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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

COURTNEY C., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, EMMA C., and HANNAH F., Appellees.	2 CA-JV 2011-0144 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J160183

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Thea M. Gilbert

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Judge.

¶1 Appellant Courtney C. appeals from the juvenile court's December 2011 order terminating her parental rights to her daughters, Hannah F. and Emma C., on grounds of abuse or neglect, disabling mental illness, and failure to remedy circumstances that caused the children to remain in court-ordered, out-of-home care for fifteen months or more. *See* A.R.S. § 8-533(B)(2), (3), and (8)(c). Courtney argues the evidence was insufficient to sustain any of these statutory grounds for severance or to establish that terminating her parental rights was in the children's best interests. We affirm.

Background

¶2 When Hannah was born in October 2004, Courtney was married to William F., Hannah's father.[1] Hannah was raised by her paternal and maternal relatives until sometime in 2009, when Courtney, who recently had married Larry C., regained physical custody of her. Emma was born in December 2009 and, a month after her birth, the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) received a report alleging Emma had been hospitalized and diagnosed with nonorganic failure to thrive.[2] The report further alleged that Courtney was not bonding with Emma, who had gained weight at the hospital but then lost weight at home. Emma's pediatrician told a CPS investigator that Courtney had said that she was always tired and

[1]William F.'s parental rights to Hannah have been terminated, and he is not subject to this appeal.

[2]Larry C.'s parental rights to Emma have also been terminated. He has appealed from the juvenile court's termination order in a separate proceeding.

not getting enough sleep, that Emma was getting only six to eight ounces of formula a day, and that Emma was always crying. Courtney reported that she suffered from epileptic seizures that prevented her from being able to parent her children. She also stated stress aggravated her epilepsy and she did not feel she could handle Emma's crying and the stress it created.

¶3 Based on its investigation, CPS took temporary custody of Emma and placed her in foster care, but concluded that Hannah, then five years old, could safely remain in the home. ADES filed a dependency petition as to both children in January 2010. By mid-March 2010, Emma, still suffering from significant medical and feeding issues, was placed in a Medically Vulnerable Program at an agency that was able to provide twenty-four-hour nursing care.[3]

¶4 In April 2010, Dr. Dee Winsky conducted a psychological evaluation of Courtney to address "her ability to parent [Emma], and to make recommendations for case plan services." Winsky diagnosed Courtney with depressive disorder, not otherwise specified; dependent personality disorder; and seizure disorder, and found she lacked the advanced parenting skills to care for Emma. Winsky opined that acquiring those skills would be challenging for Courtney; in addition, her seizure disorder likely would prevent her from ever being able to parent the child by herself. Thus, even if she were able to learn the skills needed, Courtney could be an effective parent "only with full-time help."

[3]Emma eventually was diagnosed with Noonan's Syndrome, a genetic disorder that caused or contributed to her medical issues.

Winsky recommended a bonding assessment to determine the strength of Courtney's emotional bond and attachment with Emma, bonding therapy if recommended, parenting instruction, and a safety plan with "full-time oversight" if Emma were returned to Courtney's care.

¶5 Later that month, Hannah became "very upset" after witnessing a domestic violence incident between Courtney and Larry, and CPS removed her from the home and placed her in foster care. While there, Hannah told her foster mother Larry had "touched her in her private area" and she was having pain there. She also said she did not want to see Larry, was afraid of him, and thought he was mean. The juvenile court adjudicated both children dependent as to Courtney in May 2010.

¶6 During the dependency proceedings, CPS provided numerous services, including supervised visitation, parenting classes, parent-aide services, a Parent Support Partner, a psychological evaluation, a relationship and bonding assessment, individual therapy, healthy relationships group counseling, family therapy with Emma, couples counseling, training for Emma's medical-care needs, Child and Family Team (CFT) meetings, and case-management services. In addition, the juvenile court had continued the proceedings after ADES had recommended that Courtney be given additional time to participate in services and remedy the circumstances that prevented her from being able to parent the children.

¶7 Courtney participated in her case plan services until May 2011, when Larry was extradited to Massachusetts on an outstanding warrant for failure to pay restitution

and was incarcerated there for approximately three months. Courtney stopped participating in all services during this period, and did not resume her individual counseling until September 2011, after Larry's return. At the continued permanency hearing on July 20, 2011, the juvenile court approved a case plan goal of severance and adoption and ordered ADES to file a motion to terminate parental rights.

¶8 In its motion, ADES alleged Courtney had neglected or willfully abused a child, was unable to discharge her parental responsibilities because of mental illness, and had been unable to remedy the circumstances that caused the children to remain in out-of-home care for fifteen months or longer. *See* § 8-533(B)(2), (3), and (8)(c). ADES also alleged that terminating Courtney's parental rights was in the children's best interests. After a five-day, contested termination hearing the juvenile court granted ADES's motion, finding that ADES had proven all of the grounds alleged and that termination of Courtney's parental rights was in the children's best interests. This appeal followed.

