

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

THERESA B., *Appellant*,

v.

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

No. 1 CA-JV 17-0063
FILED 9-12-2017

Appeal from the Superior Court in Maricopa County
No. JD510663
The Honorable Arthur T. Anderson, Judge

AFFIRMED

COUNSEL

Czop Law Firm, PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Michael J. Brown joined.

CAMPBELL, Judge:

¶1 Theresa B. (“Mother”) appeals a juvenile court order terminating her parental rights to her son, M.B. She challenges only the juvenile court’s statutory finding of fifteen months in an out-of-home placement. *See* Ariz. Rev. Stat. (“A.R.S.”) § 8-533(B)(8)(c). Mother argues the juvenile court placed too much weight on her son’s preference not to attend visitation. She also argues that the juvenile court erred when it concluded she failed to remedy the circumstances that caused the out-of-home placement and would be unable to parent in the near future. We reject these arguments and affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 In December 2012, Mother and boyfriend Kevin M. (“Boyfriend”) were living in a single motel room with Mother’s then two-year-old son. One evening, the couple started loudly arguing, and other motel guests called the police. When the officers arrived Mother was intoxicated and Boyfriend was cutting himself in an attempt to self-harm, with the child present. When officers responded, Boyfriend refused to comply with the officers’ commands. The officers had to shoot Boyfriend with a beanbag gun to prevent him from continuing to cut himself. After securing the scene, officers arrested Mother for child endangerment.²

¶3 The Arizona Department of Economic Security, now the Arizona Department of Child Safety (“DCS”), filed a dependency petition. DCS alleged Mother was unable to parent due to her incarceration, mental illness, and substance abuse. DCS also alleged child neglect because Mother

¹ We review the evidence and reasonable inferences in the light most favorable to sustaining the juvenile court’s termination order. *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

² At the contested severance hearing, Mother testified that she pled guilty to, and was incarcerated for, child neglect.

THERESA B. v. DCS, M.B.
Decision of the Court

was unable to provide a safe home for her son. DCS alleged, based on the police report, that on the night of the incident when officers arrived at the motel room, there were “dog feces and urine everywhere, empty beer cans, no clean clothes, [a] kitchen [that] was dirty and [] knives and swords all over.” The juvenile court granted the petition. During the first year of the dependency, Mother completed many services offered by DCS. In November 2013, DCS held a meeting to discuss reunification. Shortly after, DCS discovered Boyfriend, who was still living with Mother, had attempted suicide twice that year. Due to the safety concerns within Mother’s home, the reunification plan was put on hold, and Boyfriend was referred for mental health services. Mother also underwent a psychological evaluation. The psychologist recommended Mother address her mental health issues and, as discussed more below, *see infra* ¶ 11, her relationship with Boyfriend.

¶4 In 2014, Mother again successfully completed her services. In August, DCS again pursued reunification and sought a change in physical custody to place son back with Mother. At that time Mother had unsupervised visits with her son. His guardian ad litem objected, however, in part because until very recently, Mother continued to reside with Boyfriend, and a newborn son, in the same “roach-infested motel” that “was dirty, cluttered and unkempt.”

¶5 The juvenile court set an evidentiary hearing to resolve the issue. Prior to the hearing, DCS received information that the previous month Mother and Boyfriend were panhandling on a median near a freeway entrance, with their newborn³, and claiming to be homeless. The panhandling incident raised additional concerns about the couple’s financial stability. At the hearing, DCS withdrew its motion for a change in physical custody and requested it be granted discretion over future visitation. The juvenile court ordered that all visits between Mother and her son be supervised.

¶6 In 2015, after the two unsuccessful attempts at reunification, DCS moved to terminate Mother’s parental rights based on fifteen months in an out-of-home placement and M.B.’s best interests. After a contested severance hearing in 2016, the juvenile court terminated Mother’s parental rights finding the statutory ground for termination by clear and convincing

³ After M.B. had been removed, Mother and Boyfriend had a son. Based in part on the panhandling incident, DCS filed a dependency petition regarding the newborn son, which the juvenile court granted. The newborn son is not a party to this appeal.

THERESA B. v. DCS, M.B.
Decision of the Court

evidence, and finding by a preponderance of evidence that termination was in M.B.'s best interests. In its finding of the statutory ground, the court found Mother had several challenges: managing her mental health, substance abuse episodes, employment instability, housing problems, and a partner – Boyfriend – who was unpredictable and threatened the stability and safety of her household.

