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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JESSICA M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and AUTUMN M., Appellees.	2 CA-JV 2010-0140 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J189293

Honorable Javier Chon-Lopez, Judge

AFFIRMED

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B R A M M E R, Presiding Judge.

¶1 Jessica M. appeals from the juvenile court's November 2010 order terminating her parental rights to her daughter, Autumn, born November 19, 2008. Jessica argues the court erred in finding termination of her parental rights was appropriate pursuant to A.R.S § 8-533(B)(8)(c) because the Arizona Department of Economic Security (ADES) did not timely provide appropriate reunification services related to domestic violence issues. She also asserts termination on that ground violated her "substantive and procedural due process rights" because ADES did not timely provide domestic violence services and did not allege in its pleadings that domestic violence was a basis for seeking termination of her parental rights. Finally, Jessica argues the court erred in finding there is a substantial likelihood she would not be capable of parenting Autumn effectively in the future and that termination was in Autumn's best interests. We affirm.

¶2 In a detailed ruling issued after a contested termination hearing, the juvenile court found ADES had shown by clear and convincing evidence that, despite its diligent effort to provide Jessica with appropriate reunification services, she had been unable to remedy the circumstances that had caused Autumn to be in court-ordered, out-of-home placement for more than fifteen months and that there was a substantial likelihood she would be unable to parent effectively in the near future. *See* § 8-533(B)(8)(c); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005). Specifically, the court found that, although Jessica otherwise was compliant with her case plan, she had not benefitted from the domestic violence services that had been provided. The court found she had

been involved in several domestic violence incidents during the dependency, all with D., her boyfriend at the time Autumn was removed from her care in December 2008; had failed to end her unhealthy relationship with D.; and had lied to Child Protective Services (CPS) about that relationship. Thus, the court concluded Jessica was unlikely to "be able to stay [away] from unhealthy relationships in the near future" and her pattern of "deceitfulness and irresponsibility show that she is not yet a proper parent." And, as required, the court found by a preponderance of the evidence that termination of Jessica's parental rights was in Autumn's best interests based on the likelihood Autumn would be exposed to domestic violence were she returned to Jessica's care and the fact Autumn's foster family wished to adopt her. *See Kent K.*, 210 Ariz. 279, ¶ 41, 110 P.3d at 1022.

¶3 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] 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).

¶4 In order to terminate parental rights based on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a diligent effort to provide the family with appropriate reunification services. *See* § 8-533(B)(8). ADES fulfills this duty by providing the parent "with the time and opportunity to participate in programs

designed to help her become an effective parent." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶5 Jessica first argues the juvenile court erred by finding ADES had provided appropriate reunification services related to domestic violence. She does not dispute the juvenile court's finding that her domestic violence issues with D. dated from at least April 2009, when police responded to a domestic violence incident. Police also responded to domestic violence incidents in June and September 2009 and April 2010.[1] Nor does Jessica dispute the court's finding that she continued to have consensual contact with D. throughout the dependency process, despite informing CPS that she had no relationship with D. Her argument is instead that ADES did not provide her with domestic violence services until February 2010, well after it was aware of the issue and only a few months before ADES moved to terminate her parental rights.

¶6 Jessica's argument is not supported by the record. As ADES points out, CPS encouraged Jessica to enroll in domestic violence classes immediately following the April 2009 incident, but Jessica initially refused, asserting she was no longer in a

[1]The April 2009 incident apparently involved an argument between Jessica and D. that Jessica alleged had "turned physical." The responding officer served protection orders on both parties following that incident. In June 2009, Jessica was arrested after breaking into D.'s home, allegedly to retrieve her property. The September 2009 incident stemmed from Jessica's complaint that D. had threatened and assaulted her. No arrests were made. In April 2010, Jessica voluntarily went to D.'s residence, and she alleged D. had attacked her there after she received a text message from another person.

relationship with D. and did not need such services. Jessica was participating in domestic violence classes by July 2009. Despite these classes, her CPS case manager was concerned that Jessica had not ended her relationship with D. and discussed Jessica's domestic violence issues with her individual therapist, who agreed to address them with Jessica. Jessica's case plan, dated June 2009, also stated Jessica needed to learn skills to avoid relationships with abusive people. And a November 2009 CPS progress report notes Jessica had been given access to domestic violence services but that she continued to have contact with D. The record clearly demonstrates that CPS provided domestic violence support services immediately after the first documented incident in April 2009. Thus, the juvenile court did not err in finding ADES had been diligent in providing reunification services to Jessica.

