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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PAMELA C., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, MACY C., and KAI C., Appellees.	2 CA-JV 2008-0119 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17964400

Honorable Charles S. Sabalos, Judge

AFFIRMED

Jacqueline Rohr
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt
Tucson
Attorneys for Appellee Arizona Department of Economic Security

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B R A M M E R, Judge.

¶1 Pamela C. appeals from the juvenile court's order terminating her parental rights to her children, Macy and Kai, born in 2001 and 2003 respectively, based on her history of chronic substance abuse and the length of time the children have spent in a court-ordered, out-of-home placement.[1] *See* A.R.S. § 8-533(B)(3), (B)(8)(a) and (b).[2] Pamela does not challenge the grounds for termination or the court's best-interests determination. Rather, she contends her right to procedural due process was violated. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002); *see Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (if court finds severance justified on one statutory ground, it need not consider sufficiency of evidence on other grounds).

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[1]The children's father, whose parental rights were also terminated, is not a party to this appeal.

[2]Section 8-533(B)(8)(b) has been renumbered as § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2. In this decision we refer to the statute as numbered when the motion for termination was filed in January 2008.

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *Id*. ¶ 20. In September 2006, the Arizona Department of Economic Security (ADES) filed a dependency petition as to both children, alleging as to Pamela that, when officers arrived at the family home to arrest the father for child abuse, they found the home "in disarray" and found then-four-year-old Macy "playing in the front yard[] where there were several hypodermic needles on the ground." Pamela reported that drug users were staying in the family home and that she had been using heroin and was suffering severe withdrawal symptoms; police found "fresh track marks" on Pamela's arm. Although the parents denied the allegations in the dependency petition, the juvenile court found the children dependent as to both parents in November 2006. ADES provided various services to Pamela in furtherance of the initial case plan goal of reunification.

¶4 At the permanency hearing in December 2007, the juvenile court changed the case plan goal to severance and adoption and ordered ADES to file a motion to terminate both parents' rights. The motion, filed the following month, alleged as grounds for termination Pamela's "[m]ental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol" pursuant to § 8-533(B)(3) and both nine-month and fifteen-month out-of-home placement pursuant to § 8-533(B)(8)(a) and (b). A contested severance hearing, initially scheduled for four days in March and April 2008, ultimately spanned fourteen days between March and September 2008. ADES concluded its case on the morning of the fourteenth day, and Pamela presented her entire case that afternoon. In an order entered in October 2008, the court terminated Pamela's rights based

on her history of chronic substance abuse and the length of time the children had spent in a court-ordered, out-of-home placement. *See* § 8-533(B)(3), (B)(8)(a) and (b).

¶5 Pamela does not challenge the sufficiency of the evidence presented at the termination hearing and acknowledges that we will affirm the juvenile court's ruling "on at least one ground." She claims, however, that she was denied due process "by the length of the trial and the apportionment of time between . . . ADES and Appellant." She argues that, by allowing the trial to span fourteen days over six months, the court permitted ADES "to firmly imprint [its] position to the court, allowing very little room for [Pamela] to persuasively disprove the allegations" and thereby denying her "a fair opportunity to be fully heard," as due process requires. *See In re Pima County Juv. Action No. S-949*, 131 Ariz. 100, 101, 638 P.2d 1346, 1347 (App. 1981) (procedural due process requires notice and opportunity to be heard); *see also State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154, 157 (1992) ("The touchstone of due process under both the Arizona and federal constitutions is fundamental fairness.").

¶6 Pamela argues on appeal, without further analysis, that, "[a]fter all of the additional time given for the trial, after the amount of time freely given to the department for its presentation of evidence, it would appear that Mother was left with a situation that could have unfairly prejudiced her case." Not only has Pamela failed to show any prejudice resulting from the hearing's length or the court's denial of her request to apportion the time allocated to each party, but the record shows numerous instances, as we discuss below, many of which Pamela either caused or at least did not challenge, that created the circumstances

of which she now complains.[3] Moreover, Pamela concedes in a footnote to her opening brief that a special action petition would have been the "proper remedy" to assert the claim now before us.

