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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KHAMIRA S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, R.N., A.S., J.N., S.S., R.N., *Appellees*.

No. 1 CA-JV 21-0047
FILED 6-15-2021

Appeal from the Superior Court in Maricopa County
No. JD36849
The Honorable Sam J. Myers, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Jennifer Blum
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

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M c M U R D I E, Judge:

¶1 Khamira S. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her children, Noah (age seven), Zoë (age 5), Jayla (age 4), Mia (age 3), and Willow (age 2) (collectively “the Children”).¹ She argues the Department of Child Safety (“DCS”) failed to provide her with the reunification services recommended by its mental health expert. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 DCS began investigating Mother for neglect in April 2016 after receiving a report that she had been assaulted by the Children’s father, Romeo N. (“Father”). Between April 2016 and August 2018, Mother was reportedly the victim of several assaults by Father, including incidents in which he punched, kicked, and slapped Mother. DCS removed the Children from their Mother’s care in December 2018 after Willow was born substance exposed to marijuana. In January 2019, DCS filed a petition alleging the Children were dependent. The petition alleged that Mother had neglected to provide proper and effective parental care and control as shown by Mother’s (1) residence with Father, who perpetrated domestic violence against her; (2) substance abuse; (3) mental health condition and failure to obtain mental health treatment; and (4) failure to support the Children. In April 2019, the juvenile court adjudicated the Children dependent and set a case plan for family reunification.

¶3 DCS referred Mother for multiple services, including a psychological evaluation, individual counseling with a domestic-violence component, substance-abuse treatment, substance testing, parent-aide services, and case-aide visitation services.

¶4 After a psychological evaluation in April 2019, Mother was diagnosed with other specified depressive disorder; cannabis disorder, borderline intellectual functioning; personal history (past history) of spouse/partner violence, physical and psychological; and child neglect. The psychologist who administered the evaluation advised that Mother would benefit from continued individual therapy from a masters-level therapist, parenting classes, and substance testing.

¹ We refer to the Children by pseudonyms to protect their identities.

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¶5 Mother was referred for substance testing and treatment in January 2019 and participated inconsistently. She was closed out of substance-abuse treatment in July 2019 due to non-attendance.

¶6 In March 2019, Mother completed intake for individual counseling with a domestic-violence component. She attended only two counseling sessions and was closed out of the service due to non-attendance in September 2019.

¶7 Mother engaged in parent-aide services between March and September 2019, attending most scheduled skills sessions and all but one visit. Following the completion of the parent-aide services, Mother was referred for case-aide supervised visits, but the case agent was unable to reach her, and she was closed out of the service in September 2019.

¶8 DCS moved to terminate Mother's parental rights in October 2019 on the nine-months' time-in-care ground, A.R.S. § 8-533(B)(8)(a). After the termination hearing in February 2020, the juvenile court denied the motion, finding that DCS failed to prove by clear and convincing evidence that Mother substantially neglected or willfully refused to remedy the circumstances that caused the Children's removal. The court observed that Mother's therapy was delayed when DCS requested Mother provide a denial letter after losing insurance coverage before referring her for state-funded treatment. In addition, the court noted DCS chose not to re-refer Mother for an additional round of parent-aide services after Mother completed the first round.

¶9 In early 2020, Mother was referred for additional domestic-violence counseling, substance-abuse treatment, substance testing, and parent-aide services. Mother completed the substance-abuse treatment and the domestic-violence counseling but inconsistently participated in substance testing and parent-aide services.

¶10 In August 2020, DCS again moved to terminate Mother's parental rights, this time on the fifteen-months' time-in-care ground under A.R.S. § 8-533(B)(8)(c). The court changed the case plan to severance and adoption and scheduled a severance trial for December 1, 2020.

¶11 In November 2020, Mother had an emergency c-section during which she had to be intubated. The child was placed on life support but did not survive. Following the loss of her child, the court rescheduled the termination trial, and DCS referred Mother for another psychological evaluation. The psychologist conducting the assessment concluded that Mother would benefit from individual counseling with a doctorate-level

therapist to address the grief stemming from her recent loss and interpersonal and personality issues.

¶12 At the termination trial, DCS introduced evidence that Mother continued to reside with Father after completing domestic-violence counseling and that an assault by Father precipitated Mother's emergency c-section.

¶13 The juvenile court terminated Mother's parental rights after finding that DCS had proven each of the elements of A.R.S. § 8-533(B)(8)(c), including that it had made diligent reunification efforts. Mother appealed, and we have jurisdiction under A.R.S. §§ 8-235(A) and 12-120.21(A)(1).

DISCUSSION

A. Mother Waived Review of the Adequacy of the Services Offered by Failing to Raise the Issue Before the Juvenile Court.

¶14 On appeal, Mother challenges the adequacy of the masters-level therapy provided because doctorate-level therapy was recommended at the psychological evaluation she received shortly before the January 27 termination hearing.

¶15 We view the evidence in the light most favorable to sustaining the juvenile court's decision and will affirm a severance order unless it is clearly erroneous. *Christy C. v. ADES*, 214 Ariz. 445, 449, ¶ 12 (App. 2007).

¶16 Before a parent's rights can be terminated under A.R.S. § 8-533(B)(8), the State must make "a diligent effort to provide appropriate reunification services." The State does not satisfy this requirement "when it neglects to offer the very services that its consulting expert recommends." *Mary Ellen C. v. ADES*, 193 Ariz. 185, 192, ¶ 37 (App. 1999). But if the juvenile court finds that the State was diligent in offering adequate services, we will not review the court's finding unless the parent objected to the adequacy of the services before the juvenile court. *Shawanee S. v. ADES*, 234 Ariz. 174, 179, ¶¶ 16-18 (App. 2014). Such a rule recognizes that "a parent's failure to assert legitimate complaints in the juvenile court about the adequacy of services needlessly injects uncertainty and potential delay into the proceedings, when important rights and interests are at stake and timeliness is critical." *Id.* at ¶ 16.

¶17 Here, Mother did not object to the adequacy of the therapy services provided to her before the juvenile court and raised the issue for

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the first time on appeal. We, therefore, deem the argument waived and affirm the court's judgment.

CONCLUSION

¶18 We affirm the court's termination judgment.



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