

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DOMONIQUE H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.H., D.M., *Appellees*.

No. 1 CA-JV 15-0122
FILED 11-24-2015

Appeal from the Superior Court in Maricopa County
No. JD510913
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda L. Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge John C. Gemmill joined.

C A T T A N I, Judge:

¶1 Domonique H. (“Mother”) appeals from the superior court’s order terminating her parental rights as to two children. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 A.H., born in December 2003, and D.M., born in July 2012, are Mother’s biological sons.¹ In early August 2013, Mother dropped the children off at her cousin’s house and dropped out of contact. Later that month, after Mother’s cousin sought a legal guardianship to enable her to enroll A.H. in school, the children’s guardian ad litem initiated dependency proceedings, alleging that Mother could not parent because of substance abuse, neglect of the children due to lack of stable housing or employment, and inability to protect the children from domestic violence perpetrated by Mother’s boyfriend, D.M.’s father. The superior court found both children to be dependent.

¶3 Mother did not appear in the dependency case until December 2013. Mother has a significant history of substance abuse. She admitted being addicted to alcohol, methamphetamine, and marijuana, and she attributed her failure to appear during the first four months of the dependency to her addiction.

¶4 The Arizona Department of Child Safety (“DCS”) offered her various reunification services, including: drug testing, substance abuse treatment, domestic violence counseling, supervised visitation, and parent aide services. Mother initially began drug testing in January 2014, and she completed a drug treatment intake that same month. She tested positive for amphetamines in mid-January, however, and stopped submitting to testing in late February. Mother also failed to participate at that time in the

¹ The parental rights of A.H.’s and D.M.’s respective fathers have also been terminated; the fathers are not parties to this appeal.

DOMONIQUE H. v. DCS, et al.
Decision of the Court

intensive outpatient treatment services for which she was referred, and the referral was closed unsuccessfully. Mother continued to use amphetamines (and failed to comply with drug testing and treatment) for the next seven months.

¶5 Mother reinitiated drug testing in September 2014 when she found out she was pregnant. That month, she tested positive for THC and for methamphetamine on two separate occasions. She then began participating in drug treatment in October 2014. Mother participated in treatment more or less consistently thereafter, particularly after her baby was born in December 2014. She consistently tested negative for drugs and alcohol during her pregnancy and thereafter, albeit with a few missed tests in late 2014. Mother broke this period of sobriety, however, by drinking alcohol in late December 2014.

¶6 Before completing her treatment program, Mother stopped participating in late February 2015 because she moved to Tucson following instances of domestic violence. Mother completed an intake with a different drug treatment provider in the Tucson area two weeks later, and she had been regularly attending intensive outpatient treatment for four weeks by the time of the severance trial in April. Her substance abuse counselor testified that Mother's prognosis was positive, but acknowledged that Mother still had approximately a year remaining to complete the intensive outpatient treatment and follow-up program.

¶7 Mother has a significant history of abusive relationships. Her relationship with D.M.'s father, which continued "[o]n and off" from before the dependency began through the end of February 2015, was characterized by his "violent rages." A.H. witnessed the violence, and D.M.'s father beat A.H. at least once, in July 2013. Mother acknowledged that addressing domestic violence had been one of her first treatment goals and that DCS had offered her counseling from the beginning. By the time of the severance hearing, however, she had attended only one domestic violence class.

¶8 Mother began supervised visitation with D.M. in October 2014 and participated fully in parent aide services thereafter. DCS stipulated that those visits were going well and that D.M. was attached to Mother. Mother had only seen A.H. a few times over the course of the dependency due to A.H.'s concern about Mother's violent relationship with D.M.'s father.

¶9 In August 2014—before Mother began to re-engage in services—DCS filed a motion to terminate Mother's parental rights as to

DOMONIQUE H. v. DCS, et al.
Decision of the Court

A.H. and D.M. on grounds of nine months' time in care as to both children and six months' time in care as to D.M. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8)(a), (b).² After a trial in April 2015, the superior court found that both grounds supported termination and that termination would be in the children's best interests. Mother timely appealed from the order terminating her parental rights.

DISCUSSION

¶10 Mother argues the superior court erred by finding grounds for severance and that severance would be in the children's best interests. We review a severance ruling for an abuse of discretion, accepting the court's factual findings unless clearly erroneous and viewing the evidence in the light most favorable to sustaining the court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008); *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶11 The superior court may terminate the parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). Severance is permitted based on nine months' time in care if (1) the child has been in an out-of-home placement for at least nine months, (2) "[DCS] has made a diligent effort to provide appropriate reunification services," and (3) "the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." A.R.S. § 8-533(B)(8)(a).³ The relevant circumstances are those existing at the

² Absent material revisions after the relevant date, we cite a statute's current version.

