IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

AMBER H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, T.L., I.S., K.H., *Appellees*.

No. 1 CA-JV 17-0271
FILED 12-21-2017

Appeal from the Superior Court in Maricopa County
No. JD28060
The Honorable Alison Bachus, Judge

AFFIRMED

COUNSEL

Law Office of H. Clark Jones, LLC, Phoenix
By Clark Jones
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Jennifer M. Perkins joined.

J O N E S, Judge:

¶1 Amber H. (Mother) appeals the juvenile court's order terminating her parental rights to I.S., K.H., and T.L. (the Children). For the following reasons, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 In early 2014, the Children's maternal grandmother filed a petition for permanent guardianship over I.S. and K.H., then ages eleven and five. When the appointed guardian ad litem (GAL) attempted to interview I.S. and K.H., Mother became furious, caused a disturbance, and was ultimately arrested. The GAL filed a petition alleging the Children were dependent on the grounds of neglect. When interviewed by a Department of Child Safety (DCS) investigator, Mother admitted she struggled with anger issues, untreated mental illness, substance abuse, and a domestic violence relationship.

¶3 In July 2014, the juvenile court adjudicated I.S. and K.H. dependent as to Mother and adopted a case plan of family reunification. Mother gave birth to T.L. in December 2014; she was immediately removed from Mother's care and also adjudicated dependent.[2] Over the next two years, DCS provided Mother with a variety of services intended to address its concerns regarding Mother's mental health and substance abuse, including substance abuse testing and treatment, visitation, case aide services, parent aide services, transportation assistance, psychological

---

[1] We view the facts in the light most favorable to upholding the termination order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008).

[2] The Children were also adjudicated dependent as to their fathers. The fathers' parental rights were later terminated. Those orders were not challenged, and the fathers are not parties to this appeal.

evaluations, a psychiatric evaluation, and individual counseling. Her participation was sporadic, and she remained unable to safely care for the Children. In September 2016, the court changed the case plan to severance and adoption over Mother's objection. DCS immediately moved to terminate the parent-child relationship, alleging severance was warranted based upon Mother's chronic mental illness and the length of time the Children had been in out-of-home care.

¶4 Following a two-day trial in March and April 2017, the juvenile court found DCS proved by clear and convincing evidence that severance was warranted because: (1) Mother was unable to discharge parental responsibilities as a result of mental illness and there were reasonable grounds to believe the condition would continue for a prolonged indeterminate period, and (2) Mother had been unable or unwilling to remedy the circumstances causing the Children to be in an out-of-home placement for longer than the statutory period. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3), (8)(c).[3] The court also found DCS proved by a preponderance of the evidence that severance was in the Children's best interests and entered an order terminating Mother's parental rights to the Children. Mother timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶5 To warrant termination of Mother's parental rights on the grounds of mental illness and time-in-care, DCS was required to prove it made diligent efforts to provide appropriate reunification services to Mother. *Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 177-78, ¶ 12 (App. 2014) (citing A.R.S. § 8-533(B)(8), and *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 32-34 (App. 1999)). Mother's sole argument on appeal is that the juvenile court abused its discretion in finding DCS proved by clear and convincing evidence that it made such efforts.

¶6 Generally, we defer to the finding of diligence so long as it is supported by substantial evidence. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 81-82, ¶ 13 (App. 2005) (citations omitted). But, where "[DCS] has been ordered to provide specific services in furtherance of the case plan, and the court finds that [DCS] has made reasonable efforts to provide such services . . . a parent who does not object in the juvenile court

[3] Absent material changes from the relevant date, we cite a statute's current version.

is precluded from challenging that finding on appeal." *Shawanee S.*, 234 Ariz. at 179, ¶ 16 (citing *State v. Georgeoff*, 163 Ariz. 434, 437 (1990), and *In re Eddie O.*, 227 Ariz. 99, 103 n.2, ¶ 14 (App. 2011)). The rationale for this rule is sound:

> It serves no one to wait to bring such concerns to light for the first time on appeal, when months have passed since the severance order was entered. Instead, a parent's failure to assert legitimate complaints in the juvenile court about the adequacy of services needlessly injects uncertainty and potential delay into the proceedings, when important rights and interests are at stake and timeliness is critical.

Id. at 178-79, ¶ 16; *see also Trantor v. Frederickson*, 179 Ariz. 299, 300 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal" because "a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects.") (citing *Van Dever v. Sears, Roebuck & Co.*, 129 Ariz. 150, 151-52 (1981), and *United States v. Globe Corp.*, 113 Ariz. 44, 51 (1976)). Such an objection may be raised during any number of proceedings before the juvenile court, including at a dependency hearing, periodic review hearings, the permanency planning hearing, and even the termination hearing. *Shawanee S.*, 234 Ariz. at 179, ¶ 14.

¶7 Mother argues DCS never offered her medication assistance or couples counseling after those services were recommended in her psychological and psychiatric evaluations, conducted in June 2015, and July and August 2016, respectively. Mother has not identified anywhere in the record where she preserved this claim. The record reflects that although Mother appeared, with counsel, at numerous hearings in the nearly two years leading up to trial, Mother never objected to the adequacy of the services offered by DCS or requested medication assistance or couples counseling. Mother did not object to the juvenile court's findings in August 2015, June 2016, and September 2016 that DCS had thus far made "reasonable efforts to finalize the permanency plan" of reunification. And Mother did not suggest DCS's efforts relative to medication assistance or couples counseling were inadequate at the termination hearing. To the contrary, Mother's counsel affirmatively argued Mother had participated in services designed to address DCS's concerns regarding her substance abuse, mental health, and romantic relationship. She further argued she had actually benefitted from those services such that she was then willing and able to adequately care for the Children and would be able to independently obtain needed services in the future. On this record, Mother

has waived her opportunity to challenge the diligence of DCS's reunification efforts.

CONCLUSION

¶8 Mother does not argue any other error in the juvenile court's order. *See Denise H. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 257, 259, ¶ 7 (App. 1998) (holding that a parent has no right to an independent review by the appellate court for fundamental error). Accordingly, the order terminating Mother's parental rights to the Children is affirmed.