FILED BY CLERK
SEP 18 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DANIELA M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, OSCAR O., ESPERANZA O.-M., and EZEKIEL M., Appellees.	2 CA-JV 2012-0031 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD201000136

Honorable Kevin D. White, Judge

AFFIRMED

Ritter Law Group, L.L.C.
By Matthew A. Ritter
Florence
Attorney for Appellant

Lynn T. Hamilton
Mesa
Guardian Ad Litem for Appellant

Thomas C. Horne, Arizona Attorney General
By Michelle R. Nimmo
Tucson
Attorneys for Appellee Arizona Department of Economic Security

---

V Á S Q U E Z, Presiding Judge.

¶1 Daniela M. appeals from the juvenile court's March 2012 order terminating her parental rights to her children Oscar O., born in June 2007, Esperanza O.-M., born in February 2009, and Ezekiel M., born in January 2010, on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). She argues the evidence was insufficient to support termination on this ground and also insufficient to establish termination was in the children's best interests. For the following reasons, we affirm.

Background

¶2 In an appeal from an order terminating parental rights, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005). In August 2010, Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took temporary custody of the children and placed them in a foster home, and ADES filed a dependency petition alleging Daniela was neglecting the children, was homeless, and had a history of mental health issues.[1] That same month, Daniela submitted to the dependency without admitting the petition's allegations. Daniela's counsel suggested the juvenile court appoint a guardian ad litem for Daniela and the court granted the request, noting there were no objections.

¶3 From the time Oscar was three or four months old, the children had spent considerable time living in their maternal grandparents' home, sometimes with Daniela

[1]Daniela later gave birth to a fourth child while residing out of state. That child is not a party to this appeal, and references herein to "the children" are to appellees Oscar, Esperanza, and Ezekiel unless otherwise noted. The parental rights of the children's father, Oscar O. Sr., have been also terminated, and he is not a party to this appeal.

living there as well. But Daniela otherwise had afforded the children little stability, and often relied on others to meet her own and the children's needs. Daniela had moved from Arizona to Georgia in May 2009, where she and the children lived with Oscar Sr., the children's father, in his parents' home, but she returned to Arizona intermittently, often staying several months or more.

¶4 In June 2010, she left the children in Arizona with her own parents, Richard and Gladys M., for a planned, three-month visit, but then had resumed custody of the children in July. When the dependency petition was filed, she and the children had been staying at a shelter and, according to CPS reports, she had been observed hitting Oscar, her oldest child, and had more than once expressed her "concern of losing it and possibly hurting her children" and her desire that her children be "somewhere else."

¶5 During the first few months of the children's dependency, Daniela remained in Arizona and was provided weekly, supervised visits with the children, a psychological evaluation, and parenting classes. Visitation was discontinued after Daniela informed CPS she was moving back to Georgia. After learning that Daniela had remained in Arizona, CPS attempted to reinstate visitation in November 2010, but Daniela relocated to Georgia that same month. Also in November, the children were moved from foster care to placement with Richard and Gladys, their maternal grandparents, in Payson, Arizona, and remained there throughout these proceedings.

¶6 Before the termination trial, the last time Daniela had seen the children was in early November 2010, around the time they were placed with her parents, and she did not telephone the children or inquire about them during the next two months even though

she knew her parents' home address and telephone number. From January to June 2011, Daniela contacted the maternal grandparents only "a few" times, and even then, Gladys testified, "that was only for pictures or to badmouth us." At the termination hearing, Daniela acknowledged she had not provided any support for the children since August 2010 and, according to Gladys, Daniela did not ask to speak with the children for the first six months or more after her return to Georgia.[2]

¶7 ADES contracted for parenting and counseling services for Daniela with Oasis Counseling Center in Georgia (Oasis), but when ongoing CPS case worker Pauline Kelley contacted Daniela by telephone to convey information about these services, Daniela "made it pretty clear she didn't want to go to counseling." Although Oasis also was prepared to complete a home study on the paternal grandparents' home in Georgia, by March 2011, Kelley had learned that ADES would be unable to compensate Oasis for that particular service which, she testified, had to be completed through the State of Georgia for purposes of the Interstate Compact on the Placement of Children (ICPC), A.R.S. §§ 8-548 through 8-548.06. Consequently, Kelley instructed Oasis to forego completion of the home study. Although Daniela maintains Kelley had cancelled all services provided by Oasis, electronic mail between Kelley and Oasis supported Kelley's testimony that only the home study had been cancelled and that Oasis had remained authorized to provide counseling and parenting services to Daniela in Georgia.

[2]The maternal grandparents testified that, notwithstanding Daniela's assertions to the contrary, they never told Daniela that she could not call them or ask to speak to the children.

¶8 Daniela did not attend—even telephonically—the permanency planning hearing held in June 2011, having failed "for quite some time" to communicate with her attorneys. The juvenile court approved a case plan of severance and adoption, concurrent with a case plan of family reunification, and ordered ADES to file a motion to terminate the parent-child relationship.

