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

DIVISION ONE
FILED: 1/29/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KAREN P.,	)	No. 1 CA-JV 12-0119
	)	
Appellant,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, RHANNA P.,	)	103(G) Ariz. R.P. Juv. Ct.; Rule 28 ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD508145

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Robert D. Rosanelli — Phoenix
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General — Phoenix
by Dawn R. Williams, Assistant Attorney General — Tucson
Attorneys for Appellee Arizona Department of Economic Security

---

S W A N N, Judge

¶1 Karen P. ("Mother") appeals from the juvenile court's order terminating her parental rights. Reasonable evidence supports the order, and we therefore affirm.

FACTS[1] *AND PROCEDURAL HISTORY*

¶2 Mother gave birth to Rhanna P. ("Child") in September 2010. Mother is a member of the Pueblo of Zuni Tribe, and Child is therefore eligible for membership. Child came into the custody of Child Protective Services ("CPS") when she was two days old because she was born substance-exposed to methamphetamine and marijuana. Shortly thereafter, CPS filed a dependency petition and Child was found dependent as to Mother.

¶3 Before Child's birth, Mother had received social services from the Pueblo of Zuni Tribe for several years in connection with others of her children. At the time of Child's birth, Mother had been receiving reunification services from the Arizona Department of Economic Security ("ADES") for approximately one year, based on the removal of three of her children from her care because of her substance abuse. Those reunification services continued after Child was born: Mother was offered parenting classes, substance-abuse treatment, individual counseling through a behavioral-health organization, individual counseling with a private practitioner, psychological evaluations, random drug testing, biweekly visits with Child and a parent aide, and free transportation for all services. Mother

[1] We view the evidence in the light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

was also asked to attend Child's medical appointments, participate in Alcoholics Anonymous, and submit copies of her pay stubs.

¶4 Mother made some attempts to participate in the reunification services and satisfy the conditions required by ADES. Though she failed to provide pay stubs, she submitted employment-confirmation letters from two employers and was able to maintain stable housing for over a year. She submitted to the psychological examinations; was diagnosed with major depressive disorder, posttraumatic stress disorder, and substance dependencies; and took medication as prescribed. She completed the treatment programs offered by the behavioral health organization. She also made some progress in counseling with the private practitioner.

¶5 But Mother also missed many of her appointments with the counselor. Similarly, she attended only a few Alcoholics Anonymous meetings and canceled many of her visits with Child, despite ADES's attempts to accommodate her schedule by arranging visits at Mother's apartment and trying less frequent visits of longer duration. Further, the parent aide reported that when the visits did occur, Mother showed no bond with Child, was often preoccupied with other activities, seemed anxious to end the visits on time, and, during the longer visits, had trouble sustaining her energy.

¶6 Mother also failed to stop abusing drugs and alcohol. In 2011, Mother missed over thirty percent of her drug tests, tested positive three percent of the time, and admitted to drinking alcohol on one occasion shortly after her parental rights to three of her other children were terminated. In the first few months of 2012, Mother again missed over thirty percent of her drug tests and tested positive for alcohol or opiates over fifteen percent of the time. Mother refused to admit to having used alcohol and other prohibited substances, and instead claimed that the positive test results were mistakes because she was ill and had taken Nyquil and doctor-prescribed Vicodin, prednisone, and morphine.

¶7 The juvenile court changed Child's case plan to severance and adoption in January 2012, and in February 2012, ADES filed a motion to terminate Mother's parental relationship with Child under A.R.S. § 8-533(B)(8)(c) and (B)(10).[2] At a two-day trial in April 2012, ADES presented evidence of the facts set forth above and Mother's case manager and tribal social worker offered opinions in support of termination. The case manager further testified that termination of Mother's parental rights was in the best interests of Child, that Child's foster

[2] ADES concurrently moved to terminate the parental relationship of Child's biological father under A.R.S. § 8-533(B)(8)(c). Termination resulted. The father is not a party to this appeal.

family wished to adopt her, and the tribal social worker agreed that the foster family was an appropriate placement.

¶8 The juvenile court found that ADES had proven grounds for termination under A.R.S. § 8-533(B)(3), (B)(8)(c), and (B)(10), and had proven that termination was in Child's best interests. Mother timely appeals. We have jurisdiction under A.R.S. § 8-235(A).

