IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SHIRLEY A., *Appellant*,

v.

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

No. 1 CA-JV 19-0302
FILED 3-26-2020

Appeal from the Superior Court in Yavapai County
No. V1300JD201880003
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, P.C., Anthem
By Florence M. Bruemmer
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellees

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge James B. Morse Jr. joined.

P E R K I N S, Judge:

¶1 Shirley A. ("Mother") appeals the juvenile court's order terminating her parental relationship with B.A. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of B.A., born in January 2018. B.A.'s father is unidentified and not a party to this appeal. Mother has two other children who are not subject to these proceedings.

¶3 Mother attempted suicide two weeks before giving birth to B.A. She was then violent and erratic at the hospital and the Department of Child Safety ("DCS") took B.A. into custody two days after his birth. B.A. was later declared dependent based on neglect due to mental illness.

¶4 In May 2018, DCS referred Mother to Dr. Robert Mastikian for a psychological evaluation. He diagnosed Mother with Posttraumatic Stress Disorder, Major Depressive Disorder, Borderline Intellectual Functioning, and Unspecified-Unknown Substance-Related Disorder. Mother reported her extensive history as a victim of human trafficking, abuse, and physical violence. She also reported prior substance abuse including cannabis, cocaine, and alcohol. Dr. Mastikian recommended parent aide services, substance abuse classes, domestic violence classes, victimization group therapy, Narcotics Anonymous, and individual counselling "preferably using a [dialectical behavioral therapy or] DBT approach[.]" His prognosis for Mother's ability to parent following treatment was poor.

¶5 DCS referred Mother to services including anger management, individual counseling, and child visitation. Mother's caseworker later testified that Mother received a litany of services including counselling, assessments, transportation, and visitation. Mother received individualized therapy through UMOM and TERROS from February 2018 to February 2019. Mother was satisfied with the services addressing her "sexual abuse and trauma."

¶6 In December 2018, Dr. Mastikian noted he received no records or treatment notes that Mother's counseling used a DBT approach. He predicted that once the constraints imposed by DCS were removed, Mother would experience a drug relapse or regress into old dysfunctional practices. He finally noted that, "[e]ven if [Mother] was fully engaged in treatment since she was last evaluated, it would be highly unlikely that she would have made enough therapeutic progress to conclude that any child . . . left in her unsupervised care would be safe." His prognosis and opinion remained unchanged.

¶7 After the doctor's update, the juvenile court ordered DCS to refer Mother for DBT counselling. DCS referred Mother to TERROS for DBT counselling, but Mother instead chose to receive services from UMOM between December 2018 and February 2019.

¶8 Mother moved to Florida in February 2019, ending her DBT and anger management treatment at UMOM. When Mother returned to Arizona in May 2019, DCS re-referred Mother for DBT counseling, which Mother attended.

¶9 DCS moved to terminate Mother's parental rights in April 2019, alleging the statutory grounds of mental illness, out-of-home placement for fifteen months, and neglect. Her caseworker testified that he was in contact with Mother until she left for Florida. Mother stopped direct contact after the caseworker informed her that she was not completing all conditions of B.A.'s return, and thereafter communicated through a third-party.

¶10 Mother had mixed progress after these services. The caseworker testified that she successfully completed job training services and a cooking program. Though Mother was "less aggressive and less explosive" while receiving medication and individual counselling, her behavior deteriorated when she stopped taking medication. A CASA court report recorded Mother's verbal outbursts and threatening behavior during visits with B.A. The caseworker reported that Mother's behavior was volatile, punctuated with "verbal outbursts." The caseworker also explained that Mother had not followed doctor's orders concerning B.A.'s asthma, gastrointestinal issues, and other developmental concerns. Nor had Mother shown the financial resources or stable residence to care for B.A.

¶11 After an evidentiary hearing, the court terminated Mother's parental rights to B.A. on statutory grounds of mental illness, neglect, and

fifteen months' time-in-care; and found that termination was in the child's best interests. Mother timely appealed.

DISCUSSION

¶12 We review the termination of parental rights for an abuse of discretion. *Sandra R. v. Dep't of Child Safety*, 246 Ariz. 180, 183, ¶ 6 (App. 2019) (review granted Aug. 27, 2019). This court will uphold the trial court's findings of fact "if supported by adequate evidence in the record." *Christy C. v. Ariz. Dep't Econ. Sec.*, 214 Ariz. 445, 452, ¶ 19 (App. 2007) (quoting *State v. Smith*, 123 Ariz. 243, 247 (1979)).

¶13 To terminate the parent-child relationship, the juvenile court must find at least one statutory ground 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 by a preponderance of the evidence that severance would be in the best interests of the child. A.R.S. § 8-533(B); *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149–50, ¶ 8 (2018).

¶14 Mother does not explicitly challenge the three specific statutory grounds in Section 8-533(B) that the juvenile court relied on to terminate her rights. Rather, relying on Sections 8-846(A) and 8-533(D), she asserts that DCS failed to make reasonable efforts to provide her with services in order to reunify her family. But in raising the "reasonable efforts" issue, she notes that the juvenile court relied on Mother's mental illness as an aspect of each specific statutory grounds for termination. Thus, the core of Mother's appeal is that the court erred in finding statutory grounds for termination because DCS failed to make reasonable efforts to preserve her family.

