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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MELISSA C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.C., V. C., *Appellees*.

No. 1 CA-JV 17-0231
FILED 1-25-2018

Appeal from the Superior Court in Maricopa County
No. JD 509702
The Honorable David K. Udall, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

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

P E R K I N S, Judge:

¶1 Melissa C. (“Mother”)¹ appeals the superior court’s order terminating her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Jeffrey C. (“Father”)² are the biological parents of A.C. (born in 2008) and V.C. (born in 2011) (collectively the “Children”). Mother is also the biological parent of C.W. and A.A., two children from prior relationships.

¶3 Mother has a 30-year history of substance abuse. She completed substance-abuse treatment programs on three separate occasions but continually relapsed with methamphetamine. Mother also has a 10-year history with the Department of Child Safety (“DCS”). In 2007, DCS received a report that Mother was using methamphetamine and neglecting C.W. and A.A. At that time, Mother admitted that she had been using methamphetamine “off and on” for 12 years. DCS deemed the report unsubstantiated.

¶4 In 2011, Mother tested positive for methamphetamine when V.C. was born. Consequently, DCS took temporary custody of all four children, placed them in foster care, and filed a dependency petition. The juvenile court later adjudicated C.W., A.C., and V.C. dependent³ and

¹ Mother is sometimes referred to as Melissa W. in the trial court record.

² The superior court also terminated Father’s parental rights. Mother identified Father as a party to this appeal in her opening brief; however, Father filed a Notice of No Opening Brief because counsel was “unable to find any non-frivolous issues to present on behalf of Appellant Father.” Subsequently this court dismissed Father, and he is no longer a party to this appeal.

³ The juvenile court placed A.A. in the legal custody of her father.

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approved DCS's case plan of family reunification. Mother completed her case plan requirements, including substance-abuse treatment, family counseling, parent-aide services, and supervised visits; verified her sobriety through drug testing; and obtained and maintained stable employment and housing. By July 2013, DCS had placed A.C. and V.C. in Mother's physical custody, and the juvenile court dismissed their dependency.⁴

¶5 However, 15 months later, in October 2015, DCS received a report that Mother and Father had been arrested and incarcerated on potential drug charges following a raid at a known dealer's house. A.C. was in the car while Mother was in the home to purchase methamphetamine. Accordingly, DCS filed a petition alleging that the Children were dependent based on Mother and Father's substance abuse, the prior dependency, and neglect.

¶6 Over the next several months, Mother failed to keep in contact with DCS and its contracted providers. During that time, the DCS caseworker mailed certified letters to Mother informing her that she needed to participate in services, including substance-abuse treatment, but she did not respond. As a result, Mother did not have any contact with the Children between October 2015 and February 2016.

¶7 Between October 2015 and June 2016, DCS referred Mother to a substance abuse treatment provider, TERROS Families First ("TERROS"), on three separate occasions. DCS referred Mother three separate times to TERROS because the first two referrals were closed out due to her lack of communication and non-compliance. At the pretrial conference in October 2016, Mother moved for an order directing DCS to provide her with a fourth referral to TERROS and the juvenile court denied her request. At that point, however, DCS had already agreed to submit a fourth referral to TERROS conditioned upon Mother's participation in drug testing for thirty days.

¶8 Mother completed a psychological evaluation with Dr. Karen Mansfield-Blair in May 2016. During the evaluation, Mother admitted to using methamphetamine two days earlier. Mansfield-Blair diagnosed Mother with stimulant-use disorder, amphetamine-type substance, severe; stimulant-induced depressive disorder; stimulant-induced anxiety disorder; and borderline intellectual functioning. Mansfield-Blair recommended that Mother participate in "a long-term intensive inpatient

⁴ C.W. turned eighteen in July 2013, and the juvenile court dismissed his dependency as well.

treatment program that has a step-down process that includes recovery planning, relapse prevention, participation in a [12]-step program, and acquisition of a sponsor.” However, Mansfield-Blair opined, given Mother’s “long history of drug use,” her inability to maintain sobriety, and her recent use, it was reasonable to believe that Mother’s addiction would “continue for a prolonged, indeterminate period of time.” She concluded that the likelihood of Mother being able to “demonstrate minimally adequate parenting skills in the foreseeable future [was] extremely poor.”

¶9 In August 2016, DCS moved to terminate Mother’s parental rights to the Children based on 9 and 15 months out-of-home placements. *See* Ariz. Rev. Stat. (“A.R.S.”) §§ 8-533(B)(8)(a), (c) (2014). After a contested termination hearing, the superior court terminated Mother’s parental rights based on both grounds alleged in the petition and found that severance was in the Children’s best interests. Mother appealed the termination. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) and 12-120.21(A)(1) (2017).⁵

DISCUSSION

¶10 While custody and control of one’s children are fundamental rights, they are not absolute. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11–12 (2000). Termination of parental rights is appropriate only where the superior court finds, “by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533.” *Id.* at 249, ¶ 12. In addition, a preponderance of the evidence must demonstrate that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). The superior court must consider the circumstances as they existed at the time of the termination hearing. *Shella H. v. Dep’t of Child Safety*, 239 Ariz. 47, 50, ¶ 12 (App. 2016).