STANDARD OF REVIEW

¶9 The juvenile court is in the best position to weigh evidence, judge witness credibility, and make appropriate findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Accordingly, we will accept the juvenile court's findings of fact unless they are supported by no reasonable evidence, and we will affirm the termination order unless it is clearly erroneous. *Id.*

DISCUSSION

¶10 To terminate a parent-child relationship, the juvenile court must find by clear and convincing evidence that at least one of the grounds set forth in A.R.S. § 8-533 exists, and must find by a preponderance of the evidence that termination is in the child's best interests. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). When the child is eligible for membership in an Indian

tribe, compliance with the Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901-1963, is also required.

¶11 Here, Mother does not challenge compliance with ICWA, or the court's best-interests findings. She contends only that ADES did not meet its burden to prove the statutory grounds for termination found by the court. We therefore limit our review to that issue. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

¶12 We first examine whether ADES met its burden to prove the statutory ground for termination set forth in A.R.S. § 8-533(B)(8), which requires:

> That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:
>
> ....
>
> (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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.

A.R.S. § 8-533(B)(8)(c). ADES fulfills its duty to provide appropriate reunification services when it gives a parent "the time and opportunity to participate in programs designed to help her become an effective parent." *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not required to "provide every conceivable service[.]" *Id.*

¶13 Here, reasonable evidence supports the court's finding that the requirements of A.R.S. § 8-533(B)(8)(c) were met. First, ADES met its burden to prove that it made a diligent effort to provide appropriate reunification services to Mother. Mother had been receiving reunification services from her Tribe and ADES for some time before Child's birth because of the impact of her substance abuse on her other children. Then, after Child's birth, ADES continued to provide Mother with a wide array of reunification services. We reject Mother's contention that ADES's decision not to renew her referral for individual counseling in January 2012 showed a lack of diligent efforts to provide her with appropriate reunification services. ADES made substantial and prolonged efforts to provide appropriate services to Mother, and it did not act inappropriately by deciding, around the time of the case plan change, to discontinue the individual counseling that Mother

attended only sporadically during the year it was available to her.

¶14 ADES also met its burden to show that Child was in an out-of-home placement for at least fifteen months. The undisputed evidence showed that Child was removed from Mother's care shortly after her birth in September 2010 because she was born substance-exposed to illegal drugs, and she remained in an out-of-home placement for the next nineteen months until the trial.

¶15 Finally, ADES met its burden to show that Mother had been unable to remedy the circumstances that caused Child to be in an out-of-home placement -- principally Mother's substance abuse -- and there was a substantial likelihood that Mother would not soon be capable of exercising proper and effective parental care and control. Mother has a long history of substance abuse and had been unable or unwilling to recover by the time of trial. She admitted one episode of drinking alcohol in 2011, and her drug-test record for that year showed some positive drug tests and many missed tests. In 2012, she continued to miss drug tests with regularity and tested positive several times for opiates and alcohol. The juvenile court's finding that Mother's attribution of the positive tests to Nyquil or prescription drugs was not credible is properly supported by this record. *See Jesus M.*, 203 Ariz. at 280, ¶ 4,

53 P.3d at 205. Because A.R.S. § 8-533(B)(8)(c) provided appropriate grounds for the termination order, we need not consider whether the evidence justified termination on the other grounds found by the court. *See Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.[3]

[3] Though the court cited A.R.S. § 8-533(B)(3) as an alternative ground for termination, this ground was never alleged in the motion filed by ADES. Accordingly, though the court's findings with respect to the subsection (B)(3) inquiry were relevant to the best interests determination, reliance on subsection (B)(3) as a statutory ground for termination was not warranted. *See JS-501904*, 180 Ariz. at 355, 884 P.2d at 241 (recognizing parent's right to due process, which includes notice and an opportunity to be heard); *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 332-33, ¶¶ 35-38, 152 P.3d 1209, 1215-16 (App. 2007) (declining to affirm termination on grounds of which parent received no notice).

CONCLUSION

¶16 Mother does not dispute that termination of her parental relationship with Child was in Child's best interests, and she does not challenge compliance with ICWA. Reasonable evidence supports the juvenile court's findings and conclusion that termination was warranted under A.R.S. § 8-533(B)(8)(c). The juvenile court therefore did not commit clear error by terminating Mother's parental relationship, and we affirm.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PHILIP HALL, Presiding Judge

/s/
_____
SAMUEL A. THUMMA, Judge