

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALICE C., *Appellant*,

v.

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

No. 1 CA-JV 17-0303
FILED 1-4-2018

Appeal from the Superior Court in Maricopa County
No. JD529596
The Honorable Rodrick J. Coffey, Judge

AFFIRMED

COUNSEL

Czop Law Firm, PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Sandra L. Nahigian
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Peter B. Swann joined.

M O R S E, Judge:

¶1 Alice C. ("Mother") appeals the superior court's order terminating her parental rights to her daughter. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological mother of A.C. (born in May 2013).¹ Mother started using drugs when she was 17 and has used marijuana, methamphetamine, and opiates. Over the years, she sought treatment on several occasions and experienced periods of sobriety followed by relapses.

¶3 In December 2012, Mother entered a residential treatment program for substance abuse and mental health after discovering she was about 17 weeks pregnant with A.C. Against clinical advice, she walked out of the program a month later. When she voluntarily returned to the residential treatment program on May 7, 2013, she admitted to using methamphetamine and heroin during the previous four months. Mother remained in the residential treatment program until discharged in March 2014. After leaving the residential program, Mother continued receiving outpatient treatment services, including in-home visits from program representatives. Mother relapsed on several occasions while receiving outpatient services.

¶4 On January 28, 2015, the Department of Child Safety ("Department") received a hotline report because Mother's home was extremely dirty and she refused to take A.C. to the doctor for her fever. At the time of reporting, an outpatient treatment program representative was concerned that Mother was again using drugs. Two days later, Mother tested positive for amphetamine and high levels of methamphetamine.

¹ The superior court also terminated parental rights of A.C.'s father ("Father"). Father is not a party to this appeal.

ALICE C. v. DCS, A.C.
Decision of the Court

¶5 On December 30, 2015, the Department received another hotline report that Mother was yelling "I hate you and I don't know why I had you." A neighbor entered Mother's apartment and found A.C. alone in a bathtub with water up to her chest while Mother was in another room. Mother admitted to not taking her anti-psychotic medication. The Department removed A.C. from Mother's home and placed A.C. into temporary care.

¶6 On January 5, 2016, the Department filed a dependency petition alleging neglect, mental health issues, and substance abuse. Mother denied the allegations and submitted the dependency issue to the superior court, which found the child dependent as to Mother on March 3, 2016. The superior court approved a case plan of family reunification and ordered the Department to provide, and Mother to participate in, substance abuse testing through TASC, substance abuse assessment and treatment through TERROS, parent aide services (contingent on 30 days sobriety), and a psychological evaluation.

¶7 Over the next seven months, Mother did not participate in Department-offered services. Mother did not complete her substance abuse assessment or treatment with TERROS, missed appointments for her psychological evaluation, and failed to comply with drug testing requirements until August 2016.

¶8 On October 7, 2016, the superior court granted the Department's request to change the case plan from Reunification to Severance and Adoption. On October 19, 2016, the Department moved to terminate Mother's parental rights based on nine-month out-of-home placement under Arizona Revised Statute ("A.R.S.") § 8-533(B)(8)(a). The Department later amended its motion to include termination of parental rights based on a history of chronic substance abuse, A.R.S. § 8-533(B)(3), and 15-month out-of-home placement, A.R.S. § 8-533(B)(8)(c).

¶9 After the plan was changed to severance, Mother started engaging in services offered by the Department. On December 12, 2016, Mother completed her psychological evaluation. The psychologist diagnosed Mother with "Stimulant Use Disorder Amphetamine-type Substance, Severe." His prognosis was "guarded, at best," that Mother could demonstrate the needed parenting skills in the foreseeable future, and he recommended a reevaluation after six months of documented sobriety. The psychologist also recommended an updated psychological evaluation after six months of documented sobriety to distinguish between symptoms related to substance abuse and those related to mental health.

ALICE C. v. DCS, A.C.
Decision of the Court

¶10 Between November 2016 and the middle of January 2017, Mother provided fourteen samples to TASC. She tested positive for methamphetamine twice (November 7 and December 2, 2016), and failed to submit random samples on nine occasions, including three consecutive missed samples on January 13, 18, and 19. She did not become consistent with drug testing requirements until the middle of February.

¶11 In February 2017, the Department again referred Mother to TERROS for substance abuse assessment and treatment. Mother missed an additional two appointments before completing the intake assessment on February 20, 2017.

