IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 04/12/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

BRITTNEY C.,	)	1 CA-JV 11-0239
	)	
Appellant,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, EVAN S.,	)	Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD18293

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Robert D. Rosanelli — Phoenix
Attorney for Appellant

Thomas C. Horne, Attorney General — Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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W I N T H R O P, Chief Judge

¶1 Brittney C. ("Appellant") appeals from the juvenile court's order terminating her parent-child relationship with Evan S. ("the child") based on substance abuse, *see* Ariz. Rev.

Stat. ("A.R.S.") § 8-533(B)(3) (West 2012),[1] nine months' cumulative out-of-home placement, *see* A.R.S. § 8-533(B)(8)(a), and fifteen months' cumulative out-of-home placement.[2] *See* A.R.S. § 8-533(B)(8)(c). Appellant argues that the court erred in terminating her parental rights on these bases, and in finding that the Arizona Department of Economic Security ("ADES") made a diligent effort to provide her with appropriate reunification services. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[3]

¶2 Appellant, who was born in 1985, is the biological mother of the child. Appellant began using marijuana, alcohol, and methamphetamines when she was approximately thirteen or fourteen years old, and continued to abuse drugs into adulthood because she "didn't really see a need to" stop. When the child was born in 2004, both he and Appellant tested positive for marijuana. As a result, Child Protective Services ("CPS")

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[1] We cite the current Westlaw version of the statutes because no revisions material to our analysis have since occurred.

[2] The court also terminated the parental rights of the child's biological father ("Father") based on abandonment pursuant to A.R.S. § 8-533(B)(1). Father is not a party to this appeal.

[3] We view the facts in the light most favorable to affirming the juvenile court. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). To the extent conflicts exist in the evidence, it was for the juvenile court to resolve them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002).

referred Appellant to TERROS for substance abuse assessment and treatment. Appellant completed an intake and a two-session drug education course.

¶3 In January 2008, Appellant returned to TERROS to treat her "mood swings." She acknowledged having previously used "meth, weed, acid, coke, [and] ecstasy," but reported that she had been sober from substances other than alcohol since October 2007. She further reported that she did not plan to use drugs again and was living in a drug-free environment. After her intake evaluation, she did not follow up on services.

¶4 In 2007, before Appellant's second visit to TERROS, a custody case arose in family court between Appellant and the child's paternal grandmother ("Grandmother"), with whom the child had been living much of the time. Grandmother eventually became the child's legal guardian. In July 2009, CPS once again became involved due to continued fighting between Appellant and Grandmother, who accused Appellant of engaging in sexual activity with the child in the room, sexually abusing the child, and exposing the child to drug houses while Appellant was using drugs, including marijuana and methamphetamine. Appellant denied the allegations, although she tested positive for marijuana use on July 21, 2009. On July 30, 2009, CPS decided to remove the child from Grandmother's home and place him in a temporary foster home due to the extreme family conflict,

concerns over Grandmother's objectivity and the risk of emotional abuse, and the need for further assessment.

¶5 In August 2009, ADES filed a dependency petition, alleging the child was dependent as to both Appellant and Father. The court found that the child was dependent, and developed a case plan of family reunification. In furtherance of the case plan, ADES offered Appellant the following services: supervised visitation, transportation, parent aide services, counseling, a psychological evaluation, substance abuse assessment and treatment, urinalysis testing, and a psychological consultation.

¶6 In September 2009, Appellant submitted to random urinalysis testing twice through TASC, and she tested positive for marijuana each time. That month, she was arrested for driving under the influence. Appellant failed to appear for a hearing in that case, and the court issued a bench warrant for her arrest.

¶7 Meanwhile, from October 2009 to January 2010, Appellant failed to submit to fourteen consecutive required urinalysis tests. Appellant later admitted she did not test during this time because she knew she would test positive for marijuana.

