IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MEMORY B., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, F.W., *Appellees*.

No. 1 CA-JV 17-0322
FILED 12-28-2017

Appeal from the Superior Court in Maricopa County
No. JD528470
The Honorable David J. Palmer, Judge

AFFIRMED

COUNSEL

John L. Popilek PC, Scottsdale
By John L. Popilek
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Justice Rebecca W. Berch[1] joined.

S W A N N, Judge:

¶1 This is an appeal from an order severing parental rights. We affirm because reasonable evidence supports the severance order.

FACTS AND PROCEDURAL HISTORY

¶2 Memory B. ("Mother") is the biological mother of minor child F.W.[2] In February 2015, the Department of Child Safety removed F.W. from Mother's care after Mother took the child to a hospital and, apparently in an altered state of consciousness, made abrupt statements, spoke to the walls, and asked staff why her family was trapped in the hospital-bed call box.

¶3 A few days later, Mother stated that she had taken F.W. to the hospital because Mother was hearing noises at home and had dropped F.W. on the head. Mother disclosed that she has a traumatic brain injury and suffers from hallucinations, anxiety, and depression. Mother stated that she was supposed to be taking medication for the hallucinations but had not done so for three months because of scheduling issues. Mother produced bottles of multiple prescription medications, one of which bore the name of a different patient. Mother stated that she occasionally used methamphetamines and had last done so approximately one week before the hospital visit. Mother agreed to voluntarily pursue mental-health treatment at a behavioral health hospital.

¶4 In April 2015, the court adjudicated F.W. dependent as to Mother. Approximately ten months later, in February 2016, the

[1] The Honorable Rebecca White Berch, retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

[2] F.W.'s father, whose parental rights were severed, is not a party to this appeal.

Department recommended that the case plan change from family reunification to severance and adoption. The court adopted the Department's recommendation in June 2016, and the Department promptly moved for severance of Mother's parental rights based on mental illness under A.R.S. § 8-533(B)(3) and time-in-care under § 8-533(B)(8)(c). The court held a contested severance trial in May 2017. Trial began in Mother's absence because she failed to timely appear, but when she arrived during the first witness's testimony, the court ruled that she could participate and present evidence.

¶5 The evidence presented at the severance trial established the following facts regarding Mother's participation in services. In August 2015, Mother completed a neuropsychological evaluation that resulted in diagnoses of mild neurocognitive impairment, depressive disorder, and anxiety disorder. The neuropsychologist further concluded that the diagnoses of schizophrenia spectrum or other psychotic disorder, and amphetamine or other stimulant use disorder, should not be ruled out. The neuropsychologist found that Mother has a borderline intelligence quotient, paranoia, impulsivity, poor and maladaptive problem-solving abilities, poor memory and attention, and difficulties planning and organizing thoughts. The neuropsychologist recommended that Mother receive multi-disciplinary mental health support and individual counseling, and he opined that she would not be able to care for her child unless she demonstrated, for a protracted one-year period, emotional and psychological stability and the ability to structure her environment and engage in appropriate interactions.

¶6 The Department thereafter referred Mother for individual counseling, but she did not participate. Over the next almost-two years, Mother had at least three psychiatric hospitalizations and was appointed a guardian. Mother was prescribed medication in connection with her hospitalizations, but she failed to comply with the Department's requests for copies of the prescriptions. And though she received treatment from a psychiatric nurse practitioner, her compliance with that treatment was limited. Mother missed appointments and at the last appointment she attended, in March 2017, she informed the nurse practitioner that she had unilaterally stopped taking her medication and was using alcohol to deal with pain and auditory hallucinations.

¶7 Mother completed a substance-abuse evaluation soon after F.W.'s removal and was not recommended for services, but she was required to participate in drug-testing. Mother did not participate in all tests, and on multiple occasions in 2015, she tested positive for various

combinations of alcohol, marijuana, opiates, and benzodiazepines. Though Mother claimed that she had prescriptions for the drugs, by early 2016 she still had not provided the Department copies of the prescriptions.

¶8 Mother's participation in visitation and related services was erratic. She was barred from two visitation centers after engaging in disruptive behavior. And at various visits throughout 2015 she engaged in abnormal behavior, including hallucinating, falling asleep, repeatedly and aggressively questioning F.W., and becoming confrontational with the visit supervisor. Moreover, on several occasions she asked that the visits end early, and throughout the nearly two years of visitation, she frequently failed to attend visits and cancelled visits at the last minute. She also repeatedly denied her mental illness during meetings with the parent aide.

