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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 5/21/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SARA J.,) No. 1 CA-JV 12-0202
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, J.J.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD-509161

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Lincoln Green
Attorney for Appellant

Phoenix

Thomas C. Horne, Arizona Attorney General
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellees

Phoenix

H A L L, Judge

¶1 Sara J. (Mother), the biological mother of J.J. (age one) (the child), appeals the juvenile court's termination of her parental rights.¹ For the following reasons, we affirm.

FACTUAL² AND PROCEDURAL BACKGROUND

¶2 On June 3, 2011, J.J. was born in Tulsa, Oklahoma. The month prior to J.J.'s birth, Mother's parental rights to her two older children were terminated in Arizona. Based on Mother's child welfare history in Arizona, Oklahoma's Department of Child Protective Services took emergency custody of J.J. shortly after his birth. The Tulsa County superior court took temporary emergency jurisdiction over the matter, but later determined that Arizona was "a more appropriate forum" under the Uniform Child Custody Jurisdiction and Emergency Act and, after conferring with Maricopa County superior court, the Oklahoma court agreed to transfer physical custody of the child to the Arizona Department of Economic Security (ADES).

¶3 After taking custody of J.J. and placing him in foster care, ADES filed a petition alleging he was dependant as to

¹ J.J.'s father has also had his parental rights terminated. He is not, however, a party to this appeal.

² We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

Mother. The petition alleged that Mother has unresolved mental health and substance abuse issues, a history of domestic violence, and is unable to meet J.J.'s basic needs for clothing, food and shelter.

¶14 On September 23, 2011, Mother appeared at the preliminary protective hearing and denied the allegations set forth in the dependency petition. The juvenile court appointed counsel for Mother and set the matter for a contested dependency hearing.

¶15 At that time, ADES implemented a case plan of family reunification and referred Mother for supervised visits, substance abuse treatment, and random drug testing. As part of the case plan, Mother was also required to self-refer for mental health services and obtain stable housing and employment.

¶16 Although the CPS case manager repeatedly admonished Mother that she needed to participate in services before J.J. would be returned to her care, Mother refused to participate in mental health, drug treatment, or parent aide services. In addition, Mother only participated in two visits with J.J. from October 2011 through January 2012.

¶17 On February 2, 2012, Mother appeared with counsel at the contested dependency hearing. After receiving argument and evidence, the juvenile court found J.J. dependent as to Mother.

¶18 At a permanency planning hearing on March 23, 2012, Mother informed the court that she wished to represent herself in all future dependency proceedings. The juvenile court found Mother's waiver of counsel knowing, intelligent, and voluntary and granted her request to proceed pro per and appointed her attorney as advisory counsel in further proceedings. The juvenile court then granted ADES's case plan of severance and adoption.

¶19 On April 6, 2012, ADES moved to terminate Mother's parental rights to J.J. ADES alleged that Mother abandoned J.J. under Arizona Revised Statutes (A.R.S.) section 8-533(B)(1) (Supp. 2012) and that she substantially neglected or willfully refused to remedy the circumstances that caused J.J. to remain in an out-of-home placement for six months or longer under A.R.S. § 8-533(B)(8)(b). The motion further alleged that termination of Mother's parental rights was in J.J.'s best interest. On May 9, 2012, the juvenile court set the matter for a contested hearing on July 10, 2012.

¶10 On July 3, 2012, Mother filed a motion to waive "the fees associated with the service of subpoenas." The juvenile court summarily denied Mother's motion to waive the court fees.

¶11 The juvenile court held a two-day contested severance hearing on July 10, and July 12, 2012. At the hearing, Mother acknowledged that she was offered numerous services, including

random urinalysis testing, substance abuse assessment and treatment, parent aide services, supervised visitation, transportation, and a self-referral for mental health services. Mother unequivocally admitted that she "refused to do all services." She explained her belief that J.J. would not be returned to her whether she "complete[d] the services or not." Mother acknowledged that, between October 2011 and July 2012, she only visited J.J. on two occasions. Mother also admitted that she never sent J.J. a gift and never asked the case manager about his well-being.