¶8 In November 2009, Appellant completed an intake with TERROS for substance abuse treatment, in which she acknowledged

her continued marijuana use, and stated it was primarily to help her sleep or relax. TERROS referred her for group counseling and random drug testing. In November 2009 and January 2010, Appellant submitted to a psychological evaluation by Dr. John P. DiBacco, Ph.D., who diagnosed her with cannabis abuse. He also concluded Appellant had "demonstrated instability across her lifespan" and was then unable to adequately parent a child, and her continued drug abuse would place the child's safety at risk.

¶9 In mid-January 2010, Appellant resumed urinalysis testing, and she tested positive for marijuana three times that month. That same month, she completed an intake with Southwest Human Services for parent-aide services. The parent aide established numerous goals for Appellant related to parenting and achieving and maintaining a drug-free lifestyle.

¶10 On February 1, 2010, Appellant provided her first negative urinalysis test since the dependency order, although she again tested positive on February 11 and 18, 2010. From February 26 to April 27, 2010, Appellant tested negative for marijuana nine consecutive times (although she tested positive for alcohol on February 26 and opiates on March 16). During this time, Appellant participated in and completed an outpatient substance abuse treatment program through TERROS. The program had covered numerous topics related to sobriety.

¶11 After Appellant completed the program, her TERROS counselor called her about entering an aftercare program. On May 12, 2010, the counselor spoke with Appellant, who reported she was committed to sobriety and was "no longer [] around those who use." Despite the counselor's encouragement, Appellant decided not to enter an aftercare program because she believed she "wasn't as addicted as some people are to other drugs."

¶12 On May 6, 14, and 17, however, Appellant tested positive for marijuana. From May 27 through June 17, 2010, Appellant skipped four drug tests. Appellant then tested positive for marijuana on June 22 and 30, and July 9, 2010. On June 24, 2010, Appellant acknowledged at a parent aide skills session that she was using marijuana to help her sleep. When asked at the severance hearing why she relapsed, she responded that she "just wasn't thinking."

¶13 When Appellant's parent aide referral ended at the end of June 2010, Appellant hadn't fully met any of her goals. CPS provided Appellant with a second referral.

¶14 From mid-July to October 19, 2010, Appellant submitted negative urinalysis tests, she regularly attended her parent aide services, and she completed a counseling intake with Jewish Family and Children's Services for counseling in August 2010.

¶15 In October 2010, Appellant learned that a warrant had been issued for her arrest due to her failure to appear in court

on the driving under the influence charge. She ultimately pled guilty to the charge. During this time, she stopped submitting to urinalysis tests, and she missed ten consecutive tests between October 26, 2010, and January 3, 2011, despite having been advised by her parent aide that CPS would consider the missed tests as indicative of positive tests. She nonetheless continued to attend counseling and parent aide services.

¶16 As a consequence of her driving under the influence conviction, Appellant was in jail from January 3 until May 4, 2011. While incarcerated, her referrals for counseling and parent aide services closed without her having met her goals.

¶17 At the February 9, 2011 report and review hearing, the juvenile court changed the case plan from family reunification to severance and adoption. The court further ordered ADES to file a motion for termination of the parent-child relationship.

¶18 On February 22, 2011, ADES filed a motion to terminate both Appellant's and Father's parental rights as to the child. As to Appellant, ADES alleged the grounds of substance abuse under A.R.S. § 8-533(B)(3), nine months' out-of-home placement under A.R.S. § 8-533(B)(8)(a), and fifteen months' out-of-home placement under A.R.S. § 8-533(B)(8)(c). The motion further alleged that termination of both parents' parental rights was in the child's best interest.

¶19 After Appellant was released from jail, she completed an intake to resume counseling. She also resumed drug testing with TASC on July 19, 2011, more than two months after her release. After she resumed drug testing, Appellant's results were negative, although she missed testing for two weeks in August and September before the severance hearing.

