

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG -5 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SAMANTHA H.,)	2 CA-JV 2011-0036
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and MICHAEL N.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD201000101

Honorable Joseph R. Georgini, Judge

AFFIRMED

Camille Hernandez

Florence
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Jane A. Butler

Tucson
Attorneys for Appellee
Arizona Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Samantha H. appeals from the juvenile court's order terminating her parental rights to Michael N., born in August 2008 and two years old at the time of the March 2011 severance hearing, on the grounds of length of time in care, A.R.S. § 8-533(B)(8)(b), and chronic substance abuse, § 8-533(B)(3). Samantha challenges the sufficiency of the evidence, arguing with respect to the first ground that there was insufficient evidence she had substantially neglected or willfully refused to remedy the circumstances that caused Michael to remain in court-ordered care. With respect to the second ground, she maintains the evidence did not sufficiently establish her substance abuse problem would continue for a prolonged and indeterminate period of time. 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. Michael was taken into custody by Child Protective Services (CPS) in June 2010 and placed with his maternal grandmother because he was being neglected and abused as a result of Samantha's use of methamphetamine. The child's father was incarcerated at the time. Samantha admitted to the CPS intake worker that she had used the drug while pregnant, stopping in the fifth month because the baby "reject[ed]" it, stated friends of hers would smoke the drug in her home while Michael was there, and admitted she had been using the drug as well. Michael was adjudicated dependent at the June 30, 2010 preliminary protective hearing after Samantha admitted allegations in the dependency petition.

¶3 The initial case plan was reunification. But, because Samantha did not avail herself of services provided by ADES and did not comply with various conditions of her case plan, the juvenile court changed the plan to severance and adoption at a permanency hearing in December 2010. ADES filed a motion to terminate Samantha's parental rights on January 3, 2011, seeking severance on the grounds of chronic substance abuse and length of time in care (six months or longer based on the fact that Michael was under the age of three). The court granted ADES's motion at the end of the March 2011 hearing, and made factual findings on the record, concluding ADES had sustained its burden of proving the statutory grounds alleged in the motion with clear and convincing evidence.

¶4 The juvenile court found, *inter alia*, that Samantha had a chronic substance abuse and methamphetamine addiction and that ADES had provided services designed to address the problem, but Samantha either refused or failed to benefit from the services provided to her. Accordingly, the court found any further efforts to reunify her with Michael "would be futile." Noting Samantha had tested positive for opiates as recently as February 2011, the court added, "There's no reason to believe at this point that mother has kicked her habit, that she's going to be able to stay clean or be able to parent this child because of her drug addiction." The court found ADES had presented sufficient evidence on the ground of length of time in care as well because Samantha had substantially neglected and willfully refused to remedy the circumstances that caused Michael to remain out of the home "by refusing to participate in reunification services." The formal order was submitted and signed by the court in April. It contained few

factual findings but followed the language of the two statutory grounds upon which it severed Samantha's rights. As to each statutory ground, the court summarized the services ADES had offered and found Samantha had refused them. Finding termination was in Michael's best interests, the court terminated Samantha's parental rights. This appeal followed.

¶5 Samantha first challenges the sufficiency of the evidence to support the juvenile court's order on the ground of length of time in care, emphasizing efforts she made beginning in January 2011 to address her substance abuse issue and participate in services ADES had offered, including substance abuse counseling and parenting classes. Relying on *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 152 P.3d 1209 (App. 2007), she contends the court was required to find the circumstances supporting termination existed at the time of the severance hearing and suggests the record did not support such a finding in light of efforts she had made in the month or so preceding that hearing. She asserts she simply had a "slow start in engaging in services," insisting she had not taken illegal drugs since October 31, 2010. And, she contends, the efforts she was making at the time of the hearing negated the court's finding she had substantially neglected or willfully refused to remedy the circumstances that caused Michael to remain out of the home.

¶6 Samantha's challenge to the termination of her rights based on substance abuse, which is factually intertwined with the ground of out-of-home placement, is similar. She maintains there was insufficient evidence to support the finding that there existed reasonable grounds to believe her substance abuse problem would persist for a

prolonged, indeterminate period of time. She contends she “had proven that she was capable of remaining free from substances for a period of months,” pointing to evidence that random drug testing since November, after Thanksgiving, had been negative, except on one occasion.

¶7 To sever a parent’s rights, the juvenile court must find there is clear and convincing evidence of at least one of the statutory grounds for termination, 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, ¶ 22, 110 P.3d 1013, 1018 (2005). We do not reweigh the evidence on appeal; rather, we defer to the juvenile 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. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And as we previously stated, we view the evidence in the light most favorable to upholding the juvenile court’s decision. *See Christy C.*, 214 Ariz. 445, ¶ 12, 153 P.3d at 1078.

¶8 The record contains substantial evidence supporting the juvenile court’s order terminating Samantha’s rights on both grounds. That evidence included not only the CPS reports and testimony of CPS case manager Joann Smith, but Samantha’s own testimony. She admitted that in July or August 2010, about a month after Michael was removed from her custody, she had been given a written case plan for reunification that

outlined the services she was required to obtain. She also admitted she had been warned when she appeared in court in June 2010 that under the “new law,” referring to § 8-533(B)(8)(b), a subsection added to the statute in 2008 to expedite the period within which a parent’s rights may be severed when a child younger than three years old has been in court-ordered care, she had six months to demonstrate she could “really . . . turn things around.” *See* 2008 Ariz. Sess. Laws, ch. 198, § 2. Samantha conceded she did not “live up to that . . . time table,” and admitted she had not started individual substance abuse treatment until about six weeks before the March 2011 severance hearing, and had not begun parenting classes until the month before the hearing. She admitted, too, that at the time of the hearing she had attended only one parenting class. When asked why she had waited so long to begin availing herself of these services, she speculated, “Maybe ‘cause I was drug testing dirty” She contends, as she did below, that she wanted the judge to give her more time, but she had estimated it would take her six months to a year to be in a position to be able to care for Michael and have him in her custody. Samantha testified she was happy her son was with her mother and wanted him to remain there, agreeing he was being well cared for and that this was a safe place for him.

¶9 The juvenile court’s order is further supported by the testimony of Samantha’s mother. Michael had been placed with her when he was removed from Samantha’s custody in June 2010 and she wished adopt him. She testified about Samantha’s chronic substance abuse issue and her observations of Samantha’s behavior while she was under the influence of methamphetamine, which she had been during supervised visitation with Michael. The grandmother estimated it would take two to

three years before Samantha would be “clean, employed and have a place to stay and raise Michael.” When asked, “Do you believe your daughter is under the influence of drugs today?” she responded, “Yes,” explaining she had received a “text” message the day before from one of her other daughters who had picked up Samantha from a hotel, telling the grandmother Samantha was taking drugs and drinking. She also testified that the daughter with whom Samantha was living had called her and said she was concerned Samantha was using drugs. Although Samantha’s mother did not know how long Samantha had been using drugs, Samantha conceded she had been using methamphetamine since she was about eighteen years old.

¶10 Although Samantha insists, as she did at the severance hearing, that she stopped using drugs on October 31, 2010, there was evidence to the contrary, as discussed above. To the extent there were conflicts in the evidence on this or any other factual issue, it was for the juvenile court to resolve them, not this court. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Even assuming as true that Samantha had stopped using drugs, there nevertheless was sufficient evidence to support the court’s order on both grounds. The evidence discussed above and additional evidence in the record established overwhelmingly that, at the time of the hearing, Samantha still was not in a position to have Michael returned to her. She did not have stable housing or employment and she had been living in hotel rooms paid for by other people until she moved in with her sister. As noted above, she did not feel ready to care for Michael and estimated it would take another six months to a year for her to be in a position to do so. And given Samantha’s lengthy history of substance abuse, there was ample evidence to support the

court's finding that she had not yet "kicked her habit" and would not be able to do so for a prolonged, indeterminate period of time.

¶11 The juvenile court was well aware of the efforts Samantha had made after ADES filed the motion to terminate her parental rights. We can infer from the court's comments and findings at the end of the hearing that the court found these efforts, which she made just four to six weeks before the hearing, had been too little, too late. *See In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (mother's successful rehabilitation in eight months before hearing "too little, too late" in light of failure to remedy addiction within first year child out of home pursuant to court order). Our legislature has provided parents a short time period within which to remedy the circumstances that cause a child of Michael's age to remain out of the home. Samantha was warned about this accelerated period. The record contains reasonable evidence to support the finding that she failed to remedy those circumstances that caused Michael to remain out of the home and the court's additional finding that further efforts to reunify Samantha and Michael would be futile. And ADES is not required to provide further services when the court believes they would be futile. *In re Maricopa County Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984); *see also Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 20, 159 P.3d 562, 566 (App. 2007) (finding reunification services would have been futile based on "abundant evidence showing that no amount of 'reasonable efforts' in providing services would have enabled [mother] to function as a minimally adequate parent").

¶12 Finally, we find Samantha’s reliance on *Marina P.* unavailing; this case is readily distinguishable. There, Division One of this court found the evidence insufficient to support the juvenile court’s finding that the mother had substantially neglected or willfully refused to remedy the circumstances that caused the children to remain out of the home under the “expedited” provisions of § 8-533(B)(8)(a), which was, at that time, the shorter period of time in care, with former subsection (B)(8)(b), providing a period of fifteen months. 214 Ariz. 326, ¶ 20, 152 P.3d at 1212. The court stated, “[W]e construe those circumstances, as we have in similar contexts, ‘to mean those circumstances existing at the time of the severance’ that prevent a parent from being able to appropriately provide for his or her children.” *Id.* ¶ 22, quoting *In re Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993), *abrogated on other grounds by Kent K.*, 210 Ariz. 279, ¶¶ 12, 22, 110 P.3d at 1016, 1018. But, unlike the evidence here, the evidence in *Marina P.* fell far short of establishing the mother had substantially neglected or willfully refused to remedy the circumstances; rather, it showed the mother had substantially complied with the case plan in numerous respects notwithstanding complications resulting from her illegal immigration status. *Id.* ¶¶ 26-32. Additionally, certain factual findings, such as the finding that the mother had not had contact with the children, were not supported by the record. *Id.* The court concluded the juvenile court had not identified any circumstances remaining at the time of the severance hearing that required the children to remain in care. *Id.* ¶¶ 33-38.

¶13 Here, in contrast, the juvenile court clearly considered whether, by the time of the hearing, Samantha had addressed her chronic substance abuse, homelessness,

unemployment, and general instability sufficiently so that Michael could be returned to her. The overwhelming evidence established she had not. As the juvenile court essentially found, the record does not establish Samantha made the kinds of ““appreciable, good faith efforts to comply with remedial programs outlined by ADES”” referred to in *Marina P.* that would preclude finding a parent had ““substantially neglected to remedy the circumstances that caused the out-of-home placement.”” *Id.* ¶ 30, quoting *Maricopa County No. JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229.

¶14 We affirm the juvenile court’s order terminating Samantha’s parental rights.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge