

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TRACIE S., *Appellant*,

v.

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

No. 1 CA-JV 19-0125
FILED 9-24-2019

Appeal from the Superior Court in Maricopa County
No. JD21076
The Honorable Randall H. Warner, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate's Office, Mesa
By Suzanne Sanchez
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Kent E. Cattani joined.

T H U M M A, Judge:

¶1 Mother Tracie S. appeals from the superior court's order terminating her parental rights to her son, D.S. Because she has shown no error, the order is affirmed.

FACTUAL AND PROCEDURAL HISTORY

¶2 D.S. was born in March 2016. His father, who is not a party to this appeal, was incarcerated the year D.S. was born. In June 2017, based on a report that Mother and D.S. were homeless and living in a car, the Department of Child Safety (DCS) took D.S. into care, alleging neglect and substance abuse by Mother. Mother, who was unemployed, tested positive for methamphetamine. In November 2017, after a contested trial, the court found D.S. dependent as to Mother and adopted a case plan of family reunification with a concurrent case plan of severance and adoption.

¶3 Mother's participation in services was inconsistent. Although she underwent a substance abuse assessment at TERROS and engaged in services there for several months, TERROS closed her out in April 2018, September 2018 and December 2018 due to lack of participation. She self-referred to an inpatient drug treatment center but left before completing the program. DCS referred Mother for individual counseling in September 2017 and April 2018 to address concerns about domestic violence, but the referral was closed by both providers due to lack of contact and participation. In July 2018, Mother was unsuccessfully closed out of parent aide services due to lack of participation. Mother completed a psychological evaluation in August 2017, resulting in a diagnosis of moderate amphetamine use disorder.

¶4 Mother initially failed to comply with required drug testing, but when she later did test, she tested negative for a time. In January 2018, she stopped testing and then tested positive for methamphetamine in February and August 2018. She told a TERROS employee that she had used methamphetamine on an almost daily basis from February to July 2018.

TRACIE S. v. DCS, D.S.
Decision of the Court

Mother testified in March 2019 that she last used methamphetamine in December 2018.

¶5 In December 2018, after a change in case plan, DCS filed a motion to terminate mother’s parental rights based on substance abuse and time in care. Ariz. Rev. Stat. (A.R.S.) sections 8-533(B)(3), (8)(a)-(c) (2019).¹ By the time of the severance adjudication, D.S. had been in care for approximately twenty-one months. After a two-day trial in March and April 2019, the court terminated Mother’s parental rights on the grounds alleged. 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, *see Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000), and must find by a preponderance of the evidence that termination is in the best interests of the child, *see Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005). 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. *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004).

¶7 Mother raises one issue on appeal: whether DCS failed to make a diligent effort to provide appropriate reunification services. “[A]lthough the State is not obliged to undertake futile rehabilitative measures, it is obliged to undertake those which offer a reasonable possibility of success.” *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, 187 ¶ 1 (App. 1999). Mother argues DCS failed to make diligent efforts to provide appropriate reunification services because it did not provide her with visitation in the three months before the trial.

¶8 The trial evidence supports the court’s finding that DCS made reasonable efforts to reunify the family, given the totality of the circumstances, despite its failure to provide Mother with visits for several

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

TRACIE S. v. DCS, D.S.
Decision of the Court

months. DCS provided Mother with (1) multiple referrals for substance abuse assessment and treatment to address her methamphetamine addiction, (2) counseling, (3) a parent aide and (4) drug screening. The record indicates that Mother was inconsistent with those services and unable to remain drug-free for the majority of the dependency. DCS provided Mother with supervised visits throughout the dependency up until December 2018, when visits were put on hold because Mother informed DCS that she would be entering inpatient treatment (which she then did not do). For various reasons, DCS did not then re-establish visits. At the close of the trial, the court ordered DCS to provide Mother with a four-hour visit within the next two days; when DCS scheduled that visit, however, Mother failed to appear. On this record, the court did not abuse its discretion in finding that DCS discharged its obligations to provide appropriate reunification services, that severance was in the best interests of D.S., and in terminating Mother's parental rights.

CONCLUSION

¶9 The order terminating Mother's parental rights to D.S. is affirmed.



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