¶20 On September 30 and October 11, 2011, the juvenile court held a contested hearing on the severance motion. After taking the matter under advisement, the court granted the motion to terminate the parental rights of Appellant and Father. With regard to Appellant, the court found that each of the alleged grounds for severance existed, that ADES had made a diligent effort to provide reunification services, and that termination of Appellant's parental rights was in the child's best interest. On October 28, 2011, the court filed a signed order terminating Appellant's (and Father's) parental rights to the child.

¶21 We have jurisdiction over Appellant's timely appeal. *See* A.R.S. §§ 8-235(A), 12-120.21(A)(1), 12-2101(A)(1); Ariz. R.P. Juv. Ct. 103(A).

ANALYSIS

I. Severance Pursuant to A.R.S. § 8-533(B)(3)

¶22 Appellant argues that the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(3). We disagree.

¶23 The right to custody of one's children is fundamental, but it is not absolute. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Id*. at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B)).

¶24 Because the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings," *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Id*.; *accord Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, 982 P.2d 1290, 1291 (App. 1998). We presume that the juvenile court made every finding necessary to support the judgment, *see Pima County Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985), and defer to

the court's resolution of conflicting inferences and claims if supported by reasonable evidence. *See Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978); *O'Hern v. Bowling*, 109 Ariz. 90, 92-93, 505 P.2d 550, 552-53 (1973).

¶25 Under A.R.S. § 8-533(B)(3), the juvenile court may terminate a parent-child relationship on the following ground:

> That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.

¶26 This language means that, before a court may terminate parental rights under this subsection, there must be evidence that the ground alleged "somehow deprives the parent of the ability to effectively care for the child." *Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 558, 748 P.2d 785, 787 (App. 1988) (citation omitted). A parent's temporary abstinence from drugs does not outweigh a significant history of drug abuse or the parent's inability to abstain during the case. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 29, 231 P.3d 377, 383 (App. 2010).

¶27 In its signed order terminating Appellant's parental rights as to the child, the juvenile court found that Appellant

was unable to discharge her parental responsibilities because of her history of chronic substance abuse:

> 13. The Mother has used illicit drugs since she was thirteen years old. Mother's self-reported drug use included methamphetamines and marijuana. She received a conviction for a Driving Under the Influence (alcohol) while this matter was pending but she denied a problem with alcohol abuse.
>
> 14. Mother completed [a] substance abuse treatment program but relapsed after "successfully" completing the program.
>
> 15. Mother failed to complete a recommended After Care Program once she completed the substance abuse program.
>
> 16. Mother failed to drug test on a regular basis. She denies on-going drug use but did acknowledge that her failure to test gives rise to a presumption of on-going use.
>
> 17. Mother claims she did not recognize that marijuana use alone could result in the termination of her parental rights as she did not believe that the use of this particular illegal substance was serious.
>
> 18. Given Mother's minimizing of her drug use and her relapse after treatment and her failure to drug test on a regular and consistent basis, there is reason to believe that her condition will continue for a prolonged indeterminate period[.]
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> . . . .
>
> 20. Mother did not fully participate in services. She did not complete the parenting modules given to her by the Parent Aide. She did not fully or successfully complete the substance abuse treatment offered to her. Mother does not have housing appropriate for the child and she is unemployed. Mother did have a job but was terminated due to the number and placement of tattoos on her body. Mother claims she will obtain housing and employment if the child is returned to her but there is no reason to

> believe she will do this given her failure to do so thus far. Mother claims she did not do services as she lacked the necessary transportation. Without transportation, it is unlikely she will be able to obtain a job and without a job, she cannot realistically expect to locate suitable housing.

¶28 We conclude that reasonable evidence in the record supports the juvenile court's findings. Appellant admits that she has used marijuana for many years, and the record indicates that she has a long-standing history of substance abuse. During the approximately twenty-six months that ADES offered services to her, Appellant failed to correct the circumstances that caused the child to be removed, and she was only confirmed sober for approximately three months of that time. Additionally, Appellant missed numerous urinalysis tests, and was arrested and incarcerated for driving under the influence of alcohol.

