IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MAXINE Z.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND M.Z.,
Appellees.

No. 2 CA-JV 2016-0032
Filed June 15, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20150112
The Honorable Jane Butler, Judge Pro Tempore

AFFIRMED

COUNSEL

Scott W. Schlievert, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Maxine Z. appeals from the juvenile court's February 2016 minute-entry order terminating her parental rights to her daughter M.Z., born in June 2013, on the grounds that she had substantially neglected or willfully refused to remedy the circumstances that caused M.Z., a child under the age of three, to be in court-ordered, out-of-home care for longer than six months, *see* A.R.S. § 8-533(B)(8)(b), and longer than nine months, *see* § 8-533(B)(8)(a). For the following reasons, we affirm the court's termination order.

Background

¶2 The Department of Child Safety (DCS) took temporary custody of M.Z. on February 10, 2015, after Maxine was arrested and incarcerated on charges of shoplifting and possession of controlled substances. In a dependency petition, DCS alleged Maxine's substance use and serious mental illness posed safety risks for M.Z. DCS also alleged Maxine had left M.Z. in the care of someone who had a history of child molestation. Maxine failed to appear at a status conference after being warned of the consequences of her absence, and the juvenile court found M.Z. dependent based on the verified petition and other record documents.

¶3 In a report to the juvenile court dated April 23, 2015, DCS wrote that Maxine had just begun to demonstrate a willingness

to participate in services, claiming "to be overwhelmed by the demands of complying with her case plan," although she had not been engaging in the drug testing, substance abuse services, or parenting skills services DCS had offered. Maxine had tested positive for benzodiazepines three times in February and four times in May, and had not submitted to any tests between March 4 and May 8.

¶4 When the juvenile court approved a concurrent case plan of severance and adoption on August 3, it stressed that Maxine would be required to demonstrate full compliance with her case plan to avoid a motion to terminate her parental rights. Immediately after the hearing, Maxine's DCS case manager met with her to emphasize the court's admonition. He repeated the warning at a meeting eleven days later, when he gave her "a bullet pointed letter" explaining the compliance expected in order to avoid "the dire consequence" of having her parental rights terminated.

¶5 But Maxine failed to submit to drug tests on nineteen more occasions between that hearing and her next court appearance in November 2015; during that same time period, she tested positive for illegal substances on five occasions. Her substance abuse treatment provider also reported she had been compliant in August, but noncompliant in September, and he commented that she "needs to be more productive" in her treatment. In November, the juvenile court changed the case plan for M.Z. to severance and adoption, and DCS filed its motion to terminate Maxine's parental rights. DCS continued to provide services until the termination hearing in February 2016. Maxine tested positive for methadone in December 2015, and positive for methamphetamine in February 2016.

¶6 After a contested severance hearing, the juvenile court found that, despite diligent efforts by DCS to provide reunification services to Maxine,[1] her participation in those services "has at best

[1]Services provided by DCS included individual counseling; substance abuse testing and treatment; anger management, relapse prevention, and parenting classes; a psychological evaluation;

been sporadic," and that she "substantially neglected to remedy the circumstances causing [M.Z.] to be in out-of-home services by failing to consistently drug test or to test clean." The court further found termination of Maxine's parental rights was in M.Z.'s best interests. In its detailed minute entry, the court noted that Maxine had been given additional time to participate in case plan services and that both the court and DCS had stressed the importance of maintaining sobriety through substance abuse services; but, notwithstanding these admonitions, Maxine had admitted using methamphetamine just nine days before the termination hearing. This appeal followed.

Discussion

¶7 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for termination and finds by a preponderance of the evidence that termination is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 22, 41, 110 P.3d 1013, 1018, 1022 (2005). "[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. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶8 Pursuant to § 8-533(B)(8)(a), a ground for termination exists when (1) a child has been in a court-ordered, out-of-home placement for nine months or more; (2) DCS has made a diligent effort to provide appropriate reunification services to the family; and (3) the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child's out-of-home

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supervised visitation; monthly child and family team meetings; and an eight-session parent-child relationship assessment.

placement.[2] In determining whether termination is warranted under § 8-533(B)(8), "the court shall consider the availability of reunification services to the parent and the participation of the parent in these services." § 8-533(D).

¶9 As the sole issue identified on appeal, Maxine argues the juvenile court erred in finding DCS had made a diligent effort to provide appropriate reunification services, citing delays in providing a parent-child assessment process, which began in June 2015, and a psychological evaluation, which was conducted in September.[3] According to Maxine, written reports and recommendations from those services "were essentially useless as a tool for . . . reunification" because DCS filed its termination motion "within weeks" of their receipt. Maxine contends it was "impossible" for the court to find DCS met its statutory obligation in light of these delays.

