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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SHERILYN M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.M., *Appellees*.

No. 1 CA-JV 16-0057
FILED 7-28-16

Appeal from the Superior Court in Maricopa County
No. JD19486
The Honorable Kristin C. Hoffman, Judge

AFFIRMED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Patricia A. Orozco and Judge Maurice Portley joined.

B R O W N, Chief Judge:

¶1 Sherilyn M. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her minor child. For the reasons that follow, we affirm.

BACKGROUND

¶2 J.M. is the biological child of Mother and alleged father John G.¹ In September 2010, the Department of Child Safety (“DCS”) took the child into custody after Mother tested positive for the use of methamphetamines. The child has been in DCS custody since that time, and is currently placed in a licensed foster home, along with his biological brother.

¶3 In May 2015, DCS filed a motion to terminate Mother’s parental rights under Arizona Revised Statutes (“A.R.S.”) section 8-533(B). DCS alleged Mother had a history of chronic substance abuse and reasonable grounds existed to believe said abuse would continue indeterminately. *See* A.R.S. § 8-533(B)(3). DCS also asserted the child had been in an out-of-home placement for more than fifteen months and Mother had been unable to remedy the circumstances that led to the child’s removal from the home. *See* A.R.S. § 8-533(B)(8)(c).

¶4 During a severance hearing in January 2016, the juvenile court heard testimony from Mother and from a child safety specialist who had been assigned to the case since April 2012. Over Mother’s objection, the court also admitted reports of Mother’s drug testing from 2010 to 2014. After considering the testimony and exhibits, the court determined that DCS had proven both of the grounds for termination asserted in the motion. The court also found that severance was in the child’s best interests. Mother’s timely appeal followed.

¹ Father’s rights were also terminated as a result of these hearings, but he is not a party to this appeal.

DISCUSSION

I. Admissibility of Drug Test Reports

¶5 Mother contends the court erred by admitting in evidence reports outlining the results of several years of drug testing. Mother objected to admission of the reports at the severance hearing, arguing the reports were hearsay without proper foundation because the authors of the reports were unavailable for cross-examination.² See *Ariz. R.P. Juv. Ct. 45(D)*. DCS countered that the reports were certified records of regularly conducted activity, see *Ariz. R. Evid. 803(6)*, and the juvenile court admitted the documents over Mother's objection. We review the juvenile court's evidentiary rulings for an abuse of discretion and will reverse only if an abuse of discretion occurred and prejudice resulted. *Alice M. v. Dep't of Child Safety*, 237 Ariz. 70, 72, ¶ 7 (App. 2015); *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82-83, ¶ 19 (App. 2005).

¶6 The admissibility of evidence in juvenile court proceedings is governed by the Arizona Rules of Evidence unless otherwise provided by the Arizona Rules of Procedure for the Juvenile Court. *Ariz. R.P. Juv. Ct. 45(A)*. Rule 45(D) outlines requirements for the admissibility of reports and evaluations, including substance abuse reports:

Prior to any dependency hearing, a report of any psychological, psychiatric, medical, neurological, psycho-educational, psycho-sexual, substance abuse or similar evaluation of any party or participant, or any person with whom a child is or may be residing shall be admitted into evidence if the report has been disclosed to the parties pursuant to Rule 44(B)(1) and the author of the report is available for cross-examination.

² Mother filed a pretrial objection to admission of the drug testing reports under Arizona Rule of Juvenile Court 44(B)(2)(e). DCS argues that Mother's objection was untimely, but did not raise such an assertion in the juvenile court. Given our conclusion that Mother has failed to establish prejudice as a result of the juvenile court's decision to admit the reports at the severance hearing, we need not determine whether Mother's objection was timely filed. See *Alice M. v. Dep't of Child Safety*, 237 Ariz. 70, 73, ¶ 10 (App. 2015) (explaining that the pretrial disclosure and timely objection requirements in Rule 44 govern the admissibility of exhibits).

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At the severance hearing, DCS introduced evidence of Mother's drug test results from four different testing facilities. These reports reflected several positive hair follicle tests indicating methamphetamine use, multiple diluted urinalysis tests, and multiple missed tests from 2010 to 2014. Mother argues that had the authors of the reports been present at the severance hearing and available for cross-examination, she could have questioned them as to the veracity of the reports and whether they established that the tests demonstrated "long-term use, or simply a one-time relapse."

