

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

BRITNEY S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, G.S. M.S., *Appellees*.

No. 1 CA-JV 17-0136
FILED 10-17-2017

Appeal from the Superior Court in Maricopa County
No. JD508879
The Honorable Rodrick J. Coffey, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate's Office, Mesa
By Suzanne Sanchez
Counsel for Plaintiff/Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

T H U M M A, Chief Judge:

¶1 Britney S. (Mother)¹ challenges the superior court’s orders terminating her parental rights to her son G.S. and daughter M.S. Because Mother has shown no error, the orders are affirmed.

FACTS² AND PROCEDURAL HISTORY

¶2 Mother has been involved with the Department of Child Safety (DCS) and its predecessor for more than half of her life. As a child, Mother was a victim of serious physical and emotional abuse and neglect and was, herself, a dependent child. During and after that time, Mother abused alcohol, prescription and illegal drugs; attempted self-harm and evidenced behavioral health issues.

¶3 In December 2012, when Mother was 25-years old, she gave birth to her fourth child G.S. At birth, G.S. tested positive for methadone and opiates and evidenced special needs. DCS took G.S. into care; he was found dependent as to Mother in April 2013 and the court adopted a family reunification case plan. By February 2014, Mother absconded with G.S. In May 2015, the court noted Mother and G.S. “have been missing for over one year.”

¶4 Mother gave birth to M.S. in September 2015. At birth, M.S. tested positive for illegal drugs including methamphetamine. DCS took M.S. into care; she was found dependent as to Mother in November 2015

¹ Fathers’ rights were previously terminated and they are not parties to this appeal.

² This court views the evidence in a light most favorable to sustaining the superior court’s findings. *See Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

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and the court adopted a family reunification case plan. Both children were placed in a nonrelative placement with two of their biological siblings.³

¶5 In June 2013, May 2014, November 2015 and March 2016, the superior court found, without apparent objection, that DCS had made reasonable efforts to finalize the permanency plan by providing reunification services that included allowances and subsidies, behavioral health assessment and/or treatment, child care, group counseling, parent aide services, substance abuse counseling, transportation, urinalysis testing and visitation.

¶6 In July 2016, over objection by counsel for Mother, the court changed the case plan to severance and adoption. DCS' motion to terminate alleged substance abuse and 9-months time-in-care for both children and 15-months time-in-care for G.S. and that termination was in the children's best interests. *See* A.R.S. §§ 8-533(B)(3), (8)(a) & (c) (2017).⁴ Mother, failed to appear at several prior hearings without good cause, and failed to appear without good cause at the severance adjudication in January 2017. The trial went forward in her absence.

¶7 After receiving evidence and argument, the superior court granted the motion to terminate. This court has jurisdiction over Mother's timely appeal pursuant to Article 6, Section, 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Ariz. R.P. Juv. Ct. 103-04 (2017).

DISCUSSION

¶8 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights as long as it is supported by reasonable

³ Although not subject to this appeal, Mother's parental rights to her three older children were terminated previously.

⁴ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶9 Mother's challenge on appeal is limited to claiming that DCS failed to provide her mental health services, meaning the superior court erred in finding DCS had made reasonable and diligent efforts to provide her with appropriate reunification services. As applicable here, DCS was required to prove that it provided both reasonable and diligent efforts (which are treated synonymously) to provide appropriate reunification services. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92 ¶¶ 28-34 (App. 1999); *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453 ¶ 12 n.3, 454 ¶ 16 (App. 2005) (addressing substance-abuse under A.R.S. § 8-533(B)(3)); A.R.S. § 8-533(D). DCS was not "required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). Similarly, DCS was not required to provide futile services, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50 ¶ 18 (App. 2004), or services with no "reasonable prospect of success," *Mary Ellen C.*, 193 Ariz. at 192 ¶ 34.

¶10 The evidence at trial shows DCS referred Mother for a psychological evaluation and psychiatric evaluation. Mother, however, failed to participate in either referral and was not in contact with DCS. This evidence allowed the superior court to properly conclude DCS provided Mother mental health services, but she failed to participate in the services offered. Trial evidence also shows Mother needed to demonstrate sobriety for 30 days before she would be provided other psychological and psychiatric services. During a three-year period, however, Mother failed to show 30 days of sobriety. This record supports the superior court's finding that DCS made required efforts to provide appropriate reunification services.

CONCLUSION

¶11 Because Mother has shown no error, the superior court's orders terminating her parental rights to G.S. and M.S. are affirmed.

