptable and residing in a licensed foster home that was meeting her needs; and the foster parents expressed an interest

in adopting her. Finally, Stedman stated that Ariza would benefit from the termination of Mother's rights because she would have stability and permanency for the rest of her life.

¶13 The juvenile court terminated Mother's parental rights and found that ADES had proven by clear and convincing evidence, the following three grounds: neglect, substance abuse, and Ariza's out-of-home placement for six months or longer. The court specifically found that evidence supporting termination based on chronic abuse of dangerous drugs, controlling substances, or alcohol included: failing to participate in services from June 20, 2011 onward, with the exception of unprepared visitations; failing to maintain contact with Stedman; and Stedman's credible testimony that Mother's conduct since June 20, 2011 "reflects that [Mother] is exhibiting the behaviors that she typically exhibits when she uses methamphetamine and although no UAs reflect that use[,] that's only because she did not test since June 20, 2011." The juvenile court also found that it was in Ariza's best interest to terminate Mother's parental rights.⁴

¶14 We have jurisdiction under Arizona Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(B).

⁴ Mother does not contest the juvenile court's best interest ruling and we therefore do not address it on appeal.

DISCUSSION

¶15 Mother argues on appeal that the juvenile court erred in terminating Mother's parental rights (1) based on unverified methamphetamine abuse and (2) because Mother was making an effort to reunify with Ariza.⁵

¶16 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance and that a preponderance of the evidence shows severance is in the child's best interest. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm the judgment unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998)

⁵ Mother states in the conclusion of her opening brief that "perhaps the Court erred in not continuing the Trial to give [Mother] a chance to appear." Mother, however, failed to further address this argument in her brief. ADES argues we should not consider this argument because Mother has abandoned it on appeal. We agree and we therefore consider the argument waived. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) ("In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.") (citation omitted). ADES also argues that we should not consider Mother's other two aforementioned arguments on appeal. We will, however, address those arguments.

(citations omitted). “[T]he juvenile court will be deemed to have made every finding necessary to support the judgment.” *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted).

¶17 First, Mother maintains that the juvenile court erred in ruling there was clear and convincing evidence of methamphetamine abuse. We disagree.

Individuals who are unwilling or unable, due to drug addiction, to accept their parental responsibilities and who thereby lose custody of their children to the State, need to be aware that they run the risk of having their parental rights permanently terminated if they substantially neglect to remedy their addiction in the [time] following the removal of their children.

Maricopa County Juv. Action No. JS-501568, 177 Ariz. 571, 580, 869 P.2d 1224, 1233 (App. 1994). When a mother’s actions demonstrate that she has “expended only minimal effort toward remedying her addiction,” such behavior provides sufficient evidence to support the court’s findings and conclusions that justify termination of the person’s parental rights. *Id.* at 576, 869 P.2d at 1229; *see also* A.R.S. § 8-533(B)(8)(a).

¶18 The evidence is clear that Mother has an extended history of chronic methamphetamine abuse; she repeatedly either failed to provide mandatory random UAs or tested positive for alcohol for the UAs she did provide; she has four other children previously removed from her care based on her methamphetamine use and neglect; and she failed to complete the recommended

treatment services, including substance abuse counseling and programs. Additionally, Mother was arrested and convicted of possession of drug paraphernalia related to methamphetamine after Ariza was removed from her care. Moreover, Dr. DiBacco concluded after evaluating Mother that Mother was amphetamine dependant, her "chronic drug problem is significant [] to the extent she has compromised all of her children" and "[u]nfortunately the prognosis is poor that [Mother] will be able to come up to speed to take care of her child." Thus, the record supports the juvenile court's severance of Mother's parental rights based on her inability to discharge her parental responsibilities due to a history of chronic abuse of dangerous drugs, controlled substances, or alcohol and there were reasonable grounds to believe that the condition would continue for a prolonged, indeterminate period. A.R.S. § 8-533(B)(3).

¶19 Mother also argues that the court erred in severing her parental rights because she was making an effort to participate in reunification services. Mother was only partially compliant with reunification services. Although she participated in visitation with Ariza, she was frequently not prepared to take care of Ariza's basic needs at these visitations. Mother also failed to: consistently provide the requisite UAs, complete the recommended substance-abuse treatment programs, and obtain stable housing, finances, and

employment. Thus, although Mother may have complied with some reunification services, she did not participate in or complete the vast majority of services necessary to demonstrate her ability to adequately care for Ariza. As such, we cannot say the juvenile court erred severing her rights to Ariza.

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's judgment terminating Mother's parental rights to Ariza.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge