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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SHANNON A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and CHRISTIAN N., Appellee.	2 CA-JV 2011-0061 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD200500053

Honorable Joseph R. Georgini, Judge

AFFIRMED

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Mesa
Attorney for Appellant

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By Claudia Acosta Collings
Tucson
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V Á S Q U E Z, Presiding Judge.

¶1 After a contested severance hearing, the juvenile court terminated appellant Shannon A.'s[1] parental rights to her child, Christian N., on the ground that he had been in a court-ordered, out-of-home placement for fifteen months or longer, Shannon had "been unable to remedy the circumstances" causing the placement, and "there [wa]s a substantial likelihood" she would "not be capable of exercising proper and effective parental care and control in the near future." A.R.S. § 8-533(8)(c). On appeal, Shannon essentially challenges the sufficiency of the evidence to sustain that statutory ground for severance.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless, as a matter of law, we must say that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We review the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 When Christian was born in August 2008, Shannon already had been involved in a dependency proceeding as to her three older children for several years.

[1]Shannon is also known as Shanendolh and Shanendolhn.

Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), had taken custody of her two oldest children in 2005, and Shannon had given birth to her third child during the dependency. Shannon eventually gave up her parental rights to one of the children, but the others had been returned to her care until the oldest child ran away. CPS then removed the remaining children "due to severe neglect including mother's use of illegal drugs, drug paraphernalia in the home, criminal activities and violent people in the home." Christian ultimately was placed in foster care.

¶4 The juvenile court adjudicated Christian dependent after Shannon failed to appear at a status review hearing and the initial dependency hearing. In January 2011 the court accepted ADES's recommendation to change Shannon's case plan goal from family reunification to severance and adoption. Shortly thereafter, on February 4, 2011, ADES filed a motion to terminate Shannon's parental rights to Christian pursuant to § 8-533(B)(8)(c). After a contested severance hearing, the court granted ADES's motion and this appeal followed.

¶5 Shannon first argues ADES failed to provide her with reasonable reunification services. To prevail on a motion to terminate parental rights based on any time-in-care ground found in § 8-533(B)(8), ADES must establish it made a diligent effort to provide the family with appropriate reunification services. ADES fulfills this duty by providing the parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not

required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶6 In this case, Shannon bases much of her argument on the fact that a psychological evaluation completed in 2009 was not included in the record. Quoting *In re Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), she argues that when ADES "neglects to offer the very services that its consulting expert recommends" it does not provide reasonable efforts at reunification and that, in this case, because the evaluation is not in the record, "[i]t is unknown if CPS followed through and offered appropriate services suggested by the mental health professional."

¶7 But, a court-appointed special advocate for Christian indicated in her report that as a result of the 2009 evaluation, Shannon had been "found eligible for psychotherapy with a psychiatrist" and had been offered such therapy. Shannon, however, had not "follow[ed] through on that service." Likewise, in reports to the juvenile court dated January 12, 2010 and May 20, 2010, Shannon's case manager, Bethany Kingston, indicated individual counseling was among the services provided to Shannon. In a later report, dated August 8, 2010, Kingston indicated Shannon had participated in individual counseling, but did "not appear to have made a behavioral change." That Kingston did not apparently herself refer Shannon to counseling[2] does not undermine the court's conclusion, clearly supported by the record, that ADES provided reasonable reunification services.

[2]ADES had offered Shannon individual counseling before Kingston became the case manager. And, at some point after Kingston took over her case Shannon was referred to counseling through a domestic violence shelter.

¶8 Indeed, as Shannon acknowledges, ADES provided her with parenting classes, parent aide and supervised visitation, substance abuse assessment and treatment, urinalysis, transportation, and family counseling. Shannon alleges that despite these services, Kingston "had written [her] off . . . as a parent for Christian" and was "merely going through the motions." In support of this contention Shannon quotes Kingston's testimony that "We didn't want Mom involved." But, as ADES points out, that statement was made in relation to child and family team meetings for Shannon's oldest child, in whose case reunification was not then being sought. In sum, reasonable evidence supports the juvenile court's conclusion that ADES made diligent efforts to provide Shannon with appropriate renunciation services.

¶9 Shannon further contends there was insufficient evidence to support the juvenile court's finding that she would be unable to parent in the near future. She asserts, "No expert witness or any witness testified Mother was unlikely to be able to parent in the near future." Kingston, however, testified "there [was a] substantial likelihood the parents will not be capable of exercising parental control in the near future." And, when asked why it was not "likely that the parents will not be able to parent in the near future," Kingston explained Shannon had "a long history of substance abuse, unstable housing, neglect of her children, and hasn't been able to remedy those circumstances in the past six years." To the extent Shannon suggests evidence of recent improvements in compliance with her case plan suggest she will likely be able to parent in the future, we decline her invitation to reweigh the evidence presented to the juvenile court. *See*

Lashonda M. v. Ariz. Dep't of Econ. Sec., 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005).

¶10 Next, relying on *In re Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 152 P.3d 1209 (App. 2007), Shannon maintains the juvenile court gave "undue weight" to events that occurred before Christian's birth. She contends the court was required to focus only on her conduct six months before the severance hearing. But, nothing in *Marina P.* designates the exact time period of a parent's action the court is to consider; rather the court in *Marina P.* emphasized that a court must consider whether circumstances exist at the time of the severance proceedings "that prevent a parent from being able to appropriately provide for his or her children." *Id.* ¶ 22.

¶11 In this case, the record shows that such circumstances did continue to exist at the time of the severance hearing, and that even within the six months preceding the hearing Shannon had taken insufficient action to remedy them. Shannon "began to be consistent" in visitation with Christian after ADES provided her with transportation in August 2010, attended case plan meetings, and completed one substance-abuse related program. But Kingston testified Shannon's overall participation in substance abuse assessment and treatment had been inconsistent throughout the case. Indeed, on the record before us, although Shannon apparently submitted to "oral fluid screen[s]" in relation to her substance abuse program, it does not appear that she complied with required urinalysis testing. As late as January 2011, only a few months before the hearing, ADES provided Shannon with urinalysis testing and she failed to comply, calling in at times, but failing to actually "test for substances." And, after a hearing in

January 2011, the juvenile court ordered Shannon to submit to urinalysis within fifteen minutes of the hearing, but she did not report for approximately two hours, at which time the sample she gave was "too dilute" to assure a valid negative result. Likewise, the court ordered Shannon to submit to a hair follicle test in February 2011, and although the test was negative for drug use, she did not complete that testing until the end of March, by which time, the case manager testified, the test "ha[d] no meaning."

¶12 Furthermore, Kingston testified Shannon had failed to establish a suitable, stable home and she did not have "the ability to meet the child's needs." Shannon acknowledged in her testimony that she did not "have a stable home" and would need a "couple of months" before she would be able to care for Christian, who was then nearly three years old and had been in care for over two years. As to employment, Shannon testified she had been working for a tax preparation company from January to April of 2011 and had been "doing customer service over the phone" and in-home sales demonstrations for two weeks before the hearing. Kingston acknowledged having received one paystub to establish Shannon's employment with the tax preparation company, but testified she did not believe Shannon had otherwise been employed since she took over as caseworker in the fall of 2009. Shannon acknowledged she had not been consistently employed before January 2011. All of this constitutes evidence from which the juvenile court could reasonably conclude that circumstances existed at the time of the hearing that continued to prevent Shannon from parenting Christian and that she had failed to remedy. *See* § 8-533(B)(8)(c); *Marina P.*, 214 Ariz. 326, ¶ 22, 152 P.3d at 1213; *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266.

¶13 For the reasons stated, the juvenile court's June 2011 order terminating Shannon's parental rights to Christian is affirmed.[3]

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

[3]We note that Shannon's counsel misrepresents the record at points in her opening brief. First, she states, "Child Protective Services never offered individual counseling." But, the record is clear that, even considering only those reports filed after Christian's birth, Shannon's caseworker reported repeatedly that individual counseling had been offered. And, when Shannon was asked at the severance hearing whether individual counseling had been mentioned to her "throughout this case," she responded that "It was supposed to be voluntary." Additionally, Kingston testified Shannon had received individual counseling before she became the case manager.

Counsel also asserts no testimony was given on Shannon's ability to parent in the future. As discussed above, however, the record does contain evidence on that point. In fact, counsel cites Kingston's testimony about Shannon's history of failure to remedy her circumstances, arguing "Miss Kingston could not state that it was likely Mother could not parent in the near future." But counsel omits that this testimony was in response to the state asking, "Why is it likely that the parents will not be able to parent in the near future?" Similarly, as also discussed above, counsel misrepresents the context of Kingston's statement about Shannon's involvement in her oldest child's case.

These misrepresentations suggest either a lack of diligence or a lack of candor to this court, and we strongly caution counsel to more carefully consider her arguments in relation to her ethical duties in the future. *See* ER 3.3, Ariz. R. Prof'l Conduct, Ariz. R. Sup. Ct. 42.