IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ADRIANA R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, L.O., *Appellees*.

No. 1 CA-JV 17-0243
FILED 12-21-2017

Appeal from the Superior Court in Maricopa County
No. JD529369
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By David C. Lieb
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Thomas C. Kleinschmidt joined.[1]

T H O M P S O N, Judge:

¶1 Adriana R. (mother) appeals from the juvenile court's order severing her parental rights to her daughter, L.O. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 L.O. was born in September 2015. In October 2015, mother was living with L.O. at Maggie's Place, an inpatient residential facility. Maggie's Place tested mother for drugs and she tested positive for marijuana, amphetamine, methamphetamine, and D-amphetamine. She was reportedly breastfeeding L.O. during that period. As a result of the positive tests, mother was asked to leave Maggie's Place. She moved in with her brother, whose home she described as being an "unstable environment." DCS took L.O. into custody and placed her with her maternal aunt. Mother agreed to participate in a substance abuse program through LifeWell and informed DCS that she had an intake appointment there.[2] Mother began having twice-weekly visits with L.O., supervised by the maternal aunt.

¶3 DCS filed a dependency petition and in November 2015 the juvenile court adjudicated L.O. dependent. DCS put additional services into place, including drug testing through TASC and PSI, a parent aide to

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[1] The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

[2] Mother never provided any documentation to DCS that she actually participated in substance abuse services at LifeWell. She did, however, testify that she did not complete treatment at LifeWell.

supervise mother's visits with L.O.[3], "full" parent aide services, and two referrals for intensive outpatient substance abuse treatment.

¶4 Mother's participation in services was inconsistent. She completed ten out of twenty-one parent aide sessions and was closed out unsuccessfully. She missed her first two intake appointments for intensive outpatient treatment at Terros but completed an intake appointment in March 2016. Subsequently, because mother's participation in services at Terros was inconsistent, Terros decided to close out the referral. While closure was pending, mother re-engaged with Terros. She completed the intensive outpatient program in November 2016. However, in October and November 2016, while in the program, mother missed required urinalysis tests and DCS asked her to submit a hair follicle test. The test came back positive for methamphetamine.[4] Mother admitted to her Terros case manager that she used methamphetamine in October 2016. Mother was re-referred for intensive outpatient treatment, which included both group and individual counseling, and she completed the second program despite missing several group sessions. At the time of the severance hearing, mother had started but still needed to complete standard outpatient treatment.

¶5 Mother tested positive for drugs throughout the dependency. In October, November, and twice in December 2015 she tested positive for methamphetamine. She tested positive for methamphetamine in January, April, May, July, and December 2016, and missed numerous tests in 2016. When DCS confronted mother with her positive tests, she refused to acknowledge her drug use.[5]

¶6 In August 2016, DCS filed a motion to terminate mother's parental rights pursuant to Arizona Revised Statutes (A.R.S.) sections 8-533(B)(3) (2014) (history of chronic drug abuse), -533(B)(8)(a) (out of home placement for a cumulative total of nine months or longer), and -533(B)(8)(b) (out of home placement for a cumulative total of six months or

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[3] This referral was closed out because neither mother nor maternal aunt wanted a parent aide to supervise visits.

[4] The DCS case manager testified that hair follicle tests typically go back ninety days.

[5] In spite of the substantial body of evidence to the contrary, as reflected above, at trial mother testified that she did not have a significant history of using methamphetamine.

longer and child is under the age of three). By the time of the contested severance hearing, L.O. had been in an out of home placement for approximately seventeen months. Following the hearing, the juvenile court terminated mother's parental rights on all three grounds alleged in the petition. Mother timely appealed.

DISCUSSION

¶7 Mother raises two issues on appeal: 1) whether DCS failed to make a diligent effort to provide reunification services, and 2) whether the juvenile court's findings were insufficient.[6]

¶8 We will not disturb the juvenile court's order severing parental rights unless there is no reasonable evidence to support the court's factual findings. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2 (App. 1998) (citations omitted). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13 (App. 2005). We do not reweigh the evidence, because "[t]he juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if DCS proves by clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). The court must also find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005).

¶9 The severance statute provides, in relevant part:

> **B.** Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:
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> . . .

[6] Mother does not appeal from the juvenile court's best interests determination.

> 3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
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> . . .
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> 8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:
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> (a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order . . . and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.
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> (b) The child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or willfully 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.

A.R.S. § 8-533(B). We construe "circumstances" to mean the circumstances that exist at the time of the severance that prevent a parent from appropriately providing for his or her child. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007).

A. Reunification Services

¶10 Mother argues that DCS failed to make diligent efforts to provide appropriate reunification services because it failed to provide her with a psychological consultation or psychological evaluation. "[A]lthough the State is not obliged to undertake futile rehabilitative measures, it is obliged to undertake those which offer a reasonable possibility of success." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 187, ¶ 1 (App. 1999). DCS need not provide "every conceivable service." *Id.* at 192, ¶ 37.

