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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KIMBERLY L., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and RUBEN L., Appellees.	2 CA-JV 2010-0116 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18693700

Honorable Javier Chon-Lopez, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 Kimberly L. appeals from the juvenile court's order terminating her parental rights to Ruben L., born in October of 2007, on the grounds of neglect, mental illness or chronic substance abuse, and length of time in court-ordered care (fifteen months or longer). *See* A.R.S. § 8-533(B)(2), (3), (8)(c). Kimberly challenges the sufficiency of the evidence to support the court's rulings, arguing the statutory grounds were not established. We affirm for the reasons stated below.

¶2 Viewed in the light most favorable to sustaining the juvenile court's order, *see Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007), the evidence established the following. Ruben and three siblings were taken into custody by Child Protective Services (CPS) in May 2008, after Kimberly was arrested and incarcerated for criminal damage. Kimberly and her boyfriend Jesus H. had been intoxicated and, after an altercation between them escalated, Kimberly broke the window of his apartment. At the time, the children were in the care of the maternal grandfather, a schizophrenic alcoholic.

¶3 Ruben was adjudicated dependent as to Kimberly in August 2008 after she admitted allegations in an amended dependency petition. Among those admissions were the following: she had been drinking on the night the children were taken into CPS custody; the children had reported she and Jesus fought frequently; she had been diagnosed with anxiety, depression, and hypomania six years earlier and had not taken the prescribed medication; and she had left the children with inappropriate caregivers, including the maternal grandmother, whose own parental rights had been severed, and the maternal grandfather. The Arizona Department of Economic Security (ADES) provided the family with a plethora of services designed to accomplish the court-approved case

plan goal of reunification, focusing specifically on Kimberly's alcoholism and proclivity to engage in domestic violence.

¶4 Kimberly was, for the most part, compliant with the case plan and in June 2009, Ruben's three sisters were returned to her custody. Ruben was returned to her in October 2009, although by that time Kimberly was no longer in compliance, failing, for example, to submit to drug and alcohol testing. In late December law enforcement officers responded to a report of domestic violence. Kimberly admitted at the severance hearing she had been drinking alcohol again with Jesus, claiming she was celebrating that the children had been returned to her. She was arrested and Ruben was removed from the home in January 2010. In late February the juvenile court changed the case plan with respect to Ruben to severance and adoption and directed ADES to file a motion to terminate Kimberly's parental rights, which it did, nevertheless continuing to provide Kimberly with services designed to reunify her with her children and to address her problems with alcohol and domestic violence.

¶5 After a three-day contested severance hearing, the juvenile court terminated Kimberly's rights on three out of the five grounds ADES had alleged in its motion. In its thorough minute entry order, the court reviewed the history of the dependency proceeding and made extensive factual findings, including findings that followed the language of the statute as to each subsection establishing a ground for termination. This appeal followed.

¶6 To sever a parent's rights, the juvenile court must find there is clear and convincing evidence at least one of the statutory grounds for termination exists, and that a preponderance of the evidence establishes severing the parent's rights is in the child's

best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41, 110 P.3d 1013, 1021, 1022 (2005). We do not reweigh the evidence on appeal; rather, we defer to the court's factual findings because, 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). Consequently, we will affirm the order if reasonable evidence supports the factual findings upon which the order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, as previously noted, we view the evidence in the light most favorable to upholding the court's order. *See Christy C.*, 214 Ariz. 445, ¶ 12, 153 P.3d at 1078.

¶7 We address Kimberly's second argument first. She contends there was insufficient evidence to terminate her rights on the ground of fifteen-month out-of-home placement. A juvenile court may terminate a parent's rights pursuant to § 8-533(B)(8)(c), if clear and convincing evidence establishes "[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , [and] the parent has been unable to remedy the circumstances that cause the child to" remain out of the home. The evidence also must establish "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." *Id.* Kimberly's primary contention is that there was insufficient evidence she would be unable to parent Ruben properly in the near future. She focuses on evidence that she participated in services ADES had provided throughout the dependency, was largely compliant with the case plan, and had made progress in addressing her abuse of alcohol and her tendency to engage in domestic violence.

Conceding the CPS case manager "felt that [she] would not be able to parent in the foreseeable future," Kimberly suggests the case worker's testimony was entitled to little weight because she purportedly had not consulted "in any meaningful way . . . the service providers intimately involved with Kimberly."