¶7 Because we reject Jessica's claim that ADES failed to provide domestic violence services timely, we necessarily reject her related argument that ADES's failure to do so violated "both her substantive and procedural due process rights." Jessica additionally claims her due process rights were violated because ADES did not allege in its pleadings that domestic violence was a basis for terminating her parental rights.[2] Jessica did not raise this argument to the juvenile court despite ample opportunity to do

[2]Autumn was removed from Jessica's care in December 2008 after she left Autumn with D., telling him she "wanted nothing to do with" Autumn and instructing him to "get rid of" her. D. left Autumn at a children's shelter. Jessica admitted the allegations in a dependency petition that she had serious mental health and substance abuse problems that "prevent her from safely parenting her infant child." ADES's motion for termination of her parental rights asserted as a basis for termination time-in-care under § 8-533(B)(8), noting Jessica had been provided domestic violence services.

so. Thus, she has waived the argument on appeal. *See Marco C. v. Sean C.*, 218 Ariz. 216, ¶ 6, 181 P.3d 1137, 1139-40 (App. 2008); *In re Commitment of Jaramillo*, 217 Ariz. 460, n.7, 176 P.3d 28, 33 n.7 (App. 2008). Although she asserts this argument "cannot be waived," she cites in support only *Brady v. Maryland*, 373 U.S. 83 (1963), a criminal case containing no support for her claim. Accordingly, we do not address this issue further.

¶8 Jessica next asserts the juvenile court erred in concluding she would be unable to parent Autumn effectively in the future. This argument, again, is grounded primarily in her incorrect assertion that ADES did not timely provide services related to domestic violence and her waived argument that ADES was required to give notice of domestic violence as a grounds for severance. As we noted above, Jessica does not dispute the court's findings that she persisted in having contact with D. throughout the dependency process, resulting in several incidents of domestic violence, or that she lied about her continuing relationship with D. Although Jessica identifies evidence in the record suggesting she recently had made progress in addressing the domestic violence issues, that evidence does not require the court to have concluded Jessica could parent Autumn effectively. Her therapist's testimony that she had some success in creating boundaries to avoid choosing an abusive relationship was qualified—he also stated he could not predict whether Jessica could maintain such boundaries in the future. And there was evidence Jessica was not honest with her therapist about her relationship with D. Jessica essentially asks us to reweigh the evidence on appeal, which we will not do. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004)

(juvenile court "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts"). The court's conclusion that Jessica appeared unable to remedy the domestic violence issues stemming from her relationship with D. is supported by the evidence and Jessica has given us no valid basis to disturb that determination.

¶9 Finally, Jessica argues the juvenile court erred in finding that termination would be in Autumn's best interest. For termination to be in the child's best interests, the evidence must support a conclusion that she would benefit from the termination of Jessica's parental rights or be harmed by the continuation of the relationship. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Jessica argues the court could not base that determination on the domestic violence issues because Autumn was not present for any incidents of domestic violence. As ADES correctly points out, however, Autumn had not been in Jessica's custody when the numerous incidents of domestic violence occurred. Given Jessica's failure to remedy the domestic violence concerns, it was reasonable for the court to conclude that, if Autumn was returned to Jessica's care, she likely would be harmed by being exposed to domestic violence. Thus, the court's decision that termination was in Autumn's best interest was entirely appropriate, particularly when considered in conjunction with Autumn's foster family's willingness to adopt her. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (evidence child adoptable and current placement meeting child's needs sufficient to find termination in child's best interest).

¶10 For the reasons stated, we affirm the juvenile court's order terminating Jessica M.'s parental rights to Autumn M.

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

CONCURRING:

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

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