¶9 The former case manager testified that the Department had identified an appropriate adoptive home for F.W. The former case manager further testified that adoption would allow F.W. to obtain permanency and that otherwise she would remain in the foster care system and her future would remain unclear to her. The current case manager testified that Mother appeared to not understand why the Department sought severance, and he stated that he would fear for F.W.'s safety if she were returned to Mother's care. The neuropsychologist who evaluated Mother in August 2015 similarly opined that, based on his evaluation and the information that Mother had thereafter required at least three psychiatric hospitalizations and appointment of a guardian, parenting would be "enormously challenging" for Mother and he would worry about the safety of a dependent. The neuropsychologist opined that Mother's condition will continue for a prolonged indeterminate period and her long-term prognosis is poor.

¶10 The court ruled that the mental-illness and time-in-care grounds for severance were established and that severance was in F.W.'s best interests. Mother timely appeals.

DISCUSSION

¶11 To sever a parent-child relationship, the court must find by clear and convincing evidence that at least one of the grounds set forth in A.R.S. § 8-533(B) exists, and the court must find by a preponderance of the evidence that severance is in the child's best interests. *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). We accept the court's findings of fact unless they are not supported by any reasonable evidence, and we will affirm the severance

order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶12 Severance under either § 8-533(B)(3) or (B)(8)(c) requires that the Department reasonably or diligently endeavor to provide appropriate reunification services. A.R.S. § 8-533(D) (diligent reunification efforts required for time-in-care severance); *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12 (App. 2005) (reasonable reunification efforts required for mental-illness severance). Mother, relying on the neuropsychologist's testimony that proper medication may allow mentally ill individuals to become effective parents, contends that the Department did not diligently endeavor to provide reasonable reunification services to her because the Department "did virtually nothing with respect to the most critical rehabilitative service that Mother needed, namely, arrang[ing] for appropriate medications."

¶13 Assuming without deciding that Mother properly preserved the foregoing argument, the argument fails. The Department is not required to provide a parent every conceivable service, ensure the parent's participation in each service offered, or duplicate services that the parent receives elsewhere. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994); *see Pima Cty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989). Nor is the Department required to provide services that would be futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34 (App. 1999). The evidence shows that the Department offered Mother a variety of services designed to address her serious mental-health issues, including a neuropsychological evaluation and individual counseling. Further, the evidence shows that Mother independently received mental-health treatment, but failed to fully comply — she sporadically participated in treatment by a psychiatric nurse practitioner, and, importantly, she refused to take medication prescribed to her and instead chose to self-medicate with alcohol. She also repeatedly denied having any mental illness despite substantial evidence to the contrary. In view of the foregoing, additional mental-health services would have been both duplicative and futile.

¶14 Mother further contends that the Department failed to present sufficient evidence that she was "an unfit parent." We interpret her contention as a challenge to the balance of the requirements for severance under § 8-533(B)(3) or (B)(8)(c). We hold that severance was warranted

under § 8-533(B)(3),[3] which requires, in addition to reasonable reunification efforts, "[t]hat 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." The evidence shows that Mother is afflicted with severe mental illness and deficiency that affect her ability to safely care for herself and others, and that her condition did not appreciably improve over a nearly two-year period.

¶15 Finally, reasonable evidence supports the court's determination that severance of Mother's parental rights served F.W.'s best interests. In considering a child's best interests, the court must determine, based on the totality of the evidence, how the child would benefit from severance or be harmed by continuation of the parent-child relationship. *Maricopa Cty. Juv. Action No. JS-9104*, 183 Ariz. 455, 461 (App. 1995), *abrogated on other grounds by Kent K.*, 210 Ariz. 279; *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Relevant factors include whether the child would be at risk of abuse or neglect if placed in the parent's care, whether the child's existing placement is meeting the child's needs, whether the child is adoptable, and whether an adoptive placement is immediately available. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 383, ¶ 30 (App. 2010); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 27 (App. 2011); *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 80, ¶ 17 (App. 2005). The Department presented evidence that Mother was unable to safely care for F.W., that adoption would give F.W. permanency, and that an adoptive placement had been identified.

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[3] We therefore do not address whether the evidence also supported severance under § 8-533(B)(8)(c). *See Jesus M.*, 203 Ariz. at 280, ¶ 3 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

CONCLUSION

¶16 Reasonable evidence supports the court's severance order. We therefore affirm.