I. DCS Made Reasonable Efforts to Preserve the Family.

¶15 Before seeking termination of parental rights, the state must make "reasonable efforts" to preserve a family. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191–92, ¶¶ 32–33 (App. 1999). What constitutes "reasonable efforts" depends on the specific statutory ground for severance. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 333, ¶ 37 (App. 2007) (as corrected) (before terminating for drug use, "reasonable efforts" would include "opportunity to participate in substance-abuse treatment programs"); *Donald W. v. Dep't of Child Safety*, 247 Ariz. 9, ¶ 50 (App. 2019) (before terminating on time-in-care grounds, "reasonable efforts" required a "diligent effort . . . to identify conditions causing the child's out-of-home placement").

¶16 The court found three separate grounds for termination, but we only examine and affirm the mental health ground, which is enough to support termination. The record supports the juvenile court's findings that DCS made "reasonable efforts" to preserve the family by providing Mother with "appropriate rehabilitative services" tailored to her mental health needs.

¶17 When termination of parental rights hinges on mental illness, the state must make "reasonable efforts" to preserve the family by providing appropriate rehabilitative measures. *Mary Ellen C.*, 193 Ariz. at 186, ¶ 1 (App. 1999). DCS must afford Mother the "time and opportunity to participate in programs designed to improve [her] ability to care for the child." *Id.* at 192, ¶ 37. But DCS need only offer services with a "reasonable prospect of success," and need not offer "every conceivable service" or futile services. *Id.* at ¶ 34, 37.

¶18 The record shows that DCS offered reasonable services to Mother and made reasonable efforts to preserve the family. DCS immediately referred Mother to the services recommended by Dr. Mastikian. In May 2018, Dr. Mastikian originally recommended "individual counseling (preferably using a DBT approach)." Testimony at trial revealed that the UMOM counselor provided "individual therapy" which was "a component of DBT skills training." Mother received "twice monthly individual counseling through UMOM" between "February and March of 2018 and February 2019."

¶19 She attended anger management, individual counseling, and child visitation. She also received individualized therapy through UMOM and TERROS from February 2018 to February 2019. And after Dr. Mastikian's December 2018 addendum, DCS referred Mother for DBT counseling, which she received until departing for Florida. The juvenile court could have reasonably inferred these services were adequate.

¶20 Mother contends that DCS improperly delayed her referral for DBT counseling, giving her insufficient time or opportunity to engage in therapy before the termination hearing. But Mother decided to cease DBT counseling services and move to Florida. A parent's "failure or refusal to participate in the programs and services [DCS] offered or recommended does not foreclose termination of her parental rights." *See Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). DCS did not fail "to offer the very services that its consulting expert recommend[ed]." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 37.

¶21 Additional DBT counseling would also have been futile. Dr. Mastikian described Mother as a "'hot headed' and minimally engaged participant," adding that "it appears as if therapy is more of a burden for her than a tool for betterment." He concluded that even if Mother had been "fully engaged in treatment . . . it would be highly unlikely that she would have made enough therapeutic progress to conclude that any child or children left in her unsupervised care would be safe." DCS is not required to take all necessary services if the record supports, as here, that those services would be futile. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 18 (App. 2004) (affirming termination where, despite state's failure to provide "necessary services," the facts indicated those services would have been futile).

¶22 Mother also argues that DCS did not make reasonable efforts to reunify because the agency failed to sufficiently "follow up," but the record says otherwise. Though not required to ensure that Mother participated in every service offered, her caseworker contacted TERROS to make sure that Mother "did go to the DBT skills." After DCS referred Mother to TERROS, Mother chose to engage services at UMOM instead. The caseworker testified that he was in contact with Mother's therapist at UMOM "every other month." Further, Mother chose to cut off communication after the caseworker expressed concerns about her behavior and certain conditions of return. The record supports the juvenile court's finding that the "DCS caseworker was diligent in the efforts to help Mother in her services."

¶23 The juvenile court did not abuse its discretion in finding that DCS engaged in "reasonable efforts" to preserve the family before terminating Mother's parental rights for mental illness.

II. Termination is in Child's Best Interests.

¶24 Once a court has found at least one statutory ground to terminate, it may "presume that the interests of the parent and child diverge." *Kent K.*, 210 Ariz. at 286, ¶ 35. We thus focus our inquiry at the best interests stage on "the interests of the child as distinct from those of the parent." *Id.* at 285, ¶ 31. The "child's interest in stability and security" is the touchstone of our inquiry. *See id.* at 286, ¶ 34. Termination of parental rights is in the child's best interests "if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S.*, 245 Ariz. at 150, ¶ 13. Courts must consider the totality of the circumstances existing at the time of the severance. *Id.* Courts may consider "evidence that the child is adoptable or that an existing placement is meeting the needs of

the child." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 26 (App. 2011).

¶25 At the time of termination, the juvenile court found that B.A. was thriving in his kinship placement and that severance would further the plan of adoption, offering the child both permanency and stability. The DCS caseworker testified that B.A.'s current home was willing to adopt B.A. and that he was generally adoptable. The juvenile court did not abuse its discretion in finding that termination of parental rights was in B.A.'s best interests.

CONCLUSION

¶26 We affirm.

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