¶11 The superior court is best situated “to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004); *see also* *Ariz. Dep’t of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010) (“We view the facts in the light most favorable to upholding the juvenile court’s order.”). Thus, we review for an abuse of discretion and “will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

⁵ Absent material revision after the relevant date, we cite a statute’s current version.

¶12 On appeal, Mother raises two issues. Mother argues that DCS failed to make reasonable efforts to provide reunification services, and DCS failed to prove severance was in the best interests of the Children.

I. Reunification Services

¶13 Mother argues insufficient evidence supports the superior court's order terminating her parental rights because DCS did not provide inpatient substance abuse treatment as a reunification service.⁶

¶14 Before acting to terminate parental rights, DCS has "an affirmative duty to make all reasonable efforts to preserve the family relationship." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235, ¶ 14 (App. 2011). DCS can fulfill this duty by "provid[ing] services to the parent 'with the time and opportunity to participate in programs designed to help her to become an effective parent.'" *Id.* (quoting *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)). DCS must make "a diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8) (out-of-home placement).

¶15 However, DCS is not required "to provide every conceivable service or to ensure that a parent participates in each service it offers." *JS-501904*, 180 Ariz. at 353. It is not obligated to provide services that are futile, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 18 (App. 2004), and need only "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34. Additionally, DCS is not compelled to leave the window of opportunity for remediation open indefinitely. *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994). Termination is appropriate where a parent makes only "sporadic, aborted attempts to remedy" the circumstances. *Id.* at 576 & n.1.

¶16 Here, DCS provided ample opportunities and services to Mother for reunification, including referrals and services for substance abuse treatment, drug testing, counseling, parent-aide services, a psychological evaluation, and supervised visits. Mother failed to consistently attend services, engage in substance-abuse treatment, or verify sobriety through drug testing. Despite Mother's lack of effort, DCS continued to refer her to services, and Mother continued to miss appointments and ignore referrals. Indeed, Mother did not establish any

⁶ Mother does not challenge the superior court's findings for the other elements of nine and fifteen months out-of-home placements under Ariz. Rev. Stat. §§ 8-533(B)(3), (B)(8)(a), or (c). Thus, we do not address them.

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period of sobriety. Further, contrary to her claims on appeal, Mother was offered inpatient treatment through a substance abuse treatment provider, but she admitted at trial that she failed to complete the referral process.

¶17 Sufficient evidence supports that DCS satisfied its obligation to make reasonable efforts to preserve the family. We affirm the superior court's conclusion that DCS made diligent efforts to provide Mother with appropriate reunification services.

II. Best Interests

¶18 Mother argues that severance is not in the Children's best interests because she is bonded to them and no adoptive placement existed at the time of trial.

¶19 "Whether severance is in the child's best interests is a question of fact for the juvenile court to determine." *Jesus M.*, 203 Ariz. at 282, ¶ 13. To prove best interests, DCS must show that the child would either benefit from severance or be harmed by a continuation of the parental relationship. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288, ¶ 26 (App. 2011). A child benefits from severance when the child is adoptable and severance would free a child for adoption. *JS-501904*, 180 Ariz. at 352. Additionally, DCS can establish that severance is in a child's best interests by presenting evidence showing that an existing placement is meeting the needs of the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Also, it is in the best interests of the children and their parent to have a finite window of opportunity for remediation. *See JS-501568*, 177 Ariz. at 577.

¶20 Here, the superior court found, by a preponderance of the evidence, that severance was in the Children's best interests. At trial, the DCS caseworker testified that the Children were adoptable, their current placement was willing to adopt them, and the placement was meeting all their needs. The caseworker testified that, shortly before trial,⁷ DCS had located a relative who was also interested in adopting the Children. The caseworker stated severance was in the Children's best interests because it would provide them with permanency in a safe and stable home that was free of drugs. The caseworker further testified that there was a substantial likelihood that Mother would not be able to parent the Children due to her ongoing substance abuse. The psychological evaluation and the psychologist's subsequent testimony indicated that Mother's ability to

⁷ At the time of trial, DCS had not yet had time to go through the adoption approval process for the Children's relative.

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parent the Children in the foreseeable future was extremely poor. The caseworker testified permanency was necessary to help the Children heal from their emotional trauma. Finally, Mother testified that returning the Children to her care would not be in their best interest:

Q. What do you think is in the best interest of your children?
Do you think the children should be -- remain in care, or do you think that the children should be returned to you?

A. Uh -- I think they -- as of now we're not ready for my children to come home yet. But I don't think our rights should be severed.

¶21 Reasonable evidence supports the court's finding that the termination of Mother's parental rights was in the Children's best interests.

CONCLUSION

¶22 For the foregoing reasons, we affirm the order terminating Mother's parental rights.



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