¶12 On May 1, 2017, the superior court held a contested severance hearing. On June 16, 2017, the superior court issued an order terminating Mother's parental rights and finding that severance was in A.C.'s best interests. Mother timely appealed the termination. We have jurisdiction pursuant to A.R.S. § 8-235(A) and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

DISCUSSION

¶13 Mother argues that the superior court erred in finding clear and convincing evidence that her history of substance abuse would continue pursuant to A.R.S. § 8-533(B)(3) and that she neglected or willfully refused to remedy the circumstances that caused the child to be in out-of-home placement pursuant to A.R.S. § 8-533(B)(8)(a) and (c). Mother also argues that the Department did not provide her adequate time and opportunity to participate in services recommended by the psychologist.

¶14 Custody of one's children is a fundamental, but not absolute, right. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). To terminate parental rights, the superior court must find by clear and convincing evidence the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B), and must also find by a preponderance of the evidence that termination is in the child's best interests. Ariz. R.P. Juv. Ct. 66(C); *Michael J.*, 196 Ariz. at 249, ¶ 12. Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings," we will accept its findings of fact unless no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶15 Mother concedes that she had a "slow start" but focuses her argument on her recent changes, including six months of purported

ALICE C. v. DCS, A.C.
Decision of the Court

sobriety at the time of the severance hearing², compliance with drug testing requirements, and participation in a recovery program. Mother also argues that the Department failed to provide the services recommended in the psychologist's evaluation.

¶16 Mother's partial abstinence from drugs and short-term participation in treatment do not outweigh her extensive history of substance abuse and failure to engage in services offered by the Department. Mother has a 15-year history of substance abuse with periods of sobriety and relapse. After her daughter was removed from her home, Mother waited eight months to submit to her first drug test, which was positive for methamphetamine. She did not participate in a psychological evaluation until nine months after the Department's referral. She waited over a year before she regularly submitted to random drug testing. Mother did not fully engage in the services provided by the Department until February 2017, 14 months after her daughter was removed.

¶17 The superior court properly weighed Mother's history of drug use, relapses, and failure to participate in testing and treatment. *See Jennifer S. v. Dept. of Child Safety*, 240 Ariz. 282, 287, ¶ 20 (App. 2016) (noting that the trier of fact may consider "the length and frequency of Mother's substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses"). Generally, chronic substance abuse is long-lasting, but not necessarily constant, substance abuse, and a parent's "temporary abstinence from drugs and alcohol does not outweigh [her] significant history of abuse or [her] consistent inability to abstain during [the] case." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377 ¶ 16, 379 ¶ 29 (App. 2010). The record provides reasonable evidence to support the superior court's finding of chronic substance abuse.

¶18 The record also reflects that the Department provided Mother with appropriate reunification services. For most of 2016, the Department offered, and Mother did not participate in, drug assessment and treatment through TERROS, drug testing through TASC, and a psychological evaluation. Even after Mother began making efforts, she missed multiple scheduled appointments with the psychologist and TERROS intake. Additionally, the psychologist's recommendation for a parent aide and

² Mother's claim of six months of sobriety ignores the days she failed to call in for drug testing or missed required tests. At the time of the trial, Mother only had 11 weeks of documented sobriety.

ALICE C. v. DCS, A.C.
Decision of the Court

individual therapy from a doctoral-level psychologist required six months of documented sobriety, which Mother did not achieve by the severance hearing.³

¶19 Mother's failure to achieve six months of sobriety to be eligible to participate in some services does not mean that services were unavailable. A child's fate should not depend on the timing of a parent's decision to avail herself of the services offered. *Id.* at 378, ¶ 25. Reasonable evidence supports the superior court's decision because a child's interest in permanency must prevail over a parent's uncertain battle with drugs. *Id.* at 379, ¶ 29.

¶20 Although Mother began using the reunification services and demonstrated sobriety for 11 weeks before the severance hearing, clear and convincing evidence in the record supports the superior court's determination that Mother had a history of chronic substance abuse and that there were reasonable grounds to believe the condition would continue for a prolonged indeterminate period. Accordingly, the superior court did not err in terminating Mother's parental rights.⁴

³ During the hearing, the psychologist testified that missed drug tests would "reset the clock" because it calls into question Mother's sobriety. Mother's documented sobriety started in mid-February when she became compliant with required drug testing.

⁴ Because we find that the evidence supports termination of Mother's parental rights on the grounds of chronic substance abuse, we need not address the other grounds raised in Mother's appeal. *See Jesus M.*, 203 Ariz. at 280, ¶ 3 (App. 2002) ("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").

ALICE C. v. DCS, A.C.
Decision of the Court

CONCLUSION

¶21 The superior court's order terminating Mother's parental rights to the child is affirmed.