IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DIANA H.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, C.P., C.P., AND D.P.,
Appellees.

No. 2 CA-JV 2014-0079
Filed December 19, 2014

Appeal from the Superior Court in Pima County
No. JD181809
The Honorable Lisa Abrams, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

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By Deborah Abbey
Counsel for Appellees C.P., C.P., and D.P.

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Diana H. appeals from the juvenile court's July 2014 order terminating her parental rights to her daughters C.K.P., age seven, and D.A.P., age five, and her son, C.L.P., age six.[1] She argues there was insufficient evidence to support the termination on grounds of abuse or neglect, *see* A.R.S. § 8-533(B)(2), her inability to discharge her parental responsibilities because of mental illness, *see* § 8-533(B)(3), or her inability to remedy circumstances causing the children's placement in court-ordered, out-of-home placement for fifteen months or longer, *see* § 8-533(B)(8)(c). Specifically, she maintains the court erred because the Department of Child Safety (DCS) failed to provide sufficient reunification services.[2] For the following reasons, we affirm the termination order.

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[1]In its order, the juvenile court also terminated the parental rights of the children's father, David P. He is not a party to this appeal.

[2]In her opening brief, Diana directs these allegations against Child Protective Services (CPS), formerly a division of the Arizona Department of Economic Security (ADES). DCS has been substituted for ADES in this matter. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54; Ariz. R. Civ. App. P. 27. For simplicity,

Background

¶2 When C.K. was born in 2007, DCS removed her from Diana's care based on a report that Diana was abusing substances, was homeless and mentally ill, and that C.K.'s father, David P., was perpetrating domestic violence in the home. The history of the actions taken and services provided by DCS during the past seven years is set forth in detail in the juvenile court's ruling.

¶3 The most recent dependency petition was filed in December 2011, after DCS received a report that C.K., then four, had a four-inch-long scratch on her back that she explained had happened "when her dad, David P[.], chased her and then threw her into the wall." DCS had received six reports in as many months involving ongoing domestic violence in the home. And, in October 2011, David had been convicted of criminal charges based on testimony that the children "routinely came to [daycare] filthy and often hungry." Diana did not contest the dependency finding.

¶4 At a permanency hearing in December 2012, the juvenile court found Diana was "in partial compliance with parts of [her] case plan services" but found an issue remained regarding whether she was benefitting from those services. Finding "there [was] good cause to extend the time, briefly," for Diana to remedy the circumstances that caused the children to be in out-of-home placement, the court declined DCS's request to change the case plan goal to severance and adoption, but also declined to return the children to their parents' care, finding doing so "would create a substantial risk of harm to their physical, mental, and emotional health and safety." But by May 2013, the court granted DCS's request to change the case plan goal and directed DCS to file a motion to terminate parental rights. In its motion, DCS alleged Diana had abused or neglected the children by failing to protect them from David's abuse and neglect and, based on her most recent psychological evaluation, appeared unwilling or unable to do so due

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our references to DCS in this decision encompass both ADES and the former CPS.

to a persistent mental illness.[3] *See* § 8-533(B)(2), (3). DCS also alleged (1) the children had been in court-ordered, out-of-home care for more than fifteen months; (2) despite its diligent effort to provide appropriate reunification services, Diana had failed to remedy the circumstances causing that placement; and (3) there was a substantial likelihood that Diana would be unable to parent effectively in the near future. *See* § 8-533(B)(8)(c).

¶5 A contested severance hearing commenced on August 15, 2013, spanned seventeen hearing dates, and concluded on April 22, 2014. On July 3, 2014, the juvenile court issued a twenty-page, under-advisement ruling detailing this family's history with DCS; the "myriad of services" or referrals for service DCS had provided to Diana before and during these proceedings and her participation in those services; the evidence presented during the severance hearing; and the basis for the court's credibility determinations. The court granted the motion for termination, concluding DCS had proven the three grounds alleged by clear and convincing evidence and had also established, by a preponderance of the evidence, that termination of Diana's parental rights was in the children's best interests.[4] This appeal followed.

Discussion

¶6 On appeal, Diana challenges the juvenile court's implicit finding that DCS made a diligent effort to provide her with appropriate reunification services. *See* § 8-533(B)(8); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999) (termination on mental illness grounds, § 8-533(B)(3), requires

[3] In her July 2012 psychological evaluation, Diana was diagnosed with a "Mixed Personality Disorder with Depressive and Dependent [F]eatures," a diagnosis similar to that found in the May 2007 psychological evaluation conducted during C.K.'s first dependency proceeding.

[4] Diana does not dispute the juvenile court's best interests finding in this appeal.

proof that state "has made a reasonable effort" to reunify family); *see also Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 17, 83 P.3d 43, 50 (App. 2004) (reviewing court presumes juvenile court made every finding necessary for termination order when implicit finding supported by record evidence).[5] Although she "does not dispute that a myriad of services were provided during the totality of this case," she argues the court erred "by not giving sufficient weight to the fact that requests for additional services were ignored or denied" after the severance hearing began and she had begun to show some signs of benefitting from individual counseling.[6] Similarly, she

[5]In an argument that is not entirely clear, Diana "concedes that there is no provision either by statute or in case law that requires [DCS] to provide reunification services when termination is based on" abuse or neglect, *see* § 8-533(B)(2), but maintains the juvenile court "erred in not considering the adequacy [of] reunification services offered to assist [her] in this respect" because there is a "nexus" between her mental illness and her failure to protect the children. Because we conclude the court properly considered the reunification services DCS offered before terminating Diana's parental rights, we need not address this argument.

[6]Diana asserts DCS is "held to the same standard" of effort in providing reunification services after a case plan has been changed to severance and adoption, as long as the juvenile court has ordered reunification services to continue, as the court had here. But assuming this is a correct statement of the law, DCS "need not provide 'every conceivable service'" or "undertake rehabilitative measures that are futile." *Mary Ellen C.*, 193 Ariz. 185, ¶¶ 34, 37, 971 P.2d at 1053, *quoting Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). The court's termination order includes specific findings about the services DCS provided, or did not provide, after the case plan had changed, and reasons supporting those service decisions. Diana has developed no meaningful argument that those findings were clearly erroneous, and we decline to engage in an abstract discussion of DCS's obligations in termination proceedings. *See Bennigno R. v. Arizona Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 11, 312 P.3d 861, 864 (App. 2013)

maintains the court erred in failing to consider a "conflict" between her and her DCS case manager which "manifested as a lack of communication between [the case manager] and the other service providers." But both of these concerns, and related evidence, were addressed at length in the court's ruling, and this court will not reweigh the evidence on review. *See Bennigno R. v. Arizona Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 31, 312 P.3d 861, 867 (App. 2013).

¶7 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). In essence, Diana asks this court to reweigh the evidence and substitute its judgment for the considered judgment of the juvenile court, which we will not do. *See Bennigno R.*, 233 Ariz. 345, ¶ 31, 312 P.3d at 867.

Disposition

¶8 The juvenile court's thorough and thoughtful ruling includes a well-reasoned analysis of the statutory grounds for termination in this case, and its findings are fully supported by the record. We see no need to restate the court's correct analysis here. *See Jesus M. v. Ariz. Dep't of Econ Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, we affirm the order terminating Diana's parental rights to C.K.P., D.A.P., and C.L.P.

(reviewing court may "summarily reject" issue raised without benefit of "proper and meaningful argument").