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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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KAREN J., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, G.C., R.A., *Appellees*.

No. 1 CA-JV 21-0360  
FILED 7-21-2022

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Appeal from the Superior Court in Maricopa County

No. JD39091

JS21019

CONSOLIDATED

The Honorable Robert Brooks, Judge

**AFFIRMED**

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COUNSEL

Czop Law Firm, PLLC, Higley

By Steven Czop

*Counsel for Appellant*

Attorney General's Office, Tucson

By Dawn R. Williams

*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the Court's decision, in which Presiding Judge Brian Y. Furuya and Judge Jennifer B. Campbell joined.

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**M c M U R D I E**, Judge:

¶1 Karen J. ("Mother") appeals from the juvenile court's order terminating her parental rights to her children Keegan (an infant) and Gary (age 2).<sup>1</sup> We find no reversible error and affirm.

**FACTS<sup>2</sup> AND PROCEDURAL BACKGROUND**

¶2 Mother was diagnosed with bipolar disorder as a minor. She was treated for this condition for more than ten years and prescribed psychiatric medications. At some point in 2018, she told her parents and doctor she would no longer take the medications.

¶3 Mother was in adult guardianship with her parents because of her condition between ages 18 and 22 until she married Keegan and Gary's father ("Father")<sup>3</sup> in 2018. In April 2019, Mother moved with Father to Luke Air Force Base in Glendale. Three months later, Mother gave birth to their eldest child, Gary.

¶4 In February 2020, Air Force police were called to the parents' home. Upon arrival, Father told them Mother had threatened to kill herself, him, and their pets, although he said he did not think she would act on the threats. When Mother refused to interact, the Glendale police were called. During her conversation with the police officers, Mother asserted that Father was the one expressing suicidal ideation and he had been brandishing a knife. Mother told the police she was experiencing a

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<sup>1</sup> To protect the identities of the children, we refer to them by pseudonyms.

<sup>2</sup> We view the evidence and draw all reasonable inferences from it in the light most favorable to sustaining the court's decision. *Jordan C. v. ADES*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

<sup>3</sup> Father is not a party to this appeal.

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miscarriage, so the police took her to a hospital for an ultrasound. She later made conflicting statements about this event during two separate psychological evaluations. She first asserted she had miscarried while showering when the officers arrived at her home and that this was her third miscarriage. She later claimed she had only ever had one miscarriage and expressed confusion about being taken to the hospital, stating that her bleeding was because of a normal menstrual cycle.

¶5 Police found highly unsanitary conditions in the home. The couple had five dogs and seven cats. There was animal urine and feces throughout the house and piles of dirty dishes with moldy food and stagnant liquid in the kitchen. When Department of Child Safety (“DCS”) personnel arrived, police advised them not to enter the home and informed them a hazmat team would be contacted.

¶6 DCS took Gary into custody and petitioned for dependency, alleging that the parents had neglected him. A medical report dated shortly after Gary was taken into DCS custody revealed he was below the third percentile for height and weight. Gary’s pediatrician later reported that Gary was in the seventieth percentile for height and the eighty-fifth percentile for weight after being cared for in an out-of-home placement for less than six months. The parents pled no-contest to the dependency petition, and the juvenile court adjudicated Gary dependent in March 2020, finding that both parents had neglected to obtain mental health treatment and failed to provide a safe home environment. DCS proposed a reunification plan with the target date of August 2020, with a concurrent goal of termination and adoption. The court approved the plan.

¶7 DCS referred Mother to Dr. James Thal for a psychological evaluation, which she completed in June 2020. In his report, Thal noted Mother made “a number of odd, bizarre, unusual, or highly unlikely statements throughout the course of the evaluation” and that “she adamantly denie[d] any need for mental health care.” Mother claimed several career goals, including entering the Iditarod sled dog race in Alaska and participating in the Olympics as a member of the US Equestrian Team.

¶8 She also made several contradictory statements. For example, she revealed at the outset of her assessment that she could not read and then completed a written mental health and parenting fitness assessment without assistance. When questioned, Mother explained Father had taught her how to read in the year and a half that they had been together. Despite claiming recent illiteracy, she told Thal she had received scholarships to several prestigious universities.

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¶9 During the evaluation, Mother dismissed virtually all the allegations made by the police. She also denied that Gary was underweight when taken into DCS custody. In Thal's report, he stated that Mother "appear[ed] strongly inclined to perceive neutral or imaginary events as posing a genuine threat to her safety" and that Mother's "tenuous grasp on reality could well result in ill-advised decisions which could have substantial negative consequences for a child." He stated that her inability to acknowledge the circumstances and concerns causing Gary's removal was unsettling because the same worrisome conditions could reoccur. Thal recommended that Mother undergo sessions with a doctoral-level therapist.

¶10 DCS referred Mother to Dr. Heather de Soler in July 2020. De Soler cited "multiple obstacles that would interfere in counseling," including Mother's assertion that "there is nothing to work on." So, in August 2020, de Soler recommended Mother receive inpatient services or a psychiatric assessment before proceeding with counseling.

¶11 DCS requested Mother self-refer for a psychiatric evaluation. Mother said she would not pay for "DCS nonsense" and that her insurance did not cover mental health services. When DCS asked for documentation to prove her insurance did not cover the service, Mother said she no longer had coverage. In September 2020, DCS provided Mother with a list of service providers and offered to help her arrange a psychiatric evaluation. Mother declined, explaining she did not require assistance.

¶12 In October 2020, Mother completed a psychiatric evaluation at Terros. Because DCS was not notified until after the evaluation, it could not provide case documents to the evaluator. For her part, Mother told the evaluator she had no history of mental health diagnoses or medications. Because the evaluator did not have adequate, reliable information about Mother's background, de Soler assessed that the evaluation did not accurately reflect Mother's mental health concerns and could not be used to facilitate Mother's care. Mother completed a second psychiatric evaluation in January 2021.

¶13 In February 2021, Mother self-referred to a behavioral health clinic where she began attending individual counseling with Anne Vargas-Leveriza, an associate counselor with a Ph.D. in psychology. Mother also began working with a care coordinator and attending parenting classes at the same clinic.

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¶14 According to Vargas-Leveriza, Mother believed she had postpartum depression and anxiety but not bipolar or delusional disorder. And Vargas-Leveriza stated that Mother appeared willing to complete DCS's requirements, such as taking medication.

¶15 In February 2021, DCS was notified that Vargas-Leveriza was not a licensed psychologist. DCS contacted Thal, who confirmed his recommendation that Mother receive counseling from a doctorate-level therapist. DCS referred Mother to Dr. Kelly Rodriguez. Mother initially declined, but after consulting Vargas-Leveriza, she began attending individual therapy with Rodriguez in April. Rodriguez concluded Mother lacked insight into the reasons for DCS involvement.

¶16 After a few sessions with Rodriguez, Mother asked the court to relieve DCS of its obligation to provide PhD-level therapy and to permit her to resume therapy with Vargas-Leveriza. Over DCS's objection, the court granted her request, and Mother continued treatment with Vargas-Leveriza.

¶17 Mother completed an updated psychological evaluation with Thal in March 2021. During the assessment, Mother asserted that DCS lacked any legitimate basis for taking Gary into custody and that she did not need additional mental health services.

¶18 She told Thal that she had enlisted in the Air Force and expected to report for active duty within a year. She explained that if she were reunified with Gary while on active duty, she intended to leave him in the care of an out-of-state relative. When Thal asked Mother whether Gary had an existing bond or attachment to this relative, she said he did not. She also asserted that Father had physically and emotionally abused her, contradicting her earlier statements to Thal, in which she described their marriage positively, denying any significant conflicts between them. Thal reported that during this second evaluation, she told him that Gary had witnessed Father brandishing a bloody machete after hacking the family dog to death. She said that, later, he also killed her cats and that all the pets were buried in their backyard. She explained she did not disclose this in her previous interview because Father had been monitoring her answers during the video call.

¶19 In response to Mother's disclosures, Thal stated that "it is worrisome if [Mother] is fabricating accounts about her spouse's dangerous behavior" and that it is "equally, if not more, troubling if she is telling the truth now and concealed her spouse's dangerous conduct for so many

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months, while pretending that he was safe to be around their son.” More broadly, Thal reported that Mother’s second evaluation also supported Mother’s diagnoses of delusional, personality, and bipolar disorders. Thal recommended therapy by a licensed psychologist experienced in treating severe psychopathology, psychotropic medication, and, if either child is placed in her care, working with a parent aide, but recommended against placing the children in her care because she appeared to have a psychotic-like condition and probably unstable moods. Thal concluded DCS had provided reasonable service opportunities for Mother and that “providing further services will be futile given the nature and extent of [Mother’s] mental disorders along with her inability to address them.”

¶20 DCS had also referred Mother to parent-aide services as early as May 2020. Mother at first declined to interact with the parent aide, claiming—as the result of an apparent delusion—that she was Danish royalty and could not have contact with an American parent aide. She also said she could not participate in the services because she could not read. The parent aide stopped providing in-home skill sessions after feeling threatened when Mother told her she was trained in knife skills and hand-to-hand combat and was not afraid to use her skills. The first referral closed in November 2020, with the aide reporting that 14 of 18 caregiver protective capacities remained diminished. DCS submitted a second referral. In April 2021, the parent aide noted that Mother completed her scheduled supervised visitations and skill sessions and was doing well during visitations. But the parent aide remained concerned about Mother’s ongoing mental health issues and that Mother continued to disagree with her diagnoses. The second referral closed, unsuccessfully, in May 2021.

¶21 After the second parent aid service closed, DCS provided Mother with a case aide to supervise her visits with Gary for four hours per week in the DCS office, with the first visit in June. Mother informed DCS that she could only visit for two hours that day but then canceled and requested to have a one-hour virtual visit instead. DCS continued to offer weekly in-person visits and transportation to the visits, but Mother claimed to be available only for virtual visits due to her work schedule. She completed five additional virtual visits but could not be reached when DCS tried to schedule more.

¶22 In June 2021, DCS moved to terminate Mother’s parental rights to Gary because she could not discharge her parental responsibilities because of her mental illness and had failed to resolve the issue preventing the child’s return within fifteen months. A.R.S. § 8-533(B)(3), (8)(c). In July 2021, the court ordered DCS to conduct a bonding assessment at Mother’s

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request. Because the primary issue was Mother's ability to safely parent, a DCS unit consultant concluded a best interest assessment was unnecessary. DCS moved the court to reconsider the evaluation, and the court entered an order stating that it would review the file and positions from all parties.

¶23 While the dependency proceeding was pending for Gary, DCS received a report on its child abuse hotline that Mother had recently given birth to another child, Keegan. The reporter claimed Keegan was being neglected by Mother and had a yellow discharge around his eyes and a blistering diaper rash. The reporter also claimed that Mother had been making implausible statements that she had a husband who was wounded in combat and stationed in Africa and that she "called in a favor and the Hells Angels [would be] posted at her home during the night." DCS went to Mother's home to investigate the report. Mother claimed the allegations were false and that she had not recently given birth. But a neighbor observed DCS at the residence and told them that Keegan was with her. The neighbor said that Mother had just come over and asked her to babysit him while she purportedly went to a job interview.

¶24 Keegan was removed from Mother's care, and the court ordered him committed to the temporary custody of DCS, finding that it would endanger his welfare to remain with Mother. *See* A.R.S. § 8-821(A)(1). DCS petitioned the court to find Keegan dependent, alleging Mother was unwilling or unable to provide a safe and stable home environment and proper supervision due partly to her mental illness.

¶25 DCS again offered Mother supervised visitation, but she did not participate after DCS denied her request to attend with her new fiancé. She then requested a four-hour video visitation with both Gary and Keegan, but DCS refused because a four-hour video call with a six-week-old and a two-year-old was not feasible.

¶26 About two months after taking Keegan into custody, DCS petitioned to terminate Mother's parental rights to him on neglect and mental illness grounds. *See* A.R.S. § 8-533(B)(2), (3). Soon after, the trial started on the petitions to terminate Mother's rights to Gary and Keegan.

¶27 At the trial, Mother maintained that she provided Keegan adequate care before DCS removed him. Mother said Keegan was being treated for a diaper rash, and she was unaware of a yeast infection in his mouth, although she did notice discharge in his eyes. To address these concerns, Mother said she took Keegan to a friend who was a nurse practitioner. Mother explained she had not taken him to a pediatrician for

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checkups or to treat his conditions because she was recovering from a caesarian section.

¶28 In her testimony, Mother continued to dispute Thal's diagnosis, asserting that his diagnosis of a delusional disorder was a misinterpretation of her ambitious and aspirational personality. She also stated that Thal's diagnosis of paranoid personality disorder was based on a misunderstanding of natural paranoia resulting from domestic violence. She asserted that she had anxiety and adjustment disorders and that Thal was the only therapist to diagnose her with the other conditions. Mother said she had an appointment with a psychiatrist to clarify her diagnosis and decide whether she needed medication. She asserted that she had been consistently willing to take medication and sought assistance from DCS in finding a psychiatrist, but that DCS never responded to her request. She also claimed to have moved to North Dakota before Keegan's removal, but she was at home in Buckeye when DCS removed Keegan, and her most recent paystubs were addressed to her home in Buckeye.

¶29 Thal testified that Mother could not exercise proper and effective parental control and care for her children and that she would be unable to do so in the foreseeable future. He explained that she had a defective grasp of reality which limited her ability to parent safely. He also worried about Mother's decision-making, stating that if Mother's allegations about Father's abuse were true, she had taken no measures to prevent it. Thal testified that Mother's suggested arrangement where Gary lived with an out-of-state relative while Mother joined the Air Force shortly after their reunification "reflected an absence of . . . sound judgment or any sort of rational plan regarding [Gary]." Thal expressed skepticism of the value of Mother's therapy, partly because Mother concealed Keegan's existence from her therapist and because Mother remained unable to acknowledge the extent of her mental illness. He also testified that if it were true that Mother had moved to North Dakota, she had created an "insurmountable" barrier to developing and maintaining a relationship with the children.

¶30 The juvenile court terminated Mother's parental rights to Gary on the mental illness and fifteen-month time-in-care grounds and Keegan on the neglect and mental illness grounds. Although DCS never completed a bonding assessment, the court found that such an assessment was unnecessary because the "ongoing concern in this matter was Mother's inability to acknowledge or recognize how her significant mental illness poses a risk of harm to her children, not the nature of the parent-child bond." The court found that DCS made reasonable and diligent efforts to



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reunify Mother with Gary and Keegan by providing Mother with the necessary mental health services and parent aide referrals. Citing Mother's failure to recognize or acknowledge the severity of her mental illness, the court agreed with Thal's conclusion that ongoing services would be futile. The court found Mother neglected Keegan by inadequately supervising him and failing to provide him with appropriate medical care and that this failure had caused him harm. The court found that Mother neglected Gary by failing to provide appropriate shelter and supervision.

¶31 Mother appealed the orders terminating her parental rights for Keegan and Gary.<sup>4</sup> We have jurisdiction under A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

### DISCUSSION

¶32 Mother argues that the juvenile court erred by finding that DCS proved mental illness as grounds for termination for Keegan.<sup>5</sup>

¶33 The right of a parent to child custody is fundamental but not absolute. *Michael J. v. ADES*, 196 Ariz. 246, 248-49, ¶¶ 11-12 (2000). To show termination is warranted, DCS must prove at least one statutory ground with clear and convincing evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 19 (2005). We will affirm the juvenile court's termination order absent an abuse of discretion. *E.R. v. DCS*, 237 Ariz. 56, 58, ¶ 9 (App. 2015).

¶34 To begin, we address the State's argument that Mother waived her right to appeal the court's finding that DCS made reasonable and diligent efforts to provide appropriate reunification services by failing to timely raise the issue below. The State argues that when DCS is ordered to provide specific services to support a case plan, and the juvenile court finds that DCS made reasonable efforts to provide such services, a parent who failed to object in the juvenile court is precluded from challenging the finding on appeal. *See Shawanee S. v. ADES*, 234 Ariz. 174, 179-80, ¶ 16 (App.

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<sup>4</sup> Mother only argues in the briefing that the court erred in its termination ruling toward Keegan.

<sup>5</sup> Because we affirm the termination order for Keegan based on mental health grounds, we do not address Mother's argument that the juvenile court erred by ordering termination for Keegan based on neglect. *See Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) (One ground is sufficient for termination.).

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2014). At the trial, Mother challenged that DCS failed to make reasonable efforts to reunify the family, but we have generally required parents to make such objections before the hearing. *See, e.g., Bennigno R. v. ADES*, 233 Ariz. 345, 349, ¶ 19 (App. 2013). But depending on the nature of the objection, we have addressed the merits of claims raised during termination hearings. *E.g., Trina C. v. DCS*, No. 1 CA-JV 14-0339, 2015 WL 3540191, at \*3, ¶ 12 (Ariz. App. June 2, 2015) (DCS failure to ensure parent had proper medication for mental health condition months before termination trial). Here, when DCS petitioned for Keegan’s termination, Mother had only two months to notify the court that DCS failed to make reasonable efforts at reunifying Mother with Keegan. Thus, we will address Mother’s argument on the merits.<sup>6</sup>

¶35 A court may terminate a parent-child relationship on mental illness grounds if “the parent is unable to discharge parental responsibilities” and “there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” A.R.S. § 8-533(B)(3). Before a court issues a termination order on mental-illness grounds, DCS must make reasonable efforts to preserve the family to prove that termination is necessary. *Mary Ellen C. v. ADES*, 193 Ariz. 185, 191, ¶ 31 (App. 1999). DCS makes reasonable efforts by providing the time and opportunity to participate in programs to become an effective parent. *In re Appeal in Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). But it need only provide services with a reasonable prospect of success. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34.

