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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

REYNA C., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, S.R., *Appellees.*

No. 1 CA-JV 17-0374
FILED 4-17-2018

Appeal from the Superior Court in Navajo County
No. S0900JD201500038
The Honorable Michala M. Ruechel, Judge

AFFIRMED

COUNSEL

Law Office of Elizabeth M. Hale, Show Low
By Elizabeth M. Hale
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

S W A N N, Judge:

¶1 Reyna C. (“Mother”) appeals the juvenile court’s order terminating her parental rights on several grounds, including nine months’ time-in-care under A.R.S. § 8-533(B)(8)(a), fifteen months’ time-in-care under § 8-533(B)(8)(c), and neglect under § 8-533(B)(2). Mother’s sole argument on appeal is that there was insufficient evidence to support a finding that the statutory grounds for termination were met. We hold that the Department of Child Safety (“Department”) met its burden by clear and convincing evidence, and we therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Robert R. (“Father”)¹ are the biological parents of S.R., born April 2014. On November 11, 2015, Officer Joseph Vizzini of the Phoenix Police Department investigated a report about a couple panhandling with a child. Upon arriving at the scene, Officer Vizzini questioned Mother and her boyfriend, N.H., who stated that they were homeless and used drugs. Officer Vizzini observed that S.R. had two small bruises on her back, but otherwise looked “healthy and well[-]fed.” Thereafter, Officer Vizzini contacted the Department, which took temporary custody of S.R. and transported her to Phoenix Children’s Hospital for an examination.

¶3 The examination revealed two rib fractures and skin bruising, and a report indicated that “though [there is] no obvious evidence of physical abuse, previous episodes cannot be totally ruled out.” The report also indicated that S.R. was “indiscriminately affectionate” – showing a lack of parental stimulation – and that S.R. exhibited developmental delays. After the examination, S.R. was transported to a foster placement. On November 18, 2015, the Department filed a dependency petition,

¹ Father’s rights to S.R. were also severed in these proceedings, but he is not a party to this appeal.

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alleging S.R. dependent as to Mother and Father. The court scheduled a dependency trial and ordered that S.R. remain with the foster placement.

¶4 The Department offered Mother several services in January 2016, including individual mental-health counseling, a psychological evaluation, domestic-violence counseling, anger-management counseling, supervised parent-child visitation twice per week, parenting classes, substance-abuse assessment and treatment, and random drug testing.

¶5 Mother participated in individual mental-health counseling but did not keep her individual counseling appointments from October to December 2016. She completed her psychological evaluation. In May 2016, Mother began attending domestic-violence classes and by December 2016, she completed 5 of the required 26 sessions. But later in the dependency, Mother had completed 24 of the 26 sessions. Mother participated in two anger management counseling sessions, but she did not attend in August and November 2016.

¶6 As for visitation, Mother attended 83 of the 145 scheduled visits and ended most of them early. She attended parenting classes and completed the service in March 2017. The Department referred Mother for substance-abuse assessment and treatment on November 19, 2015. Upon enrolling in March 2016, she attended 11 of the required 25 group sessions during the months of March, April, May and August 2016. Mother did not attend any sessions in June, July, and September through December 2016. In 2017, Mother resumed services and completed the remaining nine classes before trial. Throughout 2016, Mother completed only three drug analysis tests and each test result was “abnormal.” She resumed drug testing in January 2017, completed a majority of the tests, and only two results were “abnormal.” In January 2017, the Department filed a motion for termination of the parent-child relationship, and the court affirmed. [ROA 96 (motion), ROA 99 and 100 (setting severance hearing)].

¶7 At trial, the Department presented testimony from several witnesses who were familiar with Mother’s case and her participation in services. Dr. James Thal, who conducted a psychological evaluation of Mother, testified that Mother believed that “using meth was viable” and “something that she could do while parenting a young child.” He further testified that Mother did not frame the underlying matter as the result of her neglect of S.R., but as a “department of child safety kidnapping.” At the assessment, Mother mentioned that she suffers from “multi[-]personality disorder.” However, Dr. Thal opined that her drug use is a component of her mental health as well. Dr. Thal founded his

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testimony on his initial assessment and a report of Mother's progress from mental-health and addiction services dated March 27, 2017. Based on Dr. Thal's assessment of Mother and the report, he concluded that it "would be substantially dangerous to [S.R.] to be returned to her Mother" because of her "severe mental disorders."

¶8 Though Mother participated in anger-management sessions, she still exhibited anger issues by the time of the trial. Julie Green, the visit supervisor, testified that during a visit on May 15, 2017, Mother arrived "upset and agitated" and her behavior escalated. When Green told Mother the visit was over, Mother grabbed S.R. and shoved Green. Mother returned S.R. to Green after Green threatened to call the police. Emily Reynolds, S.R.'s clinician, became involved on a weekly basis because S.R. exhibited behavioral problems after visitations with Mother. After the May 2017 incident, Reynolds wrote a letter to the court, stating:

Over the past 2 months I have had my concerns for [S.R.'s] wellbeing. Her behaviors at home have gotten worse after each visit with her biological mother. These behaviors include [S.R.] crying and screaming uncontrollably for long periods of time, pulling her own hair out of her head, biting the tips of her fingers until they bleed, and throwing tantrums when it is bath time It is my concern that the visits [S.R.] has been having with her biological mother are more destructive than beneficial.

¶9 Green also testified that Mother did not come prepared with food, was unable to control S.R. during visits, and instead of interacting with S.R., Mother "often plays with her phone and plays music on her phone and texts . . . [, and] she has a tough time on just focusing on where [S.R.] is."

¶10 Karen Shaffe, the Department's case manager, testified that while Mother's submission of approximately four months of clean drug tests was "a step in the right direction," she "would want to see [clean testing for] a longer time." Shaffe further testified that although Mother completed parenting classes, participated in visits, completed a psychological evaluation, and completed anger-management classes, "she also has to successfully go through those and make sure that the outcomes are positive."

¶11 Laura Williams, a child-service specialist with the Department, testified that Mother did not complete the drug testing for a

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long period of time and only recently “had significant clean UAs,” possibly due to Mother’s pregnancy. Williams expressed concern about reuniting Mother with S.R. because Mother had “[in]sufficient housing, . . . [and t]here is still a need for parenting education, her mental health is unstable, and she’s at a high risk for relapse.” Williams testified that “services have been working for over 15 months, and we haven’t been able to make the behavior changes to reunify the family.”

¶12 On August 11, 2017, the court found that the Department had proven the statutory grounds for termination by clear and convincing evidence and that termination was in the child’s best interests. Mother now appeals.

DISCUSSION

¶13 To justify termination of the parent-child relationship, the court must find that one statutory ground under A.R.S. § 8-533 has been met by clear and convincing evidence, and that termination is in the child’s best interests by a preponderance of the evidence.² *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 unless they are not supported by reasonable evidence, and we will affirm the order terminating parental rights unless it is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We view the evidence in the light most favorable to upholding the court’s determination. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 20 (App. 2009).

¶14 We hold that reasonable evidence supports the court’s determination that termination of Mother’s parental rights to S.R. was warranted under § 8-533(B)(8)(a). A court may terminate a parent’s parental rights in accordance with § 8-533(B)(8)(a) when a child has been in out-of-home placement for a cumulative total period of at least nine months, the Department has made a “diligent effort” to provide appropriate reunification services, and the parent has substantially neglected or willfully refused to remedy the circumstances that caused placement. The court considers the circumstances existing at the time of the trial. *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007). But when parents make only “sporadic, aborted attempts to remedy” the circumstances causing out-of-home placement, the court is well within its discretion in finding substantial neglect and terminating parental rights

² Mother does not challenge the superior court’s best-interests finding on appeal. We therefore do not address those findings.

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on that basis, even though the parent eventually begins successful recovery before the termination hearing. *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576–77 (App. 1994). Therefore, “the test focuses on the level of the parent’s effort to cure the circumstances rather than the parent’s success in actually doing so.” *Marina P.*, 214 Ariz. at 329, ¶ 20.

¶15 Mother argues that the juvenile court’s findings were contrary to the evidence presented at trial. We disagree. The court found that S.R. had been in out-of-home placement for at least nine months, the Department provided Mother with several services, and Mother substantially neglected or willfully refused to remedy the circumstances that caused S.R. to be in out-of-home placement because she continued to test positive for drugs throughout the dependency or refused to provide drug testing to demonstrate sobriety. The court also found that Mother failed to complete substance-abuse treatment and her psychological evaluation revealed that her “reality concept is marginal,” such that S.R. would be at grave risk if placed in her care.

¶16 At trial, the Department presented evidence supporting the court’s findings. Testimony by several witnesses showed that Mother attended only three drug tests throughout 2016 and that she resumed testing in 2017 in the few months before the trial. The same pattern was reflected in Mother’s efforts concerning substance-abuse treatment – she attended 11 of the required 25 sessions in 2016, completing the program in 2017 in the months before the trial. Mother’s efforts toward a successful recovery before the trial do not rectify her sporadic and aborted attempts to remedy the circumstances during the first year of services.

¶17 We are also unpersuaded by Mother’s argument that the condition of her mental health is unsupported by the record because Dr. Thal’s testimony was based “entirely on out of date information.” To the contrary, Dr. Thal’s testimony relied upon not only his initial psychological evaluation, but also progress report notes concerning Mother’s participation in substance-abuse treatment and parenting services. Based on his initial evaluation and the progress report notes, Dr. Thal questioned Mother’s concept of reality and mental stability. Moreover, his determination is supported by both Mother’s declaration of her multiple personality disorder and testimony from Williams and Green. And while Mother made some effort to complete services, her angry and aggressive behavior toward Department staff during visitation and in S.R.’s presence shows that her issues are still unresolved and support the determination that S.R. would be at risk in her care.

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CONCLUSION

¶18 For the foregoing reasons, we affirm the court's termination of Mother's parental rights to S.R. under A.R.S. § 8-533(B)(8)(a).³



AMY M. WOOD • Clerk of the Court
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³ We therefore do not address whether the evidence also supported termination under § 8-533(B)(2) and (B)(8)(b). *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.”).