¶9 By the time of the initial termination hearing on July 18, 2011, Daniela had returned to Arizona, where she apparently remained through the first day of the termination trial on September 9. During this time, Daniela never contacted Kelley and never asked Kelley or the maternal grandparents for an opportunity to see the children.[3] Although Daniela at some point began sending text messages to Richard, asking for pictures of the children or how they were doing, she had never asked whether they needed anything, never offered to send money or gifts, and never paid any special attention of any kind to the children's birthdays or other holidays.

¶10 In an under-advisement ruling, the juvenile court terminated Daniela's parental rights, concluding she had abandoned the children, noting she had "provided less than minimal support" and had "made only minimal efforts to communicate" with them, thus failing "to maintain a normal parental relationship with the children without just cause by failing to provide reasonable support for the children, failing to maintain regular contact, and failing to provide normal supervision of the children." The court also found,

[3]In August, after Daniela had returned to Arizona, a Georgia psychiatrist telephoned her to schedule the psychiatric evaluation Kelley had requested. Daniela told him she had "already had one"—apparently referring to her psychological evaluation.

> It is in the best interest of the children to terminate the parent-child relationship. The children are residing with their maternal grandparents who are committed to adopting them. Termination of the relationship would benefit the children because they would be adopted together in a safe and stable drug-free home by family who are committed to adopting them. Continuation of the parent-child relationship would be a detriment to the children because the children would not achieve permanency.

Discussion

¶11 On appeal, Daniela argues (1) ADES failed to make reasonable efforts to reunify the family, (2) the juvenile court erred in failing to address the adequacy of reunification efforts, and (3) the court erred in finding termination was in the children's best interests.[4]

¶12 We accept the juvenile court's findings of fact as long as there is reasonable evidence to support them. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264 (App. 2009). As the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. Rather, we affirm the court's order "'unless we [can] 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.*, 221 Ariz. 92, ¶ 10, 210 P.3d at

[4]To the extent Daniela also suggests ADES was required to establish her "conscious disregard" of parental obligations or a "settled purpose" to forego them, she is mistaken. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶¶ 16-17, 19, 995 P.2d 682, 685-86 (2000) (rejecting both common-law tests).

1266, *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (second alteration in *Denise R.*). "If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, 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).

¶13 First, we find no error in the juvenile court's omission, in its under-advisement ruling, of a finding of reasonable reunification efforts. This is not a statutory requirement for termination of parental rights on the ground of abandonment. *See Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 11, 200 P.3d 1003, 1007 (App. 2008) ("[N]either § 8-533 nor federal law requires that a parent be provided reunification services before the court may terminate the parent's rights on the ground of abandonment."). Moreover, we usually do not consider an issue raised for the first time on appeal, "particularly [when] it relates to the alleged lack of detail in the juvenile court's findings." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007).

¶14 Relying on *Bobby G.*, ADES maintains it was not required to establish reasonable reunification efforts to prevail on its claim of abandonment. Alternatively, ADES contends its reunification efforts were sufficient. In *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, a case involving termination on the ground of mental illness, the court concluded ADES was constitutionally required to make "reasonable efforts to preserve the family" before seeking to terminate parental rights. 193 Ariz. 185, ¶¶ 32-34, 971 P.2d 1046, 1052-53 (App. 1999). But in *Toni W. v. Ariz. Dep't of Econ. Sec.*, the court

concluded that a mother who had abandoned her child at birth had no "existing parent-child relationship . . . [and] was not entitled, based on constitutional due process principles, to require ADES to provide her with reunification services before seeking severance of her rights on the statutory ground of abandonment." 196 Ariz. 61, ¶ 15, 993 P.2d 462, 467 (App. 1999).

¶15 Assuming, without deciding, that ADES had a constitutional obligation to provide reunification services under the circumstances here, we agree that reasonable evidence supported a finding that those efforts, in Arizona and in Georgia, were sufficient, notwithstanding ADES's failure to timely process an ICPC application for the possible placement of the children in Georgia. *See In re Maricopa Cnty. Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) ("'[T]he juvenile court will be deemed to have made every finding necessary to support [its] judgment.'"), *quoting In re Pima Cnty. Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985) (alterations added). Daniela's arguments to the contrary rest largely on her own testimony and would require us to reweigh the evidence, which we will not do. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶16 Daniela's argument that the juvenile court erred in finding termination in the children's best interests, absent evidence that she is unable to parent or that future services would be futile, is without merit. The court's best interests finding is consistent

with Arizona law and supported by reasonable evidence. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (evidence of existing placement meeting child's needs supports best interests finding); *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) ("immediate availability of an adoptive placement" sufficient to support best interests finding).

Disposition

¶17 The juvenile court's order terminating Daniela's rights to Oscar, Esperanza, and Ezekiel is affirmed.

/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