Discussion

¶9 On appeal, Courtney argues there was insufficient evidence to support the juvenile court's findings of grounds for termination or its finding that termination was in the children's best interests. To terminate parental rights, the court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the

child's best interests. *See* A.R.S. § 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 we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order, *id.* ¶ 10, and if sufficient evidence supports any one of the statutory grounds relied upon, "we need not address claims pertaining to the other grounds." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

Reunification Efforts and § 8-533(B)(8)(c)

¶10 Courtney does not dispute the juvenile court's findings that the children had been in court-ordered, out-of-home care for a cumulative total of fifteen months or longer, that she had failed to remedy the circumstances causing the children's out-of-home placement, or that a substantial likelihood existed that she would not be capable of exercising proper and effective parental care and control in the near future. *See* § 8-533(B)(8)(c). Instead, she argues only that ADES failed to establish, as required for termination under § 8-533(B)(8)(c), that it had "made a diligent effort to provide appropriate reunification services." *Id.*

¶11 When a motion to terminate parental rights is based on any time-in-care ground found in § 8-533(B)(8), ADES must show it made a diligent effort to provide the family with appropriate reunification services. *Id.* Similarly, ADES must provide

appropriate services to address a parent's mental illness when termination is sought pursuant to § 8-533(B)(3). *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999). ADES fulfills this duty by providing the parent "with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Id.* ¶ 37. But ADES is not required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶12 Although the juvenile court characterized the services provided by CPS and ADES as "extensive and appropriate," Courtney argues CPS had "utterly failed to provide services designed to address [her] dependent personality"; had not referred her for a non-offending parent class, as her therapist, Cedar Stagner, had recommended; had failed to provide her and Hannah with joint therapy, despite the court's February 2011 order to do so; had failed to provide her with adequate support during the months Larry was incarcerated in Massachusetts; and had failed to provide her with services specifically directed to parenting difficulties caused by her seizure disorder.

¶13 To a large extent, Courtney suggests we reweigh the evidence, which we will not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14, 100 P.3d 943, 945, 947 (App. 2004) (juvenile court "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts"). Winsky testified that the most appropriate services for treatment of a dependent

personality disorder would be individual therapy and healthy relationships classes; CPS provided Courtney with both, including close to a year of weekly individual therapy sessions with Stagner. And Stagner testified she had relied on Winsky's evaluation as a guide to treatment goals, with a particular emphasis on Courtney's dependent personality disorder.

¶14 With respect to Courtney's claim that ADES failed its obligation because it did not refer her to or offer a non-offending parent class, CPS case manager Kristen Olsen had attempted—unsuccessfully—to locate such a class after she received Stagner's recommendation in the spring of 2011. ADES suggests Olsen's inability to identify a referral for such a class was of little consequence, because Courtney stopped participating in all therapeutic services after Larry's extradition to Massachusetts in May. Moreover, contrary to Courtney's assertions that her individual therapy had failed to address her denial of the possibility that Larry had abused Hannah or CPS's concerns about protective parenting, Stagner testified she had attempted to engage Courtney regarding issues of "protective parenting, what child sex abuse looks like, [and] how kids react." But, because Courtney had continued to deny even the possibility that Hannah's allegations were true, she had made no progress in that portion of her treatment.

¶15 We do not condone CPS's unilateral decision that it would not arrange for family therapy between Courtney and Hannah, in disregard of the juvenile court's order. CPS apparently declined to offer the therapy based on the recommendation of Hannah's therapist, Teresa Kolodny, who opined that parent-child therapy sessions would be

detrimental to Hannah and "would most likely traumatize and confuse [her] more." If CPS believed Kolodny's opinion provided a basis for relief from the court's order for joint therapy, ADES should have sought such relief by filing an appropriate motion.

¶16 Nonetheless, the juvenile court found ADES had made diligent efforts to reunify the family, even though this service was not provided, and reasonable evidence supports that finding. Evidence at the termination hearing not only included Kolodny's opinion that joint therapy with Courtney would be detrimental for Hannah, but the testimony of Sherri Mikels-Romero, a specialist in child sexual abuse, who explained that in order to conclude a non-offending mother would be able to protect a child in the future, she

> would expect her to believe her daughter, to have some therapy sessions in which she clarified that she did believe her daughter[,] also, . . . that she would take responsibility for not having protected her from the abuse[, and that she would] . . . have some kind of a safety plan in place regarding the perpetrator and contact with him, if any contact were going to be allowed or not allowed.

