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



DIVISION ONE
FILED: 06/05/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DESIREE H.,) No. 1 CA-JV 11-0255
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103(G), Ariz. R. P.
SECURITY, H.W.,) Juv. Ct.; ARCAP 28)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD504477

The Honorable Peter A. Thompson, Judge

AFFIRMED

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By Eric Devaney, Assistant Attorney General
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Mesa

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Phoenix

B R O W N, Judge

¶1 Desiree H. ("Mother") appeals from the juvenile court's order terminating her parental rights to her son, H.W. ("the child").¹ For the following reasons, we affirm.

BACKGROUND

¶2 The child was born in September 2006. On August 12, 2009, Mesa Police arrested Brian W., one of the child's purported fathers,² for aggravated driving under the influence. The police found the child in the vehicle unrestrained and trying to drink from a bottle of alcohol. The child was dehydrated, dirty, and wearing only a soiled diaper. Concerned about his safety, Child Protective Services ("CPS") took temporary custody of the child and placed him in foster care. In a team decision-making meeting held the following day, Mother admitted that she knew of Brian's drug problem and allowed him to take the child unsupervised the day of the incident. Mother also stated that she had used methamphetamine six weeks prior and that her rights to her two other children had been severed in 2004. Mother further reported that she had been living with friends since being asked to leave Brian's mother's home.

¹ On the court's own motion, we amend the caption in this appeal to refer to the child solely by his initials.

² Brian W.'s parental rights to the child were severed in August 2011. The rights of two other alleged fathers were also severed in the current action, but they are not parties to this appeal.

¶13 Several days later, the Arizona Department of Economic Security ("ADES") filed an out-of-home dependency petition, citing in part its concern over Mother's prior CPS history, her admission to recent drug use, and her unstable housing situation. Following a contested dependency hearing, the court found the child dependent in September 2009 and approved a case plan of family reunification.

¶14 ADES referred Mother for a number of reunification services, including substance abuse treatment and urinalysis testing. In September 2009, Mother began a treatment program through TERROS. She took more than a year to complete the three-month program and was inconsistent in her participation. However, she regularly returned negative urinalysis tests.

¶15 Mother also received visitation, parenting classes, and parent-aide services. She attended the majority of her visits, but was often distracted, and the CPS case manager reported being concerned that Mother was not always focused on the child. Also, during the dependency, Mother lived with her "best friend," Dawn, and Dawn's four young children. Mother missed several visits with the child because she frequently had to care for Dawn's children. Further, the CPS case manager and other service providers expressed concern that Mother and Dawn were unwilling to adjust their parenting and home routine to

meet the child's special emotional and behavioral needs and that Dawn's home was not an appropriate environment for the child.³

¶16 In September 2010, Mother ended parent-aide services and began attending family therapy with the child. Mother consistently attended the sessions, but the therapist reported the meetings were largely unproductive because Mother was not receptive to feedback or suggestions regarding her parenting. The child "began to decompensate" and the therapist determined it would be best to continue individual therapy with the child without Mother present. Mother also received two psychological evaluations and treatment for depression.

¶17 In December 2010, a family reunification team was put into place to transition the child back into Mother's home. However, the team closed its services in January 2011 out of concern that Mother was not able to appropriately parent the child and that the living environment at Dawn's home was too chaotic. The team also reported that Mother refused to

³ While in care, the child was diagnosed with neglect of a child, oppositional defiant disorder, and parent-child relational problem. The CPS case worker testified at the termination hearing that the child has significant control and behavioral issues and needs a highly structured environment. The child's first foster placement ended in March 2010 because the foster parents were unable to control his behaviors. He was then moved to a temporary placement until being transferred to his current foster home in June 2011.

incorporate its suggestions when she had difficulty parenting the child.

¶8 In June 2011, the court granted ADES's motion to change the case plan to severance and adoption, and in July 2011 ADES moved for termination of Mother's rights to the child. The motion alleged mental deficiency under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (Supp. 2011), and fifteen months out-of-home placement under A.R.S. § 8-533(8)(c). The court held a two-day termination hearing in December 2011. Following the hearing, the court found that there was insufficient evidence to terminate Mother's rights on the mental deficiency ground, but that ADES had presented clear and convincing evidence to satisfy the requirements for termination under A.R.S. § 8-533(8)(c). The court explained its ruling in part as follows:

Although [Mother] states she can and will do what is needed to properly care for [the child], she remains in the same chaotic environment with no demonstrated changes or ability to adapt to [the child's] needs. . . . In short, [Mother] will continue to live as she has lived, do what she has done and expect [the child] to adapt.

. . . .

Unfortunately, after participation in services, [Mother] is not able to parent her child at this time. The previous two years and four months have provided abundant opportunity for [her] to demonstrate the necessary changes and progress needed to

provide a stable home . . . [and] to minimally parent [the child].

The court also found that termination was in the child's best interests. Mother timely appealed.