¶36 Mother argues that DCS did not make reasonable efforts to reunify Mother with Keegan because it petitioned for termination shortly after taking him into its care. But the petition for termination concerning Keegan was based partly on events that occurred during Mother’s dependency for Gary. And before DCS sought termination for Gary, it had been moving forward with a case plan to treat Mother’s mental illness for fifteen months after the court approved the plan. Given DCS’s history of attempts to reunify Mother with Gary, the issue is whether further attempts to rehabilitate Mother would have been futile. *See Mary Ellen C.*, 193 Ariz. at 192, ¶ 34.

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<sup>6</sup> Because we address the merits of whether DCS made reasonable efforts to reunify Mother and Keegan, we do not address Mother’s argument that *Shawanee* only applies to the time-in-care ground for termination. *See* A.R.S. § 8-533(B)(8).

**A. Reasonable Evidence Supports the Court’s Finding that DCS Made Reasonable Efforts to Provide Reunification Services Concerning Keegan.**

¶37 DCS services were extensive. Over fifteen months, the services included a psychological evaluation with Thal, a referral to counseling sessions with de Soler and Rodriguez, referrals for two successive six-month terms with a parent aide, and a case aide to supervise visits when the second parent-aid service closed unsuccessfully.

¶38 On appeal, Mother challenges the reasonableness of DCS’s reunification efforts preceding Keegan’s removal. Mother asserts it was error not to perform the bonding assessment she requested. But the court found that a best-interests assessment was unnecessary because the review would not pertain to whether Mother’s behavior resulting from her mental illness threatened her children. The court did not err by finding DCS’s reunification efforts reasonable.

**B. Reasonable Evidence Supports the Court’s Finding that Providing more Services to Reunify Mother with Keegan would have been Futile.**

¶39 Mother argues that the court erred by relying on Thal’s conclusions about Mother’s lack of progress. Mother claims that because Thal’s report was released in March 2021, months before Keegan’s birth, it could not be used to gauge Mother’s improvement due to services provided after Keegan was removed. She also argues that testimony by Vargas-Leveriza and the care coordinator at the behavioral health clinic showed that her mental health had improved and that the court therefore erred by concluding additional services would be futile.

¶40 The court considered Mother’s other evaluations and acted within its discretion when it gave them less weight than Thal’s reports, which it deemed credible. *See Alma S. v. DCS*, 245 Ariz. 146, 151, ¶ 18 (2018) (Our role is not to reweigh the evidence.). Moreover, as the court noted, Thal’s reports and diagnoses tracked those of Dr. Linda Laird, who had evaluated Mother two months after Thal’s second evaluation.

¶41 Mother’s therapist at the time of the termination hearing was Vargas-Leveriza. She described Mother’s patterns of providing false information and failing to acknowledge the full extent of her mental health problems. And although Mother expressed a greater willingness to take psychiatric medication when speaking with Vargas-Leveriza, there is no evidence that Mother had begun taking medication by the termination

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hearing. Thal's and Vargas-Leveriza's reports largely differ in their interpretations of similar facts. But we will not reweigh the court's credibility findings. *See Alma S.*, 245 Ariz. at 151, ¶ 18.

¶42 Mother also questions the value of DCS's evidence that she failed to complete doctoral-level therapy, given that the court relieved DCS of its duty to provide such treatment. But Mother's argument that she did not need to complete doctoral-level therapy was irrelevant to the court's analysis. The court noted that Mother generally participated in DCS services but failed to benefit from them because she minimized her need for treatment. For this reason, the court found reasonable evidence supported a finding that Mother's mental illness would continue for a prolonged, indefinite period. The court did not err.

¶43 Finally, Mother notes that "reasonable efforts" include reasonable accommodations of a disability from which a parent may suffer. *Vanessa H. v. ADES*, 215 Ariz. 252, 256, ¶ 20 (App. 2007). But this misses the point. Mother rejected information related to her mental illness and even denied the facts of her case when they suggested that her past behaviors posed a danger to her children. The court did not err by determining that further efforts by DCS to reunify Mother with Keegan would be futile.

**CONCLUSION**

¶44 We affirm.



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