¶7 Assuming, without deciding, that the juvenile court erred in admitting them at the severance hearing, Mother has not met her burden of showing she was prejudiced by admission of the reports. Mother admitted to "relapsing" four times in the last five years, including using methamphetamines as late as December 2015. Mother explained that her use of methamphetamines is triggered by stress, specifically the stress of these proceedings. Although she argues that such behavior is not an indication of prolonged substance abuse, she also admitted that she has been a methamphetamine user for over 25 years, with periods of sobriety mixed throughout. Mother also testified that she completed substance abuse treatment programs in 2010 and 2014. But after an oral swab performed in December 2014 tested positive for methamphetamine use, she refused to complete any additional substance abuse rehabilitation services, including testing, because she "had already graduated the TERROS program" and believed the positive test result was incorrect. Furthermore, the child safety specialist opined that Mother's history with drug use and current refusal to participate in rehabilitation services indicated a likelihood that her substance abuse would continue for a prolonged, indeterminate period of time. *See Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶¶ 26-29 (App. 2010) (holding that recent drug use, a significant history of drug use, and a failure to participate in rehabilitative services is sufficient to show that substance abuse will continue for a prolonged period).

¶8 In light of the other evidence presented at the severance hearing, independent of the drug test reports, the juvenile court had sufficient evidence to conclude that Mother was unable to discharge her parental responsibilities due to a history of substance abuse, and that such abuse was likely to continue for an indeterminate period of time. *See A.R.S. § 8-533(B)(3)*; *see also Raymond F.*, 224 Ariz. at 379, ¶ 29 (explaining that temporary abstinence from drugs and alcohol does not outweigh "[a]

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significant history of abuse or [a] consistent inability to abstain during this case. It is not the number of times that [the parent] has tested positive or negative for drug abuse that is key, but rather, it is the fact that [the parent] has consistently failed to *abstain*").

II. Best Interests

¶9 Mother also challenges the court's determination that severance of her parental rights was in the child's best interests. Mother argues that because there was no adoptive placement immediately available for the child, it was not in his best interests to terminate her parental rights. To prove that severance is in the child's best interests, DCS must show that the child would either benefit from severance or be harmed by a continuation of the parental relationship. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288, ¶ 26 (App. 2011). We will uphold the juvenile court's best interests determination if it is supported by a preponderance of the evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005).

¶10 When considering whether severance is in a child's best interests, the juvenile court may consider whether an adoptive placement is immediately available as a factor in favor of severance. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 14 (App. 2002). Mother argues that because no adoptive placement has been found for the child in the five years he has been in foster care, severance of her parental rights would not serve the child's best interests. But DCS is not required to have a specific plan for adoption in place before a parent's rights are terminated. *Maricopa Cnty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 352 (App. 1994). It is sufficient that DCS show that severance of the biological parent's rights would free the child for adoption, and that the child would benefit from finding an adoptive placement. *See id.*; *see also Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179-80, ¶¶ 19-20 (App. 2014) (explaining that a child's best interests were served by severance when the child was not in an adoptive placement, but steps were being taken to permit her to be placed in an adoptive home). Additionally, DCS can establish that termination is in a child's best interests by presenting evidence showing that an existing placement is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004).

¶11 The juvenile court's finding that severance was in J.M.'s best interests is supported by a preponderance of the evidence. At the hearing, the child safety specialist testified that the child was adoptable and that DCS was conducting a search for a suitable adoptive placement. The specialist also testified that termination of Mother's parental rights would

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benefit the child by providing him an opportunity to pursue permanency and stability in his home life. By all indications, the child's current placement is meeting, and will continue to meet, his needs until a permanent adoptive placement can be identified. Mother argues that evidence was presented to show that the child would not benefit from adoption, including a 2012 report from a child psychologist and a 2014 motion to withdraw DCS's motion to sever. But we will not re-weigh the evidence on review, deferring to the juvenile court's resolution of conflicting testimony. *Jesus M.*, 203 Ariz. at 282, ¶ 12. The record supports the juvenile court's finding that termination was in the child's best interests.

CONCLUSION

¶12 For these reasons, we affirm the juvenile court's order severing Mother's parental rights to the child.



Ruth A. Willingham · Clerk of the Court

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