

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALIZE T., Appellant,

v.

DEPARTMENT OF CHILD SAFETY, J.T., M.T., J.M., *Appellees.*

No. 1 CA-JV 19-0116
FILED 9-17-2019

Appeal from the Superior Court in Maricopa County
No. JD35044
The Honorable Jeanne Garcia, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge James B. Morse Jr. and Judge David D. Weinzwieg joined.

T H U M M A, Judge:

¶1 Mother Alize T. timely appeals from an order terminating her parental rights based on six- and nine-months time-in-care. Because she has shown no error, the order is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of J.T., M.T. and J.M., born in 2014, 2016 and 2017 respectively. In November 2017, the Department of Child Safety (DCS) filed a dependency petition after Mother was arrested for assaulting father Jerrious M.¹ DCS alleged Mother repeatedly engaged in domestic violence with Father in front of the children; failed to provide proper and effective parental care and control and illegally used marijuana.

¶3 The children were found dependent as to Mother after she failed to attend a hearing in March 2018, and the court adopted a case plan of family reunification. In September 2018, the court changed the case plan to severance and adoption. DCS' motion to terminate alleged nine-months time-in-care for J.T. and six-months time-in-care for M.T. and J.M. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(8)(a)-(b) (2019).²

¹ Mother later pled guilty to assault with a deadly weapon, among other offenses. She was placed on two years' probation and required to complete 52 weeks of domestic violence classes. She had apparently completed ten or twelve of the classes by the time of the severance trial. The parental rights of Jerrious to J.M. and M.T., and of John Doe (the putative father of J.T.), were terminated and are not at issue in this appeal.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

ALIZE T. v. DCS, et al.
Decision of the Court

¶4 The court held a contested severance adjudication in January 2019 where the DCS caseworker and Mother testified and the court received exhibits. The DCS caseworker testified Mother was offered domestic violence counseling and classes, substance abuse testing and treatment, a parent aide, parenting classes, supervised visits, transportation and housing and employment assistance. Mother admitted that she did not take the process seriously before October 2018 and did not attempt to remedy the reasons the children were in care before that time. The DCS caseworker discounted Mother's assurances of her renewed commitment because she had broken similar assurances in the past, and the need for permanency.

¶5 The court severed Mother's parental rights on the basis of the children's time-in-care. The court found severance was in the children's best interests as they were placed with a paternal aunt who intended to adopt them. This court has jurisdiction over Mother's timely appeal pursuant to Article 6, Section, 9, of the Arizona Constitution, A.R.S. § 8-235(A), 12-120.21(A) and 12-2101(A) and Ariz. R.P. Juv. Ct. 103-104.

DISCUSSION

¶6 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the children. *See 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). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights so long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004)).

¶7 Mother does not challenge the superior court's finding that severance was in the best interests of the children and the evidence is sufficient to support that finding. Instead, Mother contests the finding that she substantially neglected or willfully refused to remedy the circumstances that caused the children to be in care as clearly erroneous and contrary to the evidence.

ALIZE T. v. DCS, et al.
Decision of the Court

¶8 To terminate Mother's rights under the time-in-care grounds, DCS was required to establish by clear and convincing evidence that: (1) J.T. had been in court-ordered out-of-home placement for at least nine months and M.T. and J.M., had been in court-ordered out-of-home placement for at least six months; (2) DCS made a "diligent effort to provide appropriate reunification services;" and (3) despite those efforts, Mother has substantially neglected or willfully refused to remedy the circumstances causing the children to be in an out-of-home placement. A.R.S. § 8-533(B)(8)(a); *see also E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 59-60 ¶ 16 (App. 2015).

¶9 Because Mother does not dispute that the children were in care for the required time and that DCS made diligent efforts to provide reunification services, the only issue is whether reasonable evidence supports the court's finding that Mother substantially neglected or willfully refused to remedy the circumstances causing the children to be in care. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 16 (App. 2014) (an argument not timely made is waived on appeal). This element turns upon Mother's "effort to cure the circumstances rather than [her] success in actually doing so." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 329 ¶ 20 (App. 2007).

¶10 During the first eleven months that the children were in care, Mother's participation in services was inconsistent at best. Although DCS referred Mother to a counselor for individual counseling and to address her domestic violence issues, that referral was closed out due to lack of participation. Mother only participated in parent aide services twice before those services were closed out due to lack of participation. Mother did not attend any services or attend any supervised visits from mid-April to October 2018. And from October 2018 until the trial in late January 2019, Mother only attended two visits.

¶11 DCS referred Mother for drug testing to help her establish sobriety and confront her specific drug issues. She completed no drug tests from January to November 2018. Even then, while Mother tested negative for marijuana in December 2018 and January 2019, she also tested positive for marijuana and missed numerous other tests.

ALIZE T. v. DCS, et al.
Decision of the Court

¶12 Reasonable evidence supports the superior court's finding that DCS made diligent efforts to provide Mother with appropriate reunification services. DCS provided Mother with opportunities for counseling, parent aide services, and supervised visitation as well as substance abuse assessments and random drug testing. The record also contains sufficient evidence that Mother's efforts to remedy the circumstances were insufficient.

CONCLUSION

¶13 The severance order is affirmed.



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