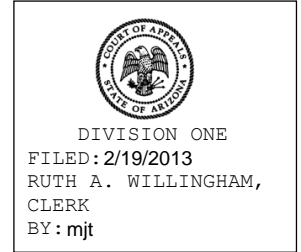


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

MICHELLE C.,) 1 CA-JV 12-0172
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz.R.P.Juv.Ct.
SECURITY, C.C., J.C., D.C.,) 103(G); ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD18949

The Honorable Colleen McNally, Judge

AFFIRMED

The Stavris Law Firm, PLLC Scottsdale
By Alison Stavris
Attorneys for Appellant

Thomas C. Horne, Attorney General Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellees

H O W E, Judge

¶1 Michelle C. ("Mother") appeals termination of her parental rights to her biological children C.C., J.C., and D.C. ("the children") based on out-of-home placement for a cumulative

period of fifteen months or more. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The children's paternal aunt ("Aunt") filed a private dependency petition on March 18, 2010, alleging that the children have been in her care since December 29, 2009. Aunt stated that Mother's whereabouts were unknown and Aunt had no way to contact her. Aunt took temporary custody of the children the following day. Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("ADES"), intervened and reported that it would provide appropriate reunification services to Mother when she was located.

¶3 From December 2009 to May 2010, Mother called Aunt and the children once or twice, and visited once. Mother used methamphetamine and was homeless during that time. In May 2010, Mother moved into her mother's home, and later that month was convicted of committing domestic violence against the children's grandmother in the children's presence and placed on probation.

¶4 On July 9, 2010, Mother appeared and contested the allegations in the dependency petition. The court found the children dependent as to Mother. The court approved the case plan of family reunification, and CPS offered services to Mother. To achieve reunification, Mother was required to remain sober; apply skills learned in treatment; and demonstrate the

ability to care for herself, her children, and the children's special needs. She also was required to demonstrate the ability to provide a secure environment, employment and stable housing; and to deal with her emotions without using violence or aggression.

¶15 CPS provided the following services to Mother directly or in coordination with her probation: urinalysis testing, substance abuse assessment and treatment, psychological consultation, parent-aide supervised visits and parenting education, anger management treatment, individual counseling, psychological evaluation and transportation. Mother participated in all services. She completed intensive outpatient substance abuse, anger management and individual counseling. She participated in drug testing and tested negatively for drug use on all tests.

¶16 The children are difficult to manage. The case manager and Aunt observed behavioral issues with the children, ages three, four, and six, all of whom had not been potty-trained. C.C. had significant mental health problems and expressed himself by kicking and biting. J.C. was diagnosed with ADD and expressed herself by throwing tantrums. D.C. also threw minor temper tantrums.

¶17 Two parent-aide referrals of six months each were offered to Mother to provide parenting skills training. Mother

attended consistently and was taught techniques for effective discipline, parenting children with mental health issues, understanding developmental issues, and finding housing assistance. However, the parent-aides reported that the children's visits with Mother were unsatisfactory. C.C. soiled himself, J.C. had nightmares after visits, and all the children acted out behaviorally before and after visits. CPS offered a second parent-aide referral because Mother did not successfully complete the first referral, and this too was unsuccessful. The parent-aides expressed concern about Mother's ability to control the children and her anger.

¶18 Mother participated in a psychological evaluation and her doctor expressed concern that Mother appeared unable to manage the children within a supervised setting. The doctor opined that Mother's lack of motivation or her inability to internalize material from her training made her unable to manage the children. Her doctor further opined that Mother would have difficulty parenting if overwhelmed by stressors, including stress caused by the children's exhibition of behavioral issues and the instability of her employment or housing.

¶19 Because the parenting services CPS offered had been ineffective, CPS offered Mother "therapeutic supervision"—visits that are supervised by a psychologist who intervenes and directly address issues that a parent is having with her

children. These visits did not go well; C.C. became aggressive and verbally defiant towards Mother during most of the visits, and bit Mother and his siblings.

¶10 The psychologist present during therapeutic supervision reported that Mother became easily overwhelmed and needed direction on what to do during her visits with the children. She also was not able to properly physically restrain the children during visits when it was necessary. The psychologist further reported that the interactions sometimes made Mother angry and frustrated and Mother did not know how to de-escalate the children's outbursts.

¶11 After one year of parent-aide training and six months of therapeutic visits, Mother's ability to parent did not progress to allow for unsupervised visits. In January 2012, ADES moved to terminate the parent-child relationship between Mother and the children. At this time, the children had been in out-of-home placement for over two years.

¶12 After a four-day trial, the court concluded that ADES made diligent efforts to provide appropriate reunification services to Mother, the children had been in out-of-home placement for fifteen months or longer, and Mother was not capable of exercising proper and effective parental care and control in the near future. The court thus terminated Mother's parental rights to the children.

¶13 Mother timely appeals. This court has jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 8-235 and 12-120.21 (West 2013).¹

DISCUSSION

¶14 Mother argues that the trial court erred in finding that (1) ADES provided appropriate reunification services, (2) she was unable to remedy the circumstances that caused her children to be in out-of-home placement, and (3) a substantial likelihood existed that Mother would not be capable of exercising proper and effective parental care and control in the near future.² We find no error and affirm.

¶15 We view the evidence and all reasonable inferences therefrom in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We do not reweigh the evidence because the juvenile court, as the trier of fact, "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, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). We accept

¹ Absent material revisions to this decision, we cite the current version of applicable statutes.

² Mother does not contest that the children have been in out-of-home placement for fifteen months or longer.

the juvenile court's factual findings if reasonable evidence supports them, and we affirm a severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶16 To terminate parental rights, the juvenile court must find by clear and convincing evidence that a ground for termination set forth in A.R.S. § 8-533 exists, and by a preponderance of the evidence that termination is in the children's best interest.³ *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, 288, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). To satisfy the requirements of § 8-533(B)(8)(c), the juvenile court must find that (1) ADES made a diligent effort to provide appropriate reunification services, (2) the child has been in out-of-home placement for a cumulative period of fifteen months or longer pursuant to court order, (3) the parent has failed to remedy the circumstances that caused the child to be in out-of-home placement, and (4) a substantial likelihood exists 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).

³ Mother does not contest the juvenile court's finding that termination of her parental rights was in the children's best interest.

I. Duty to Provide Appropriate Services

¶17 Mother's first argument, as we understand it, is that CPS failed to provide her with appropriate services by waiting almost a year to teach her the "one, two, three" redirection method, which she believes is a crucial technique necessary to parent and control C.C. Arguably, Mother waived this argument by failing to object to the trial court regarding the manner services were provided. See *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235 n.8, ¶ 15, 256 P.3d 628, 632 n.8 (App. 2011) (when trial court entered explicit findings that ADES made reasonable efforts to provide services and Mother never objected, Mother waives right to raise the issue on appeal). Nevertheless, we need not address this issue because reasonable evidence supports the finding that ADES provided appropriate services to Mother.

¶18 ADES has a statutory and constitutional obligation to make reasonable efforts to reunify the family. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 19, 219 P.3d 296, 303 (App. 2009). The juvenile court must consider the availability of reunification services to Mother and her participation in the services, and must find that ADES made a diligent effort to provide such services. A.R.S. § 8-533(B)(8), (D); *Christina G.*, 227 Ariz. at 235, ¶ 14, 256 P.3d at 632. ADES is not required to provide "every conceivable service," but must

provide Mother with the time and opportunity to participate in programs designed to improve the parent's ability to care for their children. *Mary Ellen C. v. Ariz. Dep't Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). ADES satisfies its duty when it provides the type of therapy that offers the most hope for enabling Mother to carry out her parental responsibilities. *Maricopa Cnty. Juvenile Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984).

¶19 ADES provided appropriate services to Mother. By September 2010, Mother had participated in services including visitation, parent-aide referrals, urinalysis testing, substance abuse treatment, anger management, and individual counseling. Notably, the parent-aide referrals included teaching Mother techniques for effective discipline, parenting children with mental health issues, and understanding developmental issues. After Mother failed to successfully complete the parent-aide referrals, she participated in therapeutic supervision to gain further instruction on parenting her children. ADES provided Mother with a multitude of services to help her become an effective parent. Reasonable evidence supports the finding that ADES provided services that offered the most hope of enabling Mother to carry out her parental responsibilities.

II. Inability to Remedy Circumstances

¶20 Mother next argues that she had remedied the circumstances that caused the children's out-of-home placement because she had gained the knowledge necessary for her to parent the children. We disagree and find that reasonable evidence supports the finding that Mother had not remedied the circumstances that caused the children's out-of-home placement.

¶21 The circumstances that cause a child's out-of-home placement are those "existing at the time of the severance that prevent[s] a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007). In its Findings of Fact, Conclusions of Law and Order, the court determined that Mother was not able to manage the children, even in a supervised setting, and that parent-aides and psychologists still observed that Mother experienced anger because the children overwhelmed her. The court found that "[t]he concerns regarding . . . Mother's ability to meet the children's basic needs have not been ameliorated. The problem of unstable housing and employment is also a stressor for Mother."

¶22 Reasonable evidence supported the court's finding. Mother did not successfully complete two parent-aide services. Caseworkers and psychologists were concerned about Mother's ability to parent the children while controlling her anger.

Mother was not able to progress during therapeutic supervision to allow for unsupervised visitation. Further, Mother has not found stable housing or employment. While we commend Mother for her participation in services, she nevertheless failed to learn the skills necessary to effectively parent the children.

III. Ability to Parent in the Near Future

¶23 Reasonable evidence supports the finding that Mother would not be capable of exercising proper and effective parental care and control in the near future. After all of the services offered to Mother, she did not progress to unsupervised visitation with her children and she continued to require direction from the psychologist and became frustrated when overwhelmed. At trial, Mother's clinical psychologist stated that assuming Mother continued participation in therapeutic supervision, it could take up to two years until she would recommend family reunification. Further, Mother did not show signs of improving her financial situation or living situation. At the time of the hearing, Mother continued to live with her mother, the place where Mother had committed domestic violence in the children's presence. Accordingly, we find the court did not err in terminating Mother's parental rights under § 8-533(8)(c).

CONCLUSION

¶24 For these reasons, we affirm the juvenile court's termination order.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
ANDREW W. GOULD, Judge