¶12 At that point in the proceedings, Mother's advisory counsel informed the juvenile court that Mother had filed a special action in this court to stay the proceedings and requesting relief from the juvenile court's denial of her motion to waive subpoena fees. The Court of Appeals stay hearing was then conducted and this court declined jurisdiction.

¶13 When testimony resumed, Mother testified that "in [her] heart" she does not believe she has abandoned J.J. She acknowledged that she has been diagnosed with and suffers from an anxiety disorder and depression disorder, but explained that she has not sought treatment because her mental health issues are "not a concern of mine." Mother also admitted that, after participating in substance abuse treatment during the previous

termination proceedings with her older children, she used opiates and marijuana.

¶14 The CPS caseworker assigned to the case then testified that Mother has failed to participate in all services offered to treat her mental health and substance abuse problems. She also testified that visitation has been available to Mother throughout the case, but Mother only visited J.J. twice since November 2011, with the last visit being January 2012. The caseworker also testified that J.J.'s foster family is meeting all of his physical, social, and emotional needs and wishes to adopt him.

¶15 On the second day of trial, Mother's advisory counsel made an oral motion for the juvenile court to reconsider its denial of Mother's request to waive the subpoenas service fees. Counsel explained that Mother "is ready to either do a financial affidavit showing her indigency or just answering questions under oath [] to show her indigency." The juvenile court denied the motion to reconsider on two bases: (1) Mother's original motion to waive fees, filed a few days before trial (notwithstanding that the trial date was set two months in advance) was untimely, and (2) Mother failed to submit any supporting financial documentation with her request.

¶16 After taking the matter under advisement, the juvenile court entered a signed order terminating Mother's rights.

Specifically, the juvenile court found that Mother abandoned J.J., that Mother neglected or willfully refused to remedy the circumstances that caused the out-of-home placement, and that termination of Mother's parental rights is in J.J.'s best interest.

¶17 Mother timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235 (2007) and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

DISCUSSION

¶18 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶19 We affirm an order terminating parental rights unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "The juvenile court will be deemed to have made every finding necessary to support the

judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citation omitted). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶20 On appeal, Mother argues the juvenile court erred by finding that she abandoned J.J., that she willfully refused or substantially neglected to remedy the circumstances causing his out-of-home placement, and that termination of her parental rights was in J.J.'s best interest. In addition, Mother contends the juvenile court erred by denying her motion to waive court fees.³ We address each argument in turn.

³ Mother's attorney of record filed an appellate brief raising four issues, which we have considered. Mother filed a memorandum entitled "judicial notice" raising numerous issues. Mother has neither formally requested the removal of her appellate attorney nor has she filed a motion to strike her attorney's opening brief. Therefore, we do not consider the arguments raised in Mother's memorandum.

I. Out-of-Home Placement

¶21 Pursuant to A.R.S. § 8-533(B)(8)(b), the juvenile court may sever parental rights if the State has proven that a child under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or willfully refused to remedy the circumstances causing the out of home placement. To terminate parental rights on this basis, the juvenile court must also find that ADES has made diligent efforts to provide reunification services. A.R.S. § 8-533(B)(8).

¶22 "It is well established that the State, before acting to terminate parental rights, has an affirmative duty to make all reasonable efforts to preserve the family relationship." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1, 971 P.2d 1046, 1047 (App. 1999). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs" designed to help her become an effective parent. *Id.* at 192, ¶ 37, 971 P.2d at 1053. ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa Cnty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Likewise, ADES is not "oblige[d] . . . to undertake rehabilitative measures that are futile" and

need only "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 183 Ariz. at 192, ¶ 34, 971 P.2d at 1053.