¶8 Because the record before us contains reasonable evidence to support the factual findings in the juvenile court's minute entry order and because we see no error of law, we adopt the court's ruling. *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although no purpose would be served by rehashing the ruling in its entirety here, we note certain factual findings that relate specifically to the court's termination of Kimberly's parental rights on the ground of length of time in court-ordered care. The court found, for example, that after CPS had removed the children from Kimberly's custody in May 2008, ADES had provided her with a variety of services designed "to address her alcohol and domestic violence issues, the two main reasons for the children's removal from her home." But, the court added, she did not benefit from these services, ultimately relapsing after periods of sobriety.

¶9 The juvenile court also pointed out and the evidence established that, when Kimberly began using alcohol again, there were incidents of domestic violence. As a result, the children were removed from the home not long after they were returned to Kimberly. The court further noted that at the time of the severance hearing, Kimberly had been sober for four months. Still, the court found she had failed to remedy the circumstances that caused Ruben to be removed from the home and to remain in court-ordered care.

¶10 The juvenile court based its finding that Kimberly would be unable to parent Ruben properly in the foreseeable future[1] on not only her conduct, which demonstrated a propensity to relapse, but the reports and testimony of Lorraine Rollins. Rollins initially evaluated Kimberly in September 2008 and her diagnosis was alcohol abuse; but after reevaluating Kimberly in July 2010, she diagnosed her with alcohol dependence and a personality disorder. As the court noted in its order, given this diagnosis and Kimberly's demonstrated tendency to relapse, Rollins could not say Kimberly would be able to parent appropriately unless she had a period of sobriety that lasted "at least 6 to 12 months," in contrast to her initial recommendation of four months' sobriety. The court noted that Rollins, as well as a case worker, did not believe Kimberly could be an appropriate parent.

¶11 Based on this and other evidence, which the juvenile court had specified in preceding portions of its order, the court concluded, "The totality of evidence presented clearly demonstrated that Mother will be unable to parent Ruben in the foreseeable future." The court found Kimberly's "progress and efforts . . . commendable," but

[1]As we previously noted, the statue provides, "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in *the near future*." § 8-533(B)(8)(c) (emphasis added). In its order, the juvenile court correctly articulated this subsection of the statute and pointed out that the CPS case manager had testified she believed Kimberly could not "parent Ruben in the near future." But the court subsequently concluded it could not find Kimberly would be able to "appropriately parent Ruben in the *foreseeable future*." (Emphasis added.) The "near future" is sooner than the "foreseeable future," and it is easier to establish a "substantial likelihood" something will or will not occur than that it will or will not occur; consequently, even assuming the court applied a standard that differs somewhat from that established by the statute, the court arguably imposed a greater burden on ADES, and any error in this regard would have inured to Kimberly's benefit.

concluded nevertheless she had not changed the circumstances that had resulted in Ruben's continued placement outside the home or that she would be able to parent him "appropriately . . . in the foreseeable future." That the court carefully considered Kimberly's progress is not only clear from the court's specific findings,[2] but also from the fact that the court found insufficient evidence to warrant termination of her rights based on shorter periods of out-of-home placement, pursuant to § 8-533(B)(8)(a) and (b). And, contrary to Kimberly's contention, the record reflects the court did consider all evidence before it, including the testimony of her therapist.

¶12 Kimberly essentially is asking us to reweigh the evidence and give greater weight to the evidence that was in her favor. She characterizes the evidence that she will not be able to properly parent Ruben in the "foreseeable future" as "thin," and points to evidence about her compliance with the case plan and resulting progress, asserting the juvenile court "erroneously found [she] had no reasonable possibility of parenting in the near future." But the court is the trier of fact in a termination proceeding, and it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Given the reasonable evidence before it, the court's findings and conclusions, which were the bases for its termination of Kimberly's parental rights to Ruben, are more than adequately supported by the record before us.

[2]Specifically, in the portion of its order in which it evaluated the evidence with respect to § 8-533(B)(8)(a) and (b), the juvenile court stated it could not conclude Kimberly's "efforts to remedy the circumstances that caused Ruben to be placed in out-of-home care [had been] . . . trivial or de minimus."

¶13 Because we can affirm the juvenile court's ruling if at least one statutory ground is sustainable, we need not address Kimberly's arguments that relate to the other two bases for the court's termination of her parental rights. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). The court's order therefore is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

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

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