¶7 Pamela asked the court to use the first day set for the termination hearing to address the possibility of placing the children with their maternal stepgrandfather with the understanding she would consider relinquishing her parental rights if the placement were approved. Pamela's attorney told the juvenile court, "I think it is in the best interests of the children to take the time [to address placement]. . . . They've been in seven placements, to take the time to really look at what is right for them . . . . I don't understand the rush to a severance without a permanent placement for the children." On the second day scheduled for the hearing, which was also used to address placement, Pamela's attorney told the court that she had questioned psychologist Michael German regarding placement, not termination, and that, "at this point to move over and segue into the severance, it really is unfair." Even after the court determined that placement with the stepgrandfather was in the children's best interests, the parties continued to dispute the details of the children's transition into the stepgrandfather's home during the next three days of the hearing, an issue Pamela's attorney stated she wanted to "address . . . as soon as possible." Once the severance proceeding started, Pamela's attorney (and the other counsel) had frequent conflicts with the scheduled

[3]Pamela urges us to apply a harmless error standard. Without deciding whether such a standard is appropriate, we conclude that, in the absence of any argument by Pamela that she was prejudiced by the asserted due process violation, any error was harmless. *See Creach v. Angulo*, 189 Ariz. 212, 215, 941 P.2d 224, 227 (1997) (when prejudice does not appear from record, error is deemed harmless).

hearing dates, requiring additional extensions. In addition, once the hearing started, Pamela's attorney was involved in an automobile collision with one of ADES's witnesses, the psychologist who had evaluated the parents. As a result of the "antagonism" Pamela's attorney perceived between herself and the witness, a new evaluation with a different psychologist was scheduled, once again delaying the severance proceeding.

¶8 On day eleven, Pamela asked the juvenile court to "apportion the remaining time" so she could present her case without further extensions. The court denied her request, noting it had been made at a "late date," and stated the court would "find the time to complete the trial as soon as possible." On day thirteen, when the court noted it intended to finish the hearing on the next scheduled date, Pamela did not object. However, on the final day of the hearing, after assuring the court that all of her witnesses were present, Pamela's attorney called five witnesses but then stated that her remaining witnesses were not available that afternoon. The court directed Pamela's attorney to identify the missing witnesses, summarize their anticipated testimony, and explain why they had not appeared. After hearing counsel's explanation, the court "deemed that the mother had rested." Pamela objected, citing the court's denial of her request for apportionment of time on day eleven and her "attempts on numerous occasions to subpoena witnesses only to have those subpoenas not be able to be honored because the State's case took up approximately 90 percent of the time." The court responded: "The State's case may have taken up 90 percent, but there are four other lawyers in the case, who have spent a considerable amount of time cross-examining all the State's witnesses."

¶9 The record is replete with evidence that Pamela cross-examined ADES's witnesses, did not avail herself of the juvenile court's offer to supplement her pretrial statement with additional witnesses, and presented numerous witnesses and exhibits on her own behalf. Accordingly, although we discourage protracted termination proceedings, based on this record we do not find the court abused its discretion in the manner in which it conducted the hearing, nor do we find evidence of a due process violation. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶¶ 33-34, 977 P.2d 807, 813 (App. 1998) (imposition of time limits at trial reviewed for abuse of discretion; to prevail on appeal, appellant must show harm resulting from trial court's imposition of time limitation).

¶10 Pamela also argues, again without analysis, that, if the termination hearing had "commenced and stopped in a reasonable time," ADES's argument that the children deserved permanency would not have been as compelling and thus, she suggests, the juvenile court may not have found termination was in the children's best interests. To prove its argument, ADES had to show by a preponderance of the evidence that the children would either benefit from severance or be harmed if the parental relationship continued. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). Notably, Pamela concedes "the court did not manifestly abuse its discretion in finding that the best interests of the minor children would be served by granting the motion for termination." Nor does she dispute the court's best interests findings that the children were "doing well in their present placement in the home of their maternal step-grandfather"; that he was "willing and readily able to adopt the children and they are adoptable by others"; and that, "for the children to

properly develop, they need a permanent home that provides a loving, nurturing and stable environment free from the debilitating effects of substance abuse." As we previously noted, we find no evidence of a due process violation in the manner in which the termination hearing was conducted; we also find no such violation in the court's best interests determination.

¶11 For all of the aforementioned reasons, we affirm the juvenile court's order terminating Pamela's rights to Macy and Kai.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge