

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 18 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GRACE D.,)	2 CA-JV 2011-0067
)	DEPARTMENT B
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY, MADELINE G., and)	
JASMINE G.,)	
)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18279700

Honorable Hector E. Campoy, Judge

AFFIRMED

Thea M. Gilbert

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Madeline G. and Jasmine G.

ESPINOSA, Judge.

¶1 Grace D., mother of Madeline G., born in June 2001, and Jasmine G., born in December 2004, appeals from the juvenile court’s June 2011 order terminating her parental rights to the children based on the grounds of length of time in court-ordered out-of-home care (fifteen months or longer), and the termination of her rights to another child on the same basis “within the preceding two years.” *See* A.R.S. § 8-533(B)(8)(c), (B)(10). None of Grace’s challenges to the court’s order warrants reversal for the reasons stated below.

¶2 The history of this case is set forth in the juvenile court’s thorough, well-reasoned minute entry dated June 20, 2011. We see no purpose in reiterating the court’s order in its entirety; rather, we adopt it, being well-supported by the record before us. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002). Accordingly, we adopt the court’s findings of fact and approve its conclusions of law. *See id.* We address Grace’s arguments in the order presented, referring to the court’s factual findings as they relate to the issues raised.

¶3 Grace first contends her children were deprived of the effective assistance of counsel. She insists she has standing to raise this claim because the ineffectiveness of her children’s counsel and counsel’s alleged ethical violations affected her rights and because she “is the only party in the termination proceeding likely to raise the issue of ineffective assistance of counsel by the Minors’ representative.” She appears to be complaining that counsel conflated her roles as the children’s attorney with that of a

guardian ad litem and that the court improperly failed to appoint a separate guardian ad litem. We are not persuaded she is entitled to relief on this ground.

¶4 Whether a party has standing to raise a claim is a question of law, which we review de novo. *See Karbal v. Ariz. Dep't of Revenue*, 215 Ariz. 114, ¶ 6, 158 P.3d 243, 245 (App. 2007). That Grace is an aggrieved party for purposes of Rule 103(A), Ariz. R. P. Juv. Ct., and A.R.S. § 8-235 and therefore has the right to appeal the termination order does not give her standing to raise these claims. *See In re Pima Cnty. Severance Action No. S-113432*, 178 Ariz. 288, 291, 872 P.2d 1240, 1243 (App. 1993) (finding father lacked standing to assert conflicts of interest between siblings required appointment of independent counsel or guardian ad litem for children). But even assuming we were to agree with Grace that she had standing to raise these claims insofar as they affected the order as against her, she has not sustained her burden to establish the juvenile court abused its discretion or that her constitutional rights were violated. As discussed below, there was an abundance of evidence supporting the court's order. These alleged errors had minimal, if any, effect on the course of events that resulted in the filing of the motion to terminate her rights and the court's granting of that motion.

¶5 Grace next contends the juvenile court misinterpreted the terms, "within the preceding two years" in § 8-533(B)(10). She argues the court erred when it interpreted the statute to mean that the time period should be measured from when the motion or petition to terminate the parent's rights is filed, not from the time of the termination order. But we may affirm an order terminating parental rights if we can sustain the ruling on any one of the statutory grounds for severance. *See Michael J. v. Ariz. Dep't of Econ.*

Sec., 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). Because we conclude, as discussed below, there was ample evidence supporting the juvenile court’s termination of Grace’s parental rights on the ground of length of time in court-ordered care, we need not address this issue. *See id.*

¶6 With respect to the ground of length of time in care, Grace apparently challenges the sufficiency of the evidence to support the finding that ADES had made reasonable efforts to provide her with adequate reunification services. She accuses ADES of failing to follow the “recommendations of their consulting experts” and asserts they “change[d] therapists to suit their own agenda.” She insists she “was not the focus of the reunification efforts and that she was largely ignored,” arguing that “[d]uring most of 2010 the focus of therapeutic services was on the Father and Jasmine.” Grace also challenges the sufficiency of the evidence to support the juvenile court’s finding that terminating her parental rights was in the children’s best interests. She contends the court should not have considered ADES’s recommendation because it had placed the children with their father at one point but subsequently had to remove them after he relapsed and began using cocaine again. Grace speculates that had the court appointed a guardian ad litem independent from counsel, “perhaps a valid recommendation could have been presented to the trial court,” asserting that in the absence of a “valid recommendation” or evidence regarding the children’s wishes, the court “should not have found termination in the best interests of the children.”

¶7 In order to terminate a parent’s rights, the court must find the record contains clear and convincing evidence that at least one of the statutory grounds for

termination exists, *see* Ariz. R. P. Juv. Ct. 66(C); *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004), and that a preponderance of the evidence establishes terminating the parent's rights is in the child's best interest, *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "We will review a juvenile court's termination order in the light most favorable to sustaining the court's decision and will affirm it 'unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.'" *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009), *quoting* *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*). If there is reasonable evidence in the record supporting the factual findings upon which the order is based, we will affirm. *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶8 To a large degree, Grace is asking us to reweigh the evidence on appeal. This we will not do. We defer to the juvenile court with respect to any factual findings it made because that court is the trier of fact and "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d at 945. The juvenile court must decide, after exercising its discretion to assess the witnesses' credibility and weigh the evidence presented, whether the evidence is clear and convincing as to at least one statutory ground. *Id.* If there are conflicts in the evidence, it is for that court to resolve them. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶9 With these standards in mind, we have reviewed the juvenile court’s detailed minute entry. The court found the children had been removed from the parents’ custody four years earlier, in June 2007, noting that none of them had ever been returned to Grace’s custody. The court identified the kinds of services ADES had offered, specifying that these services were designed to assist her in changing her lifestyle, one that had subjected the children to substance abuse and domestic violence. The court characterized Grace’s engagement in these services as “inconsistent and insufficient,” specifying some of the evidence it had relied on in reaching this conclusion. The court found Grace had not regularly attended individual and group counseling or treatment sessions, despite the urging of her case managers, and her overall participation in services had been poor. Grace allowed her AHCCCS¹ eligibility to lapse, and the court found her failure to participate meaningfully in various group and individual therapy and treatment sessions had persisted in 2011. The court noted Grace continued to associate with persons who negatively influenced her and engaged in criminal conduct.

¶10 The record supports these and other findings, including the finding that termination of Grace’s parental rights was in the children’s best interests. Additionally, the juvenile court addressed Grace’s criticism of the failed placement of Jasmine and Madeline with their father, rejecting that as a basis for negating the grounds asserted for terminating her rights. The court found

the mother’s assertion to be ironic and wholly unsupported by case law or statute. As a result of the court finding the father to be compliant, the mother was given the benefit of

¹Arizona Health Care Cost Containment System.

additional reunification efforts and time to demonstrate that she could become a minimally competent parent.

The court added that Grace had “squandered the opportunity” to prove that she could be an adequate parent.

¶11 The record establishes ADES had provided appropriate services to Grace for years and supports the juvenile court’s findings regarding her failure to benefit from these services. None of the points Grace makes establishes grounds for second-guessing the court and setting aside its findings with respect to the ground of length of time in care or disturbing the court’s finding that termination of her rights was in the children’s best interests.

¶12 The juvenile court’s order terminating Grace’s parental rights to Madeline and Jasmine is affirmed.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge