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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALICIA M., *Appellant*,

v.

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

No. 1 CA-JV 21-0201
FILED 10-19-2021

Appeal from the Superior Court in Maricopa County
No. JD19627
The Honorable Julie Ann Mata, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Alicia M. (“Mother”) appeals the juvenile court’s order terminating her parental rights to J.M. For the reasons below, we affirm.¹

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the juvenile court’s order. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 2 ¶ 2 (2016). The Department has had significant contact with Mother since 2006. Indeed, the Department received several reports alleging that Mother had abused substances and had physically abused and neglected her four older children. In 2010, the juvenile court found the children dependent. Mother successfully completed the services, and the juvenile court dismissed the dependency in 2012. Less than a year later, however, the Department again received reports that Mother abused substances, physically abused her children, and failed to provide for their medical needs. As a result, the Department filed a second dependency petition. During this dependency, Mother failed to successfully complete services and the juvenile court placed the children in their father’s physical custody and dismissed the dependency.

¶3 Mother kept abusing substances and in March 2019 gave birth to J.M., whom she had prenatally exposed to marijuana. The Department offered Mother rehabilitative and support services that she declined. In December 2019, the Department received a report that she had almost overdosed and had attacked her mother (“Maternal Grandmother”) with J.M. in her arms. The report also alleged that Mother had left J.M. in Maternal Grandmother’s care shortly after her birth in March and had gone weeks without visiting J.M. and without providing supplies or financial support for J.M.’s care. The Department therefore removed J.M. from

¹ J.M.’s father’s rights have been terminated based on abandonment and he is not a party to this appeal.

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Mother's custody in December 2019, placed her with Maternal Grandmother, and petitioned for dependency.

¶4 The Department unsuccessfully tried to locate Mother between December 2019 and February 2020. Mother contacted the Department in February 2020 and the Department referred her for rehabilitative and reunification services, including substance-abuse treatment and testing. It also requested that she self-refer for individual counseling. She did not engage, however, in any of the services, visited J.M. once between December 2019 and April 2020, inconsistently visited J.M. between April 2020 and June 2020, and failed to obtain housing or financial stability. Because Mother had not tried to remedy the circumstances causing J.M.'s out-of-home placement within six months, the Department moved to terminate her parental rights.

¶5 Soon after, Mother began to participate in parent-aide services and substance-abuse testing. Mother tested positive for methamphetamine in July 2020. She participated in substance-abuse treatment at TERROS. Despite completing standard outpatient treatment in October 2020 through TERROS and being enrolled in recovery maintenance, she tested positive for alcohol in November and December 2020, for methamphetamine twice in December 2020, and for fentanyl in December 2020. Her recovery maintenance provider found her "resistant to treatment" and closed her out for noncompliance in January 2021. Despite the positive drug tests, she claimed to have been sober from methamphetamine for "years" and claimed that she had been sober from all substances since March 2020.

¶6 In late January 2021, the Department referred Mother to be re-assessed for a higher level of substance-abuse treatment. But she did not complete the assessment until March and was found "resistant." While she improved many facets of parenting, she closed out of her parent-aide service, having failed to address how substance abuse affected her parenting. Mother then tested positive for fentanyl twice in March 2021.

¶7 In April 2021, TERROS found that Mother was in the "Pre-Contemplation" or "Preparation" stage of her "Stage of Change" in treating her substance abuse. TERROS's records also showed that Mother continued to miss group meetings, was late to meetings, or showed no interest in the group meetings.

¶8 At the termination hearing in May, the Department's case manager testified that Mother could not maintain her sobriety and denied

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using drugs. Because Mother did not believe that she had a substance-abuse problem, she could not properly address the problem and therefore willfully or substantially neglected to remedy her substance-abuse issues. The case manager also testified that Mother visited J.M. only two to four times a month, her visits were “very short,” and she sometimes slept during them. Keeping Mother’s parental rights intact would cause J.M. to linger in care and deny her stability, harming J.M.’s development through her tender years. She testified that J.M. had bonded to Maternal Grandmother and that Maternal Grandmother met all of J.M.’s needs and wanted to adopt her, which would provide J.M. permanency and stability.

¶9 Mother testified that she had housing and had removed people from her life who used drugs. She also stated that she had often tried to visit J.M., but that Maternal Grandmother made doing so difficult. On cross-examination, Mother claimed that in December 2020, she did not yet know the negative effects that alcohol consumption had on her substance-abuse treatment. She also admitted to using methamphetamine after the Department moved to terminate her rights but generally minimized her substance abuse despite positive testing. She also discussed going to a pain management clinic and receiving oxycodone for back pain. When asked about whether her use, although prescribed, would influence her sobriety, she said no.

¶10 The juvenile court found that (1) Mother had substantially neglected or willfully failed to address her substance abuse, (2) she continued to deny her sobriety was at issue and denied relapsing despite contrary evidence, and (3) termination would serve J.M.’s best interests because it would allow Maternal Grandmother to adopt J.M., providing J.M. with permanency and stability of care. Mother timely appealed.

DISCUSSION

¶11 Mother argues that the juvenile court erred in terminating her rights and finding that termination was in the child’s best interests. A juvenile court’s termination determination is reviewed for an abuse of discretion. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47 ¶ 8 (App. 2004). To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground under A.R.S. § 8-533 and by a preponderance of the evidence that termination would be in the child’s best interests. A.R.S. § 8-533(B); Ariz. R. P. Juv. Ct. 66(C); *Jennifer S. v. Dep’t of Child Safety*, 240 Ariz. 282, 286 ¶ 15 (App. 2016). Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve

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disputed facts, *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4 (App. 2004), we will affirm a termination decision unless no reasonable evidence supports it, *Xavier R. v. Joseph R.*, 230 Ariz. 96, 100 ¶ 11 (App. 2012).

¶12 A juvenile court may terminate parental rights when a child has been in an out-of-home placement for a cumulative total period of at least six months (or nine months if the child is over three), the Department has made a diligent effort to provide appropriate reunification services, and the parent has substantially neglected or willfully refused to remedy the circumstances that caused placement. A.R.S § 8-533 (B)(8)(a), (b). Termination on these grounds is not appropriate when a parent has made “appreciable, good faith efforts” to comply with remedial programs outlined by the Department. *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994). When a party makes only sporadic, aborted attempts to remedy the circumstances that caused a child’s out-of-home placement, a juvenile court “is well within its discretion in finding substantial neglect and terminating parental rights on that basis.” *Id.*

¶13 Reasonable evidence supports the juvenile court’s termination of Mother’s parental rights. Mother’s substance abuse led to the out-of-home placement. Because of her substance abuse, she was virtually non-existent in J.M.’s life for large swathes of J.M.’s first year, including the first two months of the dependency. During the entire first six months of the dependency, Mother refused almost all treatment referrals and visited her daughter only sporadically.

¶14 Even after the Department moved to terminate Mother’s parental rights in early July 2020, she continued to reject treatment options and largely resisted those substance-abuse treatments that she accepted, disavowing the gravity of her substance abuse, missing group sessions, and often showing little interest in participating. While she visited J.M. more often, she continued to do so sparingly and fell asleep during the visitations or cut the visitations short. She continued to drink alcohol, unaware of its effect on her substance-abuse issues, and tested positive for dangerous and narcotic drugs, including methamphetamine and fentanyl. At the termination hearing, Mother largely denied using within the past year despite positive tests and minimized her previous abuse. The juvenile court therefore did not err in finding that Mother had not made an “appreciable, good faith effort” to engage in recommended services and therefore substantially neglected to remedy her substance-abuse issues. *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. at 576.

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¶15 Mother nonetheless argues that termination under A.R.S. § 8-533(B)(8)(b) was not warranted because she participated in services after June 2020 and that she engaged in some services before then. She highlights the case manager's testimony that she had participated in some substance-abuse treatment. Though she made some efforts to comply with the case plan after the Department moved to terminate her rights in early July 2020, those efforts were "too little, too late." See *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. at 577 (finding termination warranted when a parent substantially neglected to remedy the circumstances that led to out-of-home placement within the statutory time frame but made some effort after the Department moved for termination and before the termination hearing). Mother's minimal participation in services for nearly a year and a half and TERROS's finding that she was only in the preparatory or pre-contemplative stages of substance-abuse recovery also evidences substantial neglect on Mother's behalf. See *id.* The juvenile court therefore did not abuse its discretion in finding that the Department proved termination based on time-in-care under A.R.S § 8-533(B)(8)(b).

¶16 Mother argues next that the trial court erred in finding that the Department proved by the preponderance of the evidence that termination served the child's best interests. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150 ¶ 13 (2018). In determining whether the child will benefit from termination, relevant factors to consider include whether the current placement is meeting the child's needs, an adoption plan is in place, and if the child is adoptable. *Demetrius L.*, 239 Ariz. at 3-4 ¶ 12.

¶17 Reasonable evidence supports the juvenile court's finding that termination of Mother's parental rights was in the child's best interests. The Department's case manager testified that J.M. was in an adoptable placement with Maternal Grandmother, had bonded with Maternal Grandmother, and that Maternal Grandmother met her needs. She also testified that J.M. would benefit from the permanency and stability that adoption provided. The juvenile court, therefore, did not err in terminating Mother's parental rights to J.M.

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CONCLUSION

¶18

For the reasons stated, we affirm.



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