¶23 J.J. was placed in foster care pursuant to court order shortly after his birth and has remained in foster care since that time. Mother participated in some services during the termination proceedings of J.J.'s older siblings, but refused to participate in any services during this proceeding other than two brief visits with J.J.⁴ By her own admission, Mother has used illegal drugs since she completed drug abuse treatment in the prior case and she is not seeking treatment of her diagnosed mental health disorders because her mental health is not a "concern" for her. At the severance hearing in this case, Mother acknowledged that she refused all services and affirmed her belief that it was "wise" and a "good choice" to refuse to cooperate with the case manager.⁵ Thus, the record supports the

⁴ Contrary to Mother's appellate claim that ADES denied her visitation to J.J., the case manager testified that visitation was available to Mother throughout the termination proceedings. It was for the juvenile court, as the trier of fact, to judge the credibility of the witnesses and weigh the evidence. See *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47.

⁵ Although Mother claims on appeal that she wanted to participate in some services but was unable to participate because of lack of insurance, her trial testimony belies this assertion. At the severance hearing, Mother expressly testified that she refused to participate in services because she did believe J.J. would be returned to her if she did and she did not want to cooperate with CPS/ADES.

juvenile court's finding that ADES provided Mother reasonable and appropriate services, but Mother willfully refused to remedy the circumstances causing J.J.'s out-of-home placement.⁶

II. Best Interest

¶24 Termination of the parent-child relationship is in the child's best interest if the child will benefit from the termination or would be harmed if the relationship continued. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). In assessing the child's best interest, the juvenile court may consider several factors, including the child's adoptability and whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶25 At the severance hearing, the case manager testified that J.J.'s foster placement is meeting all of his physical, social, and emotional needs. In addition, she testified that J.J. is adoptable and his foster parents wish to adopt him.

⁶ Because we affirm the termination order based on the length of J.J.'s out-of-home placement and Mother's willful refusal to remedy the circumstances causing the out-of-home placement, we need not determine whether the juvenile court also properly terminated Mother's parental rights on grounds of abandonment. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

Therefore, the record supports the juvenile court's finding that termination of the parent-child relationship is in J.J.'s best interest.

III. Waiver of Court Fees

¶126 We uphold the juvenile court's denial of a motion to waive court fees absent an abuse of discretion. *Tripati v. Tucker*, 222 Ariz. 372, 373, ¶ 3, 214 P.3d 1013, 1014 (App. 2009). Under A.R.S. § 12-302(H) (Supp. 2012), certain "fees and costs may be deferred or waived," including "[f]ees for issuance of either a summons or subpoena." Section 12-302(C) (Supp. 2012) provides that a court shall grant an application for a fee deferral "if the applicant establishes [indigency] by affidavit, including supporting documentation[.]"

¶127 Here, Mother filed a one-paragraph request to waive subpoena fees. She failed to provide any documentation establishing her indigency. Indeed, Mother's request does not reference indigency or otherwise assert an inability to pay the fees. Rather, Mother's request simply states:

Comes now [Mother] in the above captioned matter representing herself, sui juris, as a natural citizen with inalienable rights has never had a fair hearing as a result of attorney malfeasance, and hereby requests this court expeditiously waive the fees associated with the service of subpoenas for Respondent's witnesses for trial on July 10 and July 12, 2012. Please note the date and expedite ruling.

¶128 Although Mother claims on appeal that she brought in a financial affidavit demonstrating her indigency on the second day of the severance trial, this assertion is not supported by the record. Instead, Mother's advisory counsel informed the court Mother was "ready" to provide a financial affidavit or was willing to answer questions under oath. The record does not reflect that Mother ever submitted any documentation demonstrating indigency. Therefore, we cannot conclude that the juvenile court abused its discretion by denying her motion to waive fees.

CONCLUSION

¶129 For the foregoing reasons, we affirm the juvenile court.

 /s/
PHILIP HALL, Judge

CONCURRING:

 /s/
JON W. THOMPSON, Presiding Judge

 /s/
KENT E. CATTANI, Judge