DISCUSSION

¶9 Termination of the parent-child relationship is appropriate if at least one of the statutory grounds alleged is supported by clear and convincing evidence and the termination is in the best interests of the child. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶¶ 3-4, 53 P.3d 203, 205 (App. 2002). We "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." *Id.* at ¶ 4.

¶10 Mother first challenges the trial court's findings that she failed to remedy the circumstances that caused the child to be in care and that she will not be capable of exercising proper and effective parental care and control in the near future.⁴ In determining whether a parent has remedied the

⁴ Mother also argues the portion of the juvenile court's order which terminated her parental rights "pursuant to A.R.S. § 8-533(B)(3)" contains a typographical error. We agree, as the court clearly stated earlier in its ruling that "the state has failed to meet its burden" as to that ground. We therefore need not address the merits of Mother's argument regarding the insufficiency of the evidence proving Mother's mental illness. Additionally, we need not address the court's finding that

circumstances causing the child to be in care, we consider "those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotations and citations omitted).

¶11 We conclude there is sufficient evidence in the record to support the court's findings. Although ADES acknowledged that Mother has remedied her substance abuse problem, it also presented substantial evidence that Mother is not able to provide appropriate housing or parenting for the child. At the time of severance, Mother continued to live in the same environment that her service providers had warned her was chaotic and not conducive to the child's needs. Dr. Daniel Juliano, the psychologist who evaluated Mother in April 2011, reported that Mother "could not understand why" her living situation and relationship with Dawn was a problem. However, the evidence showed that Mother often missed visits, parenting sessions, and team meetings because she was caring for Dawn's children, and that she often had to care for Dawn's children when the visits were conducted at her home.

severance is in the best interests of the child, as Mother has not challenged that finding on appeal.

¶12 The CPS case manager also testified that Mother's responsibility in caring for the other children "impeded her ability" to comply with the tasks CPS required of her and indicated that the child was not Mother's first priority. This sentiment was also expressed by the parent aide, who reported that Mother was not completing her homework prior to their sessions and that there were dogs in the home during visits, despite the fact that the child is allergic. Also, the reunification team reported concerns that Dawn would be co-parenting the child and that she had expressed an unwillingness to adjust to the child's needs. Further, the family reunification team, therapist, and CPS case worker all reported that Mother has failed to acknowledge the child's special needs and has refused to modify her parenting to meet those needs.

¶13 Nevertheless, Mother asserts that she should not be faulted for her failure to appropriately parent the child because he "is an out-of-control, unmanageable terror" and is impossible to parent. Mother cites the behavioral difficulties the child has had while in foster care and asserts she "has demonstrated that she is able to parent the child as effectively as his three sets of foster parents." We disagree. Mother's inability to properly parent the child is most recently evident in the report of the family reunification team showing that during Mother's final weekend visit with the child she called

the child's therapist to seek help in dealing with him, reporting that his behaviors were "uncontrollable." The report further indicated that Mother did not implement the techniques that she had been taught over the previous year. In contrast, the CPS case manager testified that the child is doing well in his current placement because he receives individualized attention and his emotional needs are being met.

¶14 Therefore, sufficient evidence exists in the record to support the court's finding that Mother has failed to remedy the circumstances causing the child to be in care. Further, Mother was provided a number of services over the course of more than two years. As the trial court noted, she had "abundant opportunity" to demonstrate her ability to provide a proper home and care for the child. Thus, we find the court did not err in finding that Mother would be unable to exercise proper care and control in the near future.

¶15 Mother next briefly argues that the reunification services ADES provided to her were insufficient. Specifically, she asserts that the efforts of the family reunification team should not have been terminated after only one month and that she should have been provided with another parent aide after the reunification effort failed. Although 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,"

it is not required to provide every conceivable reunification service or attempt futile rehabilitative measures. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053 (App. 1999).

¶16 The child had already been in CPS care for sixteen months before ADES attempted reunification. During that time, ADES offered Mother a variety of services to assist with her mental health, substance abuse, and parenting issues. Mother was slow in taking advantage of some of these services and was consistently resistant to the service providers' feedback and suggestions on her parenting. Further, the family reunification team reported that Mother "was not willing to incorporate [its] suggestions during times when she was struggling to parent" the child. Also, following the child's final extended visit with Mother, the child had a bruise on his face and told his foster mother and therapist that Mother had hit him. The team therefore concluded that Mother was not "capable of meeting [the child's] needs or providing an environment and structure which would be safe for [the] child."

¶17 Mother cites no authority suggesting that the family reunification team must remain in place for ninety days when it believes its efforts are futile or that the child would be placed in an unsafe environment. Nor are we persuaded that ADES was required to provide Mother another parent aide after the

reunification effort failed, as it had already provided Mother with several appropriate services over the course of sixteen months. Accordingly, we reject Mother's suggestion that the reunification efforts of ADES in this case were inadequate.

CONCLUSION

¶18 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's rights to the child.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

RANDALL M. HOWE, Judge