¶29 Further, at the severance hearing, Appellant's service providers opined that she failed to remedy both her substance abuse and her instability. Dr. DiBacco testified that Appellant needed to demonstrate one year of sobriety before it would be safe for CPS to return the child to her care. He stated that, since his evaluation of Appellant, he had reviewed her updated urinalysis, TERROS, parent aide, and counseling records. Based on his review, he opined that Appellant had not made appropriate changes in her life or demonstrated a sufficient period of sobriety to lower the risk that she posed to the child; instead,

she had continued to show a pattern of instability and drug use. Finally, he opined that Appellant's substance abuse would continue into the foreseeable future, and likely for a prolonged, indeterminate period.

¶30 Appellant's parent aide testified that Appellant had not sufficiently improved her parenting skills. The aide explained that Appellant had not learned how to consistently use proper discipline techniques, and had completed only six of the ten parenting modules. She also had not established stable housing during the case.

¶31 The CPS unit supervisor testified that Appellant had minimized her marijuana use, despite failing to show prolonged, consistent sobriety. The supervisor opined that Appellant's drug use would continue for a prolonged, indeterminate period, and that Appellant continued to have issues with parenting, stable income, and stable housing. She also opined that severance would be in the child's best interest.

¶32 Based on the aforementioned evidence, we conclude that reasonable evidence supports the juvenile court's findings that Appellant has a history of illicit drug abuse, that she is unable to discharge her parental responsibilities and effectively care for the child due to that drug abuse, and that there are reasonable grounds to believe that the condition will

continue for a prolonged indeterminate period pursuant to A.R.S. § 8-533(B)(3).

II. ADES's Effort to Provide Appropriate Reunification Services

¶33 Appellant contends that the TERROS drug program provided to her was inappropriate or inadequate because she was a marijuana user and others in the program "were hard drug abusers, not marijuana smokers." She also maintains that she should have been provided with ongoing services during her incarceration. Even assuming *arguendo* that Appellant has not waived her argument, we conclude that reasonable evidence supports the juvenile court's finding that ADES made a sufficient effort to provide appropriate reunification services to Appellant.

¶34 Generally, before seeking to terminate a parent-child relationship, ADES must make "reasonable" efforts to preserve the family as a necessary constitutional element to overcome the "fundamental liberty interest of the natural parents in the care, custody and management of their child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶ 32, 971 P.2d 1046, 1052-53 (App. 1999) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)); *see also* A.R.S. § 8-533(B)(8) (requiring "the agency responsible for the care of the child [to make] a diligent effort to provide appropriate reunification services").

This means that ADES must make a reasonable effort to rehabilitate the parent by offering services designed to improve the parent's ability to care for the child. *Mary Ellen C.*, 193 Ariz. at 192, ¶¶ 33-34, 971 P.2d at 1053. However, ADES is not required to provide every conceivable service, *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), or to provide futile services. *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989). Further, although a parent need not "completely overcome [her] difficulties" within the statutory period, the parent must "make appreciable, good faith efforts to comply." *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994).

¶35 We note that Appellant does not explain how the drug treatment offered her was inadequate or not properly tailored to her needs, and she does not show that she requested additional or alternate services to meet her needs. With the exception of asking for more visits at the report and review hearing on July 29, 2011, Appellant did not request additional services at the report and review hearings or object to the services provided her by ADES. Moreover, at each of the report and review hearings, the court found that ADES had made reasonable efforts to provide reunification services, and Appellant did not object to the court's findings.

¶36 At the severance hearing, Appellant admitted she had known since the beginning of the case what circumstances CPS wanted her to remedy. She also admitted she had not informed her case manager the services were inadequate or she needed additional services. She explained that she was not serious about complying with services at first, and the concept of losing the child did not "hit" her until several months before the severance hearing. Appellant also testified that she did not believe she needed additional substance abuse treatment, and that her use of marijuana was "just out of pure laziness and boredom." Additionally, Appellant explained that, after learning of her arrest warrant, she believed she had "screwed up" her chance to reunite with the child and therefore "kind of stop[ped] doing everything," including drug testing.