DISCUSSION

¶7 Mother challenges the juvenile court's finding that under A.R.S. § 8-533(B)(8)(c) she had been unable to remedy the circumstances that caused son's out-of-home placement and that she would not be capable of exercising parental control in the near future. Specifically, Mother argues the evidence and the juvenile court focused "primarily" on her son's preference not to visit her rather than the requisite statutory factors under A.R.S. § 8-533(B)(8)(c). We disagree.

¶8 To find the statutory ground for termination under A.R.S. § 8-533(8)(B)(c) the juvenile court is required to find, by clear and convincing evidence, that DCS made diligent efforts to provide reunification services for a child in an out-of-home placement for a cumulative period of fifteen months or longer, the parent has been unable to remedy the circumstances that caused the out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental control in the near future. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 17 (App. 2009). "Circumstances" means "those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her child[]." *Id.* at 96 n. 14, ¶ 31 (citations omitted).

¶9 In a challenge to a statutory ground we will affirm the termination order "unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory ground[] for termination] to be clear and convincing." *Id.* at 93, ¶ 18 (citations omitted). Here, reasonable evidence supports the juvenile court's finding of fifteen months in an out-of-home placement.

¶10 At the time of the severance hearing, Mother had obtained different housing, had presented some evidence of employment, and her substance abuse was in remission. DCS, however, presented significant evidence that Mother had not remedied the circumstances that caused the out-of-home placement. Both her current and previous case managers testified that Mother had cycles of stability that lasted a short while,

THERESA B. v. DCS, M.B.
Decision of the Court

followed by periods of instability. As evidence DCS pointed to the two unsuccessful attempts to reunify the child with Mother. Both times factors such as Mother's continued relationship with Boyfriend, who exhibited a pattern of mental instability, and their panhandling, which raised safety concerns and demonstrated an inability to reach any financial stability, prevented reunification. *See supra* ¶¶ 3-5. This cycle did not stop; after DCS petitioned for termination, Boyfriend stopped taking his medications and going to therapy for a period of eleven months and a DCS case aid again saw Mother and Boyfriend panhandling.

¶11 Testimony from three psychologists provide further support. The psychologist who administered Mother's psychological evaluation in 2013 specifically recommended in his evaluation that Mother separate from Boyfriend, who was mentally unstable. He opined the child would continue to be at risk of serious injury should he remain in the home. In his evaluation, he initially provided a "guarded" prognosis as to Mother's ability to parent in the future. Importantly, that prognosis was contingent on her compliance with his treatment recommendations. And at the contested severance hearing, he concluded that at the time of the hearing the relationship between Mother and son had "eroded badly."

¶12 A second psychologist concluded that Mother had not been credible during the evaluation regarding her own mental health symptoms or her relationship with her son. For example, she omitted her son's request to end visitation. That psychologist concluded Mother lacked any insight or accountability about the circumstances that led to her son coming into DCS's care. As to Mother's ability to parent in the future, the psychologist gave a "guarded" prognosis, stating, "it's hard to say exactly how long it would take for her to make any real progress. But it would be a significant amount of time."

¶13 Finally, a third psychologist who performed a bonding assessment explained that Mother engaged in minimization regarding the cause of the dependency. The psychologist concluded Mother would not be able to parent in the near future as it had been "nearly four years" since her son's removal and she "continues to have difficulty understanding why her [son was] removed." The psychologist explained that "[i]f Mother has difficulty understanding why [her son was] brought into care, she's more likely to make decisions in the future that would also put him at risk." Based on the testimony and evidence, we do not find any error in the juvenile court's findings regarding the statutory ground for termination.

Theresa B. v. DCS, M.B.
Decision of the Court

¶14 Next, we reject Mother’s argument that the juvenile court placed too much focus on her son’s preference not to visit her. Although the juvenile court did consider her son’s preference not to visit Mother, it was only one factor that supported its conclusion that termination was in her son’s best interests. Thus, her son’s preference regarding visitation did not “control[] the case.” *Cf. Desiree S. v. Dep’t of Child Safety*, 235 Ariz. 532, 535, ¶¶ 12-13 (App. 2014) (juvenile court abused its discretion in terminating parental rights of mother who successfully completed reunification services; child’s preferences alone insufficient to support statutory ground for termination based on fifteen months out-of-home placement).

¶15 Accordingly, the juvenile court’s findings that Mother failed to remedy the circumstances leading to the out-of-home placement and that there was a substantial likelihood she would be unable to exercise parental control in the near future is supported by reasonable evidence.

CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court’s order terminating Mother’s parental rights to her son M.B.



AMY M. WOOD • Clerk of the Court
FILED: AA