¶10 In response, DCS points out that it already had provided Maxine with intensive in-home services in 2013, shortly after M.Z. was born exposed to opiates. Even before M.Z.'s birth, Maxine had been receiving mental health services for bipolar disorder, posttraumatic stress disorder, and depression. DCS denies any delay in providing the parent-child relationship assessment that began in June 2015, noting the assessment had only been ordered the

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[2] Section 8-533(B)(8)(b) similarly provides for termination when a parent substantially neglects or willfully refuses to remedy circumstances causing a child under the age of three to be in a court-ordered, out-of-home placement for six months or more. There is no dispute that M.Z. was under the age of three and had been in court-ordered care for more than a year when Maxine's rights were terminated. We therefore address the grounds together.

[3] Although her brief's table of contents suggests she intends to also challenge the juvenile court's best interests finding, Maxine develops no argument on this point and so has waived our review of the issue. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, n.16 215, 181 P.3d 1126, 1136 n.16 (App. 2008) (declining to consider issue not raised in appellate briefs).

previous month, at the request of M.Z.'s counsel, due to the child's "troubling behaviors before and after visits" with Maxine. Moreover, the evaluator who performed the parent-child assessment found that ongoing parent-child relationship therapy would not be appropriate until Maxine could "show benefit from substance abuse and mental health services." Both services had been made available to Maxine from the beginning of the dependency proceeding, and, although DCS had accommodated Maxine's requests for changes of service providers, her participation was so sporadic it was considered "noncompliant."

¶11 With respect to the psychological evaluation conducted in September 2015, Maxine's DCS case manager explained that most DCS-contracting psychologists require a consistent period of sobriety before they will perform an evaluation, and Maxine had not met that requirement. Despite Maxine's inability to achieve a period of sobriety, the case manager obtained an exception to the policy and Maxine was seen by a psychologist. As a result of her psychological evaluation, Maxine was referred for additional individual counseling before the termination hearing.

¶12 DCS fulfills its statutory obligation to facilitate reunification if it provides a parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa Cty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But DCS "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.* When considering whether a parent has substantially neglected or willfully refused to remedy circumstances causing a child's out-of-home placement under § 8-533(B)(8)(a) or (b), "the test focuses on the level of the parent's effort to cure the circumstances rather than the parent's success in actually doing so." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 20, 152 P.3d 1209, 1212 (App. 2007). Thus, "parents who make appreciable, good faith efforts to comply with remedial programs outlined by [DCS] will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement," but "sporadic, aborted attempts" to do so may well be insufficient.

In re Maricopa Cty. Juvenile Action No. JS-501568, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994).

¶13 Maxine's reliance on *Jordan C.* is unavailing. In that case, the Arizona Department of Economic Security (ADES) had implemented a case plan to transition five children back into their mother's care individually over a period of time, and then filed a motion to terminate her parental rights to her two youngest children pursuant to § 8-533(B)(8)(c), arguing they had been in care for longer than fifteen months and it was unlikely their mother would be able to parent them effectively in the near future. *Jordan C.*, 223 Ariz. 86, ¶ 15, 219 P.3d at 303. We concluded ADES had failed to prove a diligent effort to reunify the mother with her two youngest children, who had not yet participated in family counseling, because "ADES's plan of reunification contributed to and contemplated the length of time the children would remain in care and the parent was in full compliance with the plan." *Id.* ¶¶ 16, 30, 37.

¶14 This case, in contrast, involves termination pursuant to § 8-533(a) and (b). *See Marina P.*, 214 Ariz. 326, ¶¶ 20-21, 152 P.3d at 1212-13 (distinguishing proof required under nine-month and fifteen-month time-in-care grounds). Unlike the mother in *Jordan C.*, Maxine was noncompliant with her case plan services, and DCS presented evidence that any delay in providing a psychological evaluation or further parent-child relationship therapy was caused by Maxine's inability to establish sobriety, not by dilatory conduct on the part of DCS.

¶15 Substantial evidence supported the juvenile court's determinations that DCS had made a diligent effort to provide appropriate reunification services but that, despite that effort, Maxine substantially neglected to address the cause of M.Z.'s out-of-home placement. *See*, *e.g.*, *Maricopa Cty. No. JS-501568*, 177 Ariz. at 577, 869 P.2d at 1230 (affirming termination order when mother "substantially neglected to remedy her addiction" within statutory time frame). We will not disturb the court's ruling on review.

¶16 Accordingly, we affirm the juvenile court's minute-entry order terminating Maxine's parental rights.