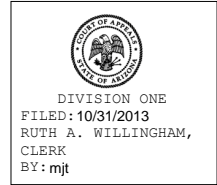


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



SANDRA H. ,)	1 CA-JV 13-0128
)	
Appellant,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication-
ARIZONA DEPARTMENT OF ECONOMIC)	Ariz. R.P. Juv. Ct.
SECURITY, S.H. ,)	88(G); ARCAP 28)
)	
Appellees.)	
)	
)	

Appeal from the Superior Court of Maricopa County

Cause No. JD 20358

The Honorable Roland J. Steinle, III, Judge

AFFIRMED

Robert D. Rosanelli
Attorney for Appellant

Phoenix

Thomas C. Horne, Attorney General
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

T H O M P S O N, Judge

¶1 Sandra H. (mother) appeals from the juvenile court's order severing her parental rights to her child, S.H.¹ For the following reasons, we affirm.

¶2 An order terminating parental rights must be supported by clear and convincing evidence showing one or more of the statutory grounds enumerated in Arizona Revised Statutes (A.R.S.) § 8-533(B) (Supp. 2012); *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, 248-49, ¶ 12, 995 P.2d 681-82, 685 (2000). The juvenile court must also find by a preponderance of the evidence that the termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶3 The juvenile court held a one-day severance trial in April 2013; mother failed to call in or appear.² Mother presented no evidence, did not object to the Department of Economic Security's (Department) evidence and did not cross-examine the case worker. The juvenile court terminated mother's parental rights pursuant to A.R.S. § 8-533(B)(3) and made findings of fact that supported four statutory bases for

1 The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

2 Mother's attorney stated mother was aware of the hearing, that they had discussed it, and that the last she had heard from mother, there was not a clear decision whether mother wanted to contest or not, but mother did say "she wanted to see the best for S[] and that she hoped he was in a good placement."

mother's severance: abandonment, mental illness, out-of-home placement for nine months or longer and out-of-home placement of children under the age of three for more than six months. See A.R.S. § 8-533(B)(1), (3), (8)(a) and (8)(b). Mother appealed and this court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 8-235 (2007).³

¶14 We need only find support for one of the statutory grounds to affirm. S.H. is under three years of age and, thus, we will examine whether there is support for the trial court's findings that S.H.'s out-of-home placement was in excess of six months while mother "substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department." See A.R.S. §

3 Mother's appeal challenges the finding of abandonment and whether the Department provided appropriate reunification services despite the fact that she did not appear at the severance hearing or dispute any of the Department's evidence. Section 8-537(C) (2007) provides that "[i]f a parent does not appear at the pretrial conference, status conference or termination adjudication hearing, the court, after determining that the parent has" received the requisite notice of the hearing and the consequences of failing to appear, including termination of the parental rights, "may find that the parent has waived the parent's legal rights and is deemed to have admitted the allegations of the petition by the failure to appear." The statute further provides the court may, as was done here, terminate that parent's rights "based on the record and evidence presented." Mother has waived her right to challenge those findings on appeal. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235 n. 6, ¶ 14, 256 P.3d 628, 632 n. 6 (App. 2011). Mother does not appeal the best interests finding.

8-533(B)(8)(b). The statutory time limits of A.R.S. § 8-533(B) serve the dual purpose of expediting the possibility of adoption and of providing an incentive to parents to overcome obstacles to assuming their parental responsibilities. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (discussing time limits of A.R.S. § 8-533(B)(6)). On appeal, we accept the findings of the trial court unless clearly erroneous; we do not reweigh the evidence. *Pima County Juv. Severance Action No. S-2462*, 162 Ariz. 536, 539, 785 P.2d 56, 59 (App.1989).

¶15 S.H. was born in Arizona in April 2011 when mother had fled New York with her then eight year-old son M.H. who was a ward of the State of New York.⁴ S.H. was born prematurely and remained in the Phoenix Children's Hospital neonatal intensive care unit (NICU) for five weeks during which time M.H. was returned by CPS to foster care in New York. [Id.] At the hospital, mother was acting erratically and indicated to staff that she was homeless. After mother expressed concerns about S.H. being fed through a gastric tube, the NICU staff found the

4 The record demonstrates that mother has had multiple encounters with Child Protective Service (CPS) for her six children in various states dating back to 1997. Mother has a history of diagnosed schizophrenia, bipolar disorder and substance abuse; she is reportedly non-compliant with medication for her mental illness and has, on at least two occasions, fled New York with a minor who was a ward of the state.

gastric tube removed and lying in the crib. After mother expressed concerns about the involvement of CPS, NICU staff found S.H.'s security alarm removed from his ankle. Mother was advised she would not be allowed to return to the hospital and staff expressed concerns over whether mother was capable of parenting the child and following directives as to his care.⁵ S.H. left the NICU after five weeks and went directly into the custody of a foster family.

¶16 S.H. has never resided with mother. Mother moved back to New York before he was released from the NICU. S.H. was found to be dependant as to Mother on February 9, 2012. Mother made one visit to Arizona in January 2013, which was facilitated by CPS, to see S.H. During her visit, mother had a psychological assessment by Dr. Silberman, two therapeutic visits, and a bonding assessment. Dr. Silberman's report concluded that S.H. was not bonded to mother and mother's prognosis was poor. Dr. Silberman found that she was "a very unstable woman who has had a history of being unstable for many years," and "has had services for many years. It is not believed that any new services would be beneficial."

5 In addition to the complications associated with his premature birth, S.H. is hearing impaired and was fitted with a cochlear implant after his first birthday.

¶17 At the severance hearing, the Department presented evidence that mother has not provided support for S.H., has not sent cards or gifts for the child and has not maintained a normal parental relationship with the child. The Department presented evidence that mother left Arizona without completing the services offered to her here. The Department presented evidence that there was a substantial likelihood that mother would be unable to remedy the circumstances which caused S.H. to be in an out-of-home placement and that severance and adoption was in the best interests of the child. An adoptive home was identified.

¶18 Reasonable evidence supports the trial court's determination that S.H. has been out of the home in excess of the time outlined by A.R.S. § 8-533(B)(8)(b), that mother was unable to remedy the circumstances which caused the child to be in an out-of-home placement, and that there was a substantial likelihood that she would not be capable of exercising proper and effective parental care and control in the near future. Reasonable evidence also supports the finding that severance and adoption was in S.H.'s best interests.

¶19 For the foregoing reasons, the juvenile court's severance order is affirmed.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge