

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANIKA H., *Appellant*,

v.

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

No. 1 CA-JV 18-0049
FILED 8-21-2018

Appeal from the Superior Court in Maricopa County
No. JD529661
The Honorable Arthur T. Anderson, Judge

AFFIRMED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Dawn Rachelle Williams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Lawrence F. Winthrop joined.

M c M U R D I E, Judge:

¶1 Anika H. (“Mother”) appeals the superior court’s order terminating her parental rights to her daughter, A.H.¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of C.H., born in September 2001, and A.H., born in August 2016. Mother has an admitted history of substance abuse, using methamphetamine for approximately 12 consecutive years, from almost daily at 17-years-old until 2010. She remained sober for six years, but began using methamphetamine again in 2016.

¶3 In January 2016, the Department of Child Safety (“DCS”) petitioned the superior court to find C.H. dependent.² In April and June 2016, while the dependency proceeding regarding C.H. was open, Mother tested positive for methamphetamines and amphetamines. Mother was pregnant with A.H. when she tested positive for the drugs. Mother testified she used methamphetamine while pregnant to induce a miscarriage because she could not afford an abortion. A few days after A.H. was born, DCS took temporary physical custody of the child and petitioned for

¹ The superior court also terminated A.H.’s father’s parental rights; he is not a party to this appeal.

² C.H. had been placed in a guardianship with his paternal grandmother since 2005, but the guardianship was terminated in January 2016. C.H. was initially placed with Mother, but after Mother tested positive for methamphetamine and amphetamine, C.H. was placed in a group home. In July 2016, C.H. was found dependent, and in February 2018, a permanent guardian was appointed. C.H. is not a party to this appeal.

ANIKA H. v. DCS, A.H.
Decision of the Court

dependency, arguing A.H. was dependent as to Mother due to Mother's substance abuse and neglect. Mother denied the allegations in the dependency petition but submitted the issue to the superior court, which found A.H. dependent in January 2017.

¶4 DCS provided various services to Mother, including substance abuse testing and treatment, parent-aide services, individual counseling, and visitation. Mother initially refused to participate in substance abuse treatment, and once she began to participate, her level of engagement throughout the proceedings varied. She tested positive for methamphetamine in February, July, and September 2017. Mother also missed all but one urinalysis test between A.H.'s birth and the severance hearing.

¶5 In June 2017, DCS moved to terminate Mother's parental rights based on Mother's history of chronic substance abuse and six months time-in-care. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 8-533(B)(3), (8)(b). After a two-day hearing, the superior court terminated Mother's parental rights to A.H. The court found DCS proved by clear and convincing evidence the statutory ground for severance based on Mother's chronic substance abuse and that termination was in A.H.'s best interests.³ Mother timely appealed, and we have jurisdiction pursuant to A.R.S. § 8-235(A) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶6 To terminate a parent-child relationship, the superior court must find at least one statutory ground for severance under A.R.S. § 8-533(B) by clear and convincing evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). The court must also find severance is in the child's best interests by a preponderance of the evidence.⁴ *Id.* We review the court's severance determination for an abuse of discretion and will affirm unless no reasonable evidence supports the court's findings. *Mary Lou C. v. ADES*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). The superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of the

³ The superior court found DCS did not prove by clear and convincing evidence the statutory ground for severance based on six months time-in-care.

⁴ Mother does not challenge the superior court's finding that severance is in A.H.'s best interests.

ANIKA H. v. DCS, A.H.
Decision of the Court

witnesses, and resolve disputed facts.” *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004).

¶7 Under § 8-533(B)(3), a parent’s rights may be terminated if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” Chronic substance abuse is long-lasting, but “need not be constant.” *Raymond F. v. ADES*, 224 Ariz. 373, 377, ¶ 16 (App. 2010). The superior court does not have to find the parent’s substance abuse precludes her from discharging *any* parental responsibilities, but rather that she is unable to carry out her collective responsibilities. *Id.* at 378. A child’s interest in permanency must prevail over a parent’s uncertain battle with drugs. *Id.*

¶8 Mother first argues DCS failed to provide her with a psychiatric examination—a required service. She contends DCS failed to recognize the relationship between her mental health and her substance abuse problems. She argues DCS failed to provide appropriate reunification services by not providing her with a psychiatric evaluation and the opportunity to try medication without significant side effects. DCS counters that Mother waived this argument on appeal by failing to object to the adequacy of services prior to her testimony during the severance hearing, *see Shawanee S. v. ADES*, 234 Ariz. 174, 179, ¶ 16 (App. 2014) (a parent who fails to object to the adequacy of services below waives that argument on appeal), and asserts the department did in fact provide adequate services.

¶9 During the final day of the severance hearing, Mother testified she wanted a psychiatric evaluation so she could be prescribed medications for depression and anxiety, rather than turning to illegal drugs. She testified she requested a psychiatric evaluation but DCS would not approve it. Assuming Mother’s testimony preserved this argument for appeal, *see Shawanee S.*, 234 Ariz. at 178, ¶ 14 (“[A]t a termination hearing, a parent can dispute evidence that [DCS] claims shows a diligent effort to provide appropriate reunification services, including by testifying about the services actually provided.”), we nonetheless hold DCS did not fail to provide required services to Mother.

¶10 Before severing a parent’s rights based on chronic substance abuse, the superior court must find DCS “made reasonable efforts to reunify the family or that such efforts would have been futile.” *Jennifer G. v. ADES*, 211 Ariz. 450, 453, ¶ 12 (App. 2005). DCS must provide the parent “with the time and opportunity to participate in programs designed to help

ANIKA H. v. DCS, A.H.
Decision of the Court

her become an effective parent,” but is not required to provide every conceivable service to a parent. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994).

¶11 Mother completed a psychological evaluation in June 2016, while pregnant with A.H. Based on that evaluation, DCS initially recommended a psychiatric evaluation and individual counseling. Mother was aware of those recommendations, and could have obtained a psychiatric evaluation directly through Terros, without a separate referral from DCS, but she refused to participate in a psychiatric evaluation at that time. Additionally, before the case plan was changed from reunification to severance and adoption, DCS offered Mother multiple services designed to help address her substance abuse problem and become an effective parent. These services included substance abuse testing and treatment, individual counseling, parent-aide services, and supervised visitation. As noted above, Mother’s participation in these services was infrequent and, ultimately, she was non-compliant. Based on this record, we cannot say DCS failed to provide reasonable services to Mother.

¶12 Mother also argues DCS failed to prove by clear and convincing evidence the chronic substance abuse ground. To support her argument, Mother contends that without a psychiatric evaluation and the opportunity to try medication without significant side effects there are no reasonable grounds to believe her substance abuse will “continue for a prolonged indeterminate period.” A.R.S. § 8-533(B)(3). In determining whether a parent’s substance abuse will continue for a prolonged and indeterminate period, the superior court may consider the parent’s past and recent history of substance abuse, prior efforts to remain sober, prior relapses, and compliance with substance abuse treatment. *See Jennifer S. v. DCS*, 240 Ariz. 282, 287, ¶ 20 (App. 2016); *Raymond F.*, 224 Ariz. at 379, ¶¶ 27-28.

¶13 Mother admitted she began using methamphetamine when she was 17-years-old. Although she achieved sobriety for six years, she testified she began using again in 2016, purportedly to unsuccessfully induce a miscarriage; thereafter, Mother continued to use drugs to self-medicate, calm herself, and to avoid anger outbursts. Mother tested positive for methamphetamine in April and June 2016 and in February, July, and September 2017. The superior court found DCS offered numerous services to address her substance abuse problems, but found “[m]ethamphetamine is Mother’s method of dealing with stress, anxiety, and anger” and “[i]n large measure, Mother blames DCS for her continued drug use because she ran out of psychiatric medications.” On this record,

ANIKA H. v. DCS, A.H.
Decision of the Court

the superior court did not err by finding Mother is unable to discharge her parental responsibilities due to her history of chronic substance abuse or that there are reasonable grounds to believe the abuse will continue for a prolonged indeterminate period.

CONCLUSION

¶14 For the foregoing reasons, we affirm the superior court's order terminating Mother's parental rights to A.H.



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