But when Courtney was asked how she knew Hannah had not been molested, she testified, "Well, first of all, because she hasn't said anything to me, and second of all, because this molestation has not been proven." She said she believed Larry's mother, Alta W., had "put [the allegations] in [Hannah's] head," and, when asked how she would empathize with Hannah if she did not believe the abuse had occurred, she responded, "I would simply ask her . . . if he did it or not." Thus, Courtney's expressed purpose in seeking therapy with Hannah was not to reassure her, as Mikels-Romero had described,

but to confront her about the veracity of her allegations. In light of testimony that Hannah may have suffered from anxiety about whether or not she had been believed, the court reasonably could have concluded, based on evidence at the termination hearing, that providing joint therapy for Courtney and Hannah would not have been an appropriate reunification service.

¶17 With respect to allegations that ADES provided insufficient support while Larry was incarcerated in Massachusetts, Courtney testified she had been offered alternative means of transportation to services, but she had "felt really down at the time" and so had stopped attending visitation and individual therapy and "pretty much" stopped doing "everything" related to her case plan. Olsen testified services had remained available to Courtney, but her contacts with Courtney had been "sparse" during this period. She stated she had proposed visitation at Courtney's home, but Courtney had been evicted for failure to pay rent and had not provided Olsen with a new address or home phone number. ADES is not required to ensure a parent's participation in the services it offers, *Maricopa Cnty. No. JS-501904*, 180 Ariz. at 353, 884 P.2d at 239, and reasonable evidence supported the juvenile court's ruling that ADES made diligent efforts to provide appropriate reunification services.

¶18 Finally, Courtney contends ADES's reunification efforts were insufficient because it "made no efforts . . . to determine any community supports that were available

to assist epileptic parents with caring for their children."[4] But she presented no evidence that such specialized "community supports" even exist and fails to explain why the services CPS did provide, including the services of a "Parent Support Partner," were insufficient. Again, we find no basis to disturb the juvenile court's finding that ADES had made a diligent effort to provide appropriate reunification services.

Best Interests

¶19 Courtney argues that it is not in the children's best interests to be adopted by Larry's mother, Alta, with whom they had been placed, and that there was no evidence they otherwise are adoptable. To establish that terminating Courtney's parental rights is in her daughters' best interests, ADES was required to show the girls "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945. But in making its determination on this issue, the juvenile court does not "weigh alternative placement possibilities to determine which might be better," *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998); rather, the court's finding of best interests "is separate from and preliminary to its determination of placement after

[4]Courtney also asserts ADES's efforts were insufficient because it "made no efforts to communicate with [her] medical doctor," but she cites no evidence in the record to support this allegation. We therefore do not consider it. *See* Ariz. R. P. Juv. Ct. 106(A) (Ariz. R. Civ. App. P. 13 applicable to appeals from juvenile court rulings); Ariz. R. Civ. App. P. 13(a)(4), (6) (factual statements and legal arguments shall contain citations to record and relevant legal authority).

severance." *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1011-12 (App. 2009).

¶20 Here, there was evidence Alta was willing to adopt the children and had provided for their needs during their placement with her. *See Audra T.*, 194 Ariz. 376, ¶ 5, 982 P.2d at 1291 (court may consider "the immediate availability of an adoptive placement" or "whether an existing placement is meeting the needs of the child" in support of best interests finding). Moreover, although Olsen did not state specifically that the children were adoptable, she responded affirmatively when asked if CPS had "alternate resources to identify an adoptive home" for Hannah and Emma if Alta did not adopt them. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (best interests may be established by showing "a current adoptive plan exists for the child, or even that the child is adoptable") (citation omitted). Thus, there was ample evidence to support the juvenile court's finding of best interests. *See Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945 ("[t]he existence of a current adoptive plan is one well-recognized example" of benefit sufficient to satisfy best interests requirement).

Disposition

¶21 We conclude reasonable evidence supported the juvenile court's finding that ADES made a diligent effort to provide Courtney with appropriate reunification services. Courtney does not dispute the court's findings that, notwithstanding the services provided, she failed to remedy circumstances causing Hannah and Emma to remain in court-ordered care for fifteen months or longer and that she likely will be

unable to parent the children effectively in the near future. We assume she concedes these unchallenged findings. *See Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960) (when "findings of fact are not . . . challenged [on] appeal, [this court] may assume that their accuracy is conceded").

¶22 Reasonable evidence thus supports termination pursuant to § 8-533(B)(8)(c),[5] as well as the juvenile court's finding that termination is in the children's best interests. We therefore affirm the court's order terminating Courtney's parental rights to Hannah and Emma.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

[5]In light of our conclusion with respect to this ground for termination, "we need not address claims pertaining to the other grounds" found by the juvenile court. *Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205.