¶11 In this case, reasonable evidence supports the juvenile court's finding that DCS made a diligent effort to provide appropriate reunification services to mother. L.O. came into care and remained in care due to mother's drug use. DCS provided mother with multiple referrals for substance abuse assessment and treatment, supervised visitation, a parent aide, and drug screening. The record indicates that mother was inconsistent with services and unable to remain drug free for the majority of the dependency. Although the DCS case manager testified that a psychological consultation may have been helpful, he explained that DCS would not refer mother for a psychological consultation until she demonstrated her sobriety for thirty days.[7] The case manager further testified that mother never indicated to him that she had a mental illness or was in need of mental health services, and never requested him to provide her with a psychological consultation during her alleged periods of sobriety. We find no abuse of discretion in the juvenile court's finding that DCS provided appropriate reunification services to mother.

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[7] Mother argues that she had no positive drug tests for thirty-day periods from July 6, 2016 to August 4, 2016 and November 21, 2016 to December 21, 2016, and therefore demonstrated her sobriety enough that the case manager should have thereafter scheduled a psychological consultation. The first alleged window of sobriety, July 6, 2016 to August 4, 2016, was less than thirty days. As to the second alleged window of sobriety, November 21, 2016 to December 21, 2016, the record shows that mother submitted to a hair follicle test on December 20, 2016 and that test, test result number 02675235, which included a confirmation test, came back positive for methamphetamine. *See* exhibit 6 at 13. Mother tested positive for methamphetamine again on December 27, 2016. Even if mother had demonstrated her sobriety for thirty days or more, we would still find no error in the failure to provide a psychological consultation in view of the long-term nature of mother's drug problem.

B. The Juvenile Court's Findings

¶12 Mother next argues that the juvenile court's order terminating mother's parental rights is invalid because the court's findings of fact are either not supported by reasonable evidence or are vague and self-conclusory. She urges us to reverse because the findings do not allow for meaningful appellate review. We review questions about the sufficiency of the juvenile court's findings de novo. *Ruben M. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 236, 240, ¶ 20 (App. 2012). Arizona Rule of Procedure for the Juvenile Court 66(F) provides that if the state meets its burden of proof in a severance case, "the court shall . . . [m]ake specific findings of fact in support of the termination of parental rights . . . ." The findings must be made in writing. *Id.* "The primary purpose for requiring a court to make express findings of fact and conclusions of law is to allow the appellate court to determine exactly what issues were decided and whether the lower court correctly applied the law." *Ruben M.*, 230 Ariz. at 240, ¶ 24 (citations omitted). "Findings must include 'all of the ultimate facts—that is, those necessary to resolve the disputed issues.'" *Id.* at 25 (quoting *Elliott v. Elliott*, 165 Ariz. 128, 132 (App. 1990)).

¶13 The juvenile court's findings here were sufficient. The court detailed how L.O. came into care, the services that DCS provided to mother, and mother's participation in those services before concluding that DCS made diligent efforts to provide reunification services, that DCS had established the grounds for severance, and that severance was in L.O's best interests. More specifically, the court found:

> 1. *Parent Aide*- The Department made a referral for a parent aide. This service would provide Mother with hands on assistance in how to best meet the needs of the children. Mother did not demonstrate that she has the capacity to implement the strategies taught to her in the parent aide service as well as the parenting classes.
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> 2. *Facilitated Visitation*- Mother was offered services that were designed to facilitate regular and on-going contact with her daughter.
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> 3. *Drug Testing*- Testing services were made available to Mother through TASC and

> TERROS. This would afford Mother with the opportunity to confront specific substance abuse issues and allow the Department to tailor the services that Mother needed.
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> 4. *Substance Abuse Assessment and Treatment*- The Department offered Mother services through TERROS which were designed to assist Mother in addressing substance abuse issues. Mother completed an Intensive Outpatient Treatment Program, but subsequently tested positive for methamphetamine, which Mother admitted was a relapse. To date, Mother has not successfully completed a substance abuse treatment program to the point of successful discharge from a relapse prevention program.
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> 5. *Case Management*- This service provided coordination of services for the family. . . .
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> 6. *Transportation*- This service was offered to assist Mother in being able to participate in referred services.

The court further found that "the services provided and offered by the Department were adequate," and that "[t]he failures in this case are primarily attributed to Mother's resistance to engaging in services." The court erroneously found that DCS conducted a psychological consultation. Mother did not bring this single erroneous finding to the juvenile court's attention, and "[w]e generally do not consider objections [to the juvenile court's findings] raised for the first time on appeal." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 21 (App. 2007) (citations omitted). Moreover, we cannot agree that this one mistaken finding invalidated the balance of the severance order.

CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's order

severing mother's parental rights.

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