

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CASSANDRA S., *Appellant*,

v.

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

No. 1 CA-JV 21-0003
FILED 6-15-2021

Appeal from the Superior Court in Maricopa County
No. JD531407
The Honorable Cassie Bray Woo, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Thomas Jose
Counsel for Appellees

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Lawrence F. Winthrop joined.

B A I L E Y, Judge:

¶1 Cassandra S. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her daughter, I.D., born in November 2012. Because the juvenile court’s order is supported by reasonable evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2016, the family court awarded Kristoph D. (“Father”) sole legal decision-making authority over I.D., made Father the primary residential parent, and granted supervised parenting time to Mother.¹ Due to Mother’s incarceration, substance abuse and instability, the court ordered she could not petition to modify parenting-time until she had demonstrated six months of sobriety.

¶3 In January 2018, Father’s step-sister intervened in the family court matter and sought custody of I.D., alleging Father was abusing drugs. The family court appointed a best interest attorney, who filed a private dependency action on I.D.’s behalf. The following month, the Department of Child Safety (“DCS”) filed a substitute petition alleging that I.D. was dependent as to Mother based on substance abuse and neglect.

¶4 The juvenile court adjudicated I.D. dependent as to Mother and approved a family reunification case plan. DCS referred Mother for a psychological consultation, supervised visitation, random urinalysis testing, substance-abuse treatment, parent-aide services, and childcare. At the end of 2018, the court approved concurrent case plans of family reunification and severance and adoption.

¶5 Because Mother failed to participate consistently in the reunification services DCS provided her, DCS moved in July 2019 to

¹ The juvenile court also terminated Father’s parental rights to I.D., but he is not a party to this appeal.

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terminate Mother's parental rights, based on substance abuse and 15-months' time-in-care grounds. *See* A.R.S. § 8-533(B)(3), (8)(c).

¶6 Throughout the dependency, Mother participated inconsistently in urinalysis testing—missing 77 of her scheduled tests—and unsuccessfully closed out of testing multiple times. Two hair follicle tests—in February and July 2020—were positive for methamphetamine.

¶7 Nor did Mother consistently participate in her supervised visitation, even though DCS eventually implemented a system to remind Mother and confirm each visit in advance. All told, five of Mother's supervised visit providers unsuccessfully closed her out due to lack of engagement.

¶8 In the summer of 2020, DCS received a hotline report concerning Mother's other two minor children.² After an investigation, DCS allowed the children to remain with Mother only because the children's father also lived in the home. DCS determined that the father was sober, able to assist Mother, and capable of supervising the children.

¶9 In the weeks before the trial, DCS again referred Mother for substance-abuse treatment. During this same period, Mother began attending supervised visits and scheduled an intake appointment for the substance-abuse treatment. Although Mother was drug testing more frequently, she continued to miss some of her appointments.

¶10 At the December 2020 severance trial, the court took testimony from the DCS case specialist, Father, and Mother. Mother admitted she began using methamphetamine approximately ten years earlier and had last used the drug six months before the trial. Mother testified that her methamphetamine use had not negatively impacted her children's lives and that she did not need substance-abuse treatment. The case manager testified that even though Mother began engaging in services in the weeks before trial, she had not demonstrated a period of sobriety. The case manager stated that termination of Mother's parental rights would provide stability and permanency to I.D., who had been in care for almost three years, was adoptable and was residing with an adoptive placement who was meeting her needs.

² Mother's other children do not have the same biological father as I.D. Their biological father is Mother's fiancé.

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¶11 The court terminated Mother’s parental rights on the grounds of chronic substance abuse and 15-months’ time-in-care. See A.R.S. § 8-533(B)(3), (8)(c).

¶12 We have 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)(1), and Arizona Rules of Procedure for the Juvenile Court 103 and 104.

DISCUSSION

¶13 To terminate parental rights, a court must find clear and convincing evidence of at least one statutory ground in A.R.S. § 8-533(B) and must find by a preponderance of the evidence that termination is in the child’s best interests. 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 juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts,” we will affirm an order terminating parental rights if it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation omitted).

¶14 Termination under the 15-months’ time-in-care ground requires proof that DCS “made a diligent effort to provide appropriate reunification services,” *id.* at 93, ¶ 17, but that the parent “has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control,” A.R.S. § 8-533(B)(8)(c).

¶15 By ordering Mother’s parental rights terminated based on 15-months’ time-in-care, the court necessarily found by clear and convincing evidence that she was unable to remedy her substance abuse. See *id.* On appeal, Mother does not dispute the court’s findings; instead, she argues only that the record does not support that she is unable to parent I.D. In support, she cites DCS’s decision to allow her other two children to remain with Mother and their father. We disagree.

¶16 The question the juvenile court faced was not whether Mother can parent the other two children, but whether DCS had proved a statutory ground for severance as to her parental rights over I.D.

¶17 That DCS allowed Mother’s other children to remain in her and her fiancé’s care does not by itself show that she had remedied the

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circumstances that brought I.D. into care or that she would be capable of exercising parental care and control of I.D. *Cf. Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 12 (App. 2008) (stating that parents' retention of an infant born during dependency proceedings as to older three children "did not demonstrate that it was in [the older children's] best interests" to maintain the parent child relationship); *see also Elizabeth W. v. Ariz. Dep't of Child Safety*, 1 CA-JV 17-0495, 2018 WL 3358992, at *3, ¶ 12 (Ariz. App. July 10, 2018) (mem. decision) (rejecting Mother's argument that the return of one of her other children in another state established she could parent the dependent child in Arizona); *Karrie M. v. Ariz. Dep't of Child Safety*, 1 CA-JV 17-0034, 2017 WL 4510495, at *4, ¶ 23 (Ariz. App. Oct. 10, 2017) (mem. decision) (affirming severance of Mother's parental rights to one of her children because sufficient evidence supported the finding that Mother was incapable of exercising proper and effective parental control over that child).

¶18 On this record, Mother has not shown the juvenile court erred in finding she would be unable to exercise parental care and control over I.D. She was not meaningfully involved in I.D.'s life at any point since she was awarded visitation rights in 2016. Since the dependency was filed in 2018, she did not regularly participate in visitation until just before trial. DCS provided Mother with services for nearly three years, but she did not successfully complete any of them.

¶19 Moreover, the evidence showed that Mother's substance abuse prevents her from properly caring for I.D. At trial, Mother refused to acknowledge that her substance abuse negatively impacted I.D. and disagreed that she needed substance abuse treatment. DCS took I.D. into care because of Mother's substance abuse; the record fully supports the court's finding that by the time of trial, Mother had not remedied that circumstance.

¶20 The record also supports the juvenile court's finding that Mother cannot provide proper and effective parental care of I.D. *See* A.R.S. § 8-533(B)(8)(c). The court gave proper weight to the evidence that Mother is, with biological father's assistance, currently parenting her other two children. *See Jordan C.*, 223 Ariz. at 93, ¶ 18.

¶21 Given that the record supports termination of Mother's parental rights based on time-in-care grounds, we do not address her arguments related to the chronic substance-abuse grounds for severance pursuant to A.R.S. § 8-533(B)(3). *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) (providing that if clear and convincing

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evidence supports any statutory ground for severance, we need not address claims about the other grounds).

CONCLUSION

¶22 Because reasonable evidence supports the juvenile court's order terminating Mother's parental rights, we affirm.



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