¶37 In this case, ADES provided Appellant with numerous services - including parent-aide services, transportation assistance, visitation, counseling, a psychological evaluation, substance abuse assessment and treatment, urinalysis testing, and a psychological consultation – all aimed at helping her remedy her substance abuse problems, become an effective parent, and stabilize her mental well-being. The outpatient substance abuse treatment program Appellant participated in through TERROS covered numerous topics related to sobriety, including spirituality and recovery, self-defeating beliefs and behaviors,

building stable foundations for recovery, identifying high-risk situations, coping with using urges, warning signs of relapse, maintaining recovery, and identifying triggers. Although Appellant completed the initial TERROS program and made an effort regarding some of the services offered by ADES, she also relapsed after "successfully" completing the substance abuse treatment program, failed to complete the recommended aftercare program for substance abuse, and failed to submit to testing on a regular basis, giving rise to a presumption of on-going substance abuse. On this record, we cannot say that the services offered Appellant were inadequate or inappropriate for Appellant.

¶38 Additionally, we find unavailing Appellant's argument that ADES should have provided her with services while she was in jail. Appellant fails to recognize that it was her own behavior that caused her inability to participate in services for that period of time, and she fails to point to any services that ADES could have provided her while she was in jail. The record also does not indicate that she requested services in jail or sought out services that may have been provided. Finally, we note that Appellant's compliance with services even while not incarcerated was spotty at best. The record supports the juvenile court's findings.

III. Severance Pursuant to A.R.S. § 8-533(B)(8)(a) and (c)

¶39 Appellant also contends that the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(8)(a) and (c), the subsections allowing for termination based on cumulative out-of-home placement of nine and fifteen months. However, the existence of any one of the enumerated statutory grounds is sufficient to justify termination. *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988). Because we find that reasonable evidence supports termination pursuant to A.R.S. § 8-533(B)(3), we need not consider the additional grounds found by the juvenile court. *See JS-501568*, 177 Ariz. at 575, 869 P.2d at 1228.

IV. Best Interest of the Child

¶40 Appellant does not specifically challenge the juvenile court's finding that termination of her parental rights was in the best interest of the child. *See* A.R.S. § 8-533(B) (requiring the court to "consider the best interests of the child"). In any event, we conclude that substantial evidence in the record supports this finding.

¶41 With regard to the child's best interest, the court found as follows:

> By a preponderance of the evidence, the Department [ADES] has proved that the best interests of the child would be served by the termination of the

> parent-child relationship. A termination of the parental rights would further the plan of adoption.
>
> 22. Adoption will allow the child to have a permanent, safe and loving home that is able to meet all of [his] educational, medical, social and developmental needs.
>
> 23. The child is placed with his paternal grandmother with whom he has a significant bond. She has been his caretaker for a significant period and she has demonstrated her ability to meet his needs. She is committed to providing him a permanent home.

¶42 To support a finding that termination is in a child's best interest, the petitioner must prove that the child will affirmatively benefit from the termination. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990). This means that "a determination of the child's best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship." *Id*. at 5, 804 P.2d at 734. The best interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child, *id*. at 6, 804 P.2d at 735, or even that the child is adoptable. *JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶43 In this case, evidence reasonably supports the juvenile court's finding that termination of Appellant's parental rights was in the child's best interest. At the time of the severance hearing, the child remained placed with Grandmother, with whom he has a significant bond, and he was

adoptable. Moreover, Appellant was unemployed and lacked suitable housing. Concluding that evidence reasonably supports the juvenile court's finding that termination of Appellant's parental rights was in the child's best interest, we affirm the court's order terminating Appellant's parental rights to the child.

CONCLUSION

¶44 The juvenile court's severance order is affirmed as to Appellant.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
DIANE M. JOHNSEN, Presiding Judge

_____/S/_____
PETER B. SWANN, Judge