³ The same analysis, but a shorter timeframe, applies to children under three years of age who have been in an out-of-home placement for at least six months. A.R.S. § 8-533(B)(8)(b). Because both grounds apply to D.M. (who was under three years old and had been in an out-of-home placement for over nine months at the time of severance), we review the court's order severing Mother's rights based on nine months' time in care, which applies to both children. *See also Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000) (stating that appellate court affirming on one severance ground need not consider alternative grounds).

DOMONIQUE H. v. DCS, et al.
Decision of the Court

time of severance. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶12 Mother argues that DCS failed to allow her adequate time to complete reunification services after she began to participate in such services in October 2014. But the issue is not one of DCS failing to provide adequate services, but rather of Mother failing to participate for months at a time. Mother did not appear at all for the first four months of the dependency. DCS offered her services when she reappeared in December 2013, but she participated only minimally for the next two months, and not at all for over six months after that. By the time Mother began to engage in services, the children had already been in an out-of-home placement for 14 months, and the case plan had already been changed to severance and adoption. Under these circumstances, DCS did not fail to provide Mother with adequate time and opportunity to participate in reunification services. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999).

¶13 Mother also argues that severance was improper because her participation in services after October 2014 constituted a good faith effort to comply with DCS's remedial programs, and she further contends that, by the time of the severance trial, she had in fact remedied the circumstances originally necessitating the children's out-of-home placement. Despite Mother's commendable efforts in the months leading up to trial, substance abuse and domestic violence concerns remained at the time of termination, and under the circumstances, Mother's eventual participation in services did not negate her substantial neglect to do so for over a year while her children remained in care.

¶14 This court has noted that the test for termination based on nine months' time in care "focuses on the level of the parent's effort to cure the circumstances rather than the parent's success in actually doing so." *Marina P.*, 214 Ariz. at 329, ¶ 20, 152 P.3d at 1212. As such, "appreciable, good faith efforts to comply" with DCS's remedial programs during the statutory timeframe preclude a finding of substantial neglect, even if the parent is not able to completely overcome the circumstances. *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). But "disappear[ing] for months at a time" and making "sporadic, aborted attempts to remedy" the circumstances will support a finding of substantial neglect. *Id.* Moreover, severance may be appropriate based on substantial non-compliance during the statutory timeframe even if the parent later begins successful recovery efforts before the severance hearing. See *id.* at 576-77, 869 P.2d at 1229-30 (affirming severance based on

DOMONIQUE H. v. DCS, et al.
Decision of the Court

substantial neglect during the statutory one-year time-in-care period even though the parent thereafter began successful rehabilitation eight months before severance hearing).

¶15 The latter analysis applies in this case. Mother did not comply with drug testing and treatment—and in fact continued using amphetamines—for over a year after the children were placed in care, and she only began to participate in these services after DCS filed a severance motion. Although she had been testing negative for drugs and alcohol for several months by the time of the severance trial, Mother had not completed a substance abuse treatment program, and she still had a year of treatment remaining. Mother’s relatively short period of sobriety and incomplete treatment do not establish that severance was improper, particularly given her lengthy history of substance abuse. *See id.* at 577, 869 P.2d at 1230.

¶16 Moreover, Mother had attended only one domestic violence class by the time of severance, even though counseling had been available to her from the beginning. Mother moved away from D.M.’s violent father, but she only did so six weeks before the severance trial. In light of her history of leaving, then reuniting with D.M.’s father, and her failure to take advantage of available counseling, the superior court did not err by considering Mother’s failure to adequately address the domestic violence risk to the children.

¶17 Mother’s counselor affirmed that her prognosis is positive, and the superior court acknowledged that “there is much hope [Mother] will succeed” in her recovery. But after the children were taken into care, she continued to abuse methamphetamine and effectively disappeared for over a year, and she did not begin to engage in services for 14 months. Although Mother made some efforts to participate in services before the severance hearing, the superior court did not abuse its discretion by finding grounds for severance based on nine months’ time in care.

¶18 Mother also argues that the court erred by finding severance to be in the children’s best interests. She argues that she has a bond with D.M. and that she has now positioned herself to build a relationship with A.H.

¶19 In considering best interests, the superior court must determine how the child would benefit from severance or how the child would be harmed by continuing the parental relationship. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50. Evidence of a current adoptive plan, or that the child is adoptable, may support a finding that termination would be in

DOMONIQUE H. v. DCS, et al.
Decision of the Court

the child's best interests, as may evidence that the current placement is meeting the child's needs. *Id.*

¶20 Here, the children had been placed together with a family in the same home since the beginning of the dependency, and the family was meeting the children's needs and was willing to adopt. By the time of the severance trial, the children had been in care for 20 months, and even though Mother had begun to participate in services, she had months to go to complete treatment and counseling and to show that she could provide a safe and stable home. Accordingly, the superior court did not err by finding severance to be in the children's best interests, and by terminating Mother's rights as to A.H. and D.M.

CONCLUSION

¶21 For the foregoing reasons, we affirm.



Ruth A. Willingham · Clerk of the Court
FILED : ama