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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAWN F., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, O.F., *Appellees*.

No. 1 CA-JV 22-0038
FILED 10-06-2022

Appeal from the Superior Court in Maricopa County
No. JD36458
The Honorable Robert I. Brooks, Judge

AFFIRMED

COUNSEL

Maricopa County Legal Defender's Office, Phoenix
By Jamie R. Heller
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Emily M. Stokes
Counsel for Appellees, Department of Child Safety

MEMORANDUM DECISION

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge James B. Morse Jr. joined.

B R O W N, Judge:

¶1 Dawn F. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her daughter, O.F., born in 2012. For reasons that follow, we affirm.

BACKGROUND

¶2 Mother has three children, K.A., A.F., and O.F. Marcus F. is the father of A.F and O.F.; his parental rights were separately terminated and he is not a party to this appeal.

¶3 In July 2015, then 17-year-old K.A. reported that Father had sexually abused her two years earlier. When police and the Department of Child Safety (“DCS”) investigated, Mother said she did not know what to believe but she agreed to participate in family-preservation services and to remove Father from the home. A few days later, Mother told DCS that Father had moved out and was staying in a motel. But during an unscheduled visit several weeks later, Mother’s service provider discovered that Father had moved back into the home. Soon thereafter, Mother told the service provider the problem was “fixed” because Father was “out of the home and moving to Illinois.”

¶4 Mother nonetheless indicated she was willing to engage in services, which included parenting-education sessions designed to address her ability to keep her children safe from sexual abuse. During the sessions, Mother doubted that Father had abused K.A. and resisted the lessons. At one session, the provider suggested Mother attend therapy sessions with K.A. to better understand how to help her with her past trauma. Mother became extremely angry and aggressive with the provider, causing the session to end early. Because Father was not living in the home, however, and there were no other immediate safety threats, DCS ended its involvement with the family.

¶5 About two years later, then five-year-old O.F. disclosed to then thirteen-year-old A.F. that Father had played a game where O.F. and

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Father would touch each other's private areas. Mother took the girls to the police station; she told police about K.A.'s past allegation of sexual abuse against Father but also told them she did not believe it. A.F. and O.F. did not disclose any sexual abuse by Father when police forensically interviewed them. Nonetheless, Mother told police Father was violent and had threatened to kill her and the children if she ever tried to leave him. She also told DCS she was unsure whether to believe O.F. but agreed to end her relationship with Father and obtain an order of protection against him.

¶6 Despite her claim, Mother reunited with Father. A year later, while the parents were on a date, K.A., who was now an adult, and 14-year-old A.F. had an argument with roommates who were also living in the same apartment. A.F. grabbed a shotgun from Mother's closet and pointed it at a roommate. The argument ended abruptly; K.A. and A.F. left the apartment and called Mother, who then drove them to a hotel. Mother then drove Father to the apartment, where he grabbed a gun from her purse and fired several shots towards the apartment.

¶7 Police arrested the parents, and DCS took custody of A.F. and O.F. In January 2019, the juvenile court adjudicated the children dependent after the parents pled no contest to the petition. DCS referred the children for therapy, where seven-year-old O.F. eventually revealed that Father had "touched [her] in a bad way and [Mother] didn't stop it."

¶8 Mother eventually pled guilty to disorderly conduct and was sentenced to time served. During her 13 months of incarceration, Mother completed a parenting class and visited A.F. and O.F. virtually. Upon release, DCS referred Mother for a psychological evaluation and a parent aide with supervised visitation. The evaluating psychologist did not diagnose Mother with any mental-health disorders and gave a good prognosis of her ability to parent the children in the future, "conditional on her ability to provide her children with a safe and consistent home environment." Nevertheless, the psychologist concluded that Mother's aggressive antisocial behavior could negatively impact her ability to parent and put the children at risk of developing their own psychosocial problems. Mother participated in the parent-aide service but resisted the lessons and failed to demonstrate progress towards improving her ability to effectively parent.

¶9 DCS then consulted a unit psychologist who recommended that future visits be therapeutic and that Mother participate in individual therapy "to help [her] understand the impact that her behaviors have on her children and to increase her ability to plan and articulate ways to protect

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her children.” Mother completed an intake for therapy but only asked for help with processing her feelings. She quit after two sessions and waited several months to inform DCS her therapy had ended.

¶10 Mother engaged in clinically-supervised visits with A.F. and O.F. but made minimal progress toward the goal of meeting their emotional needs. During this time, O.F. told her individual therapist she wanted to confront Mother about the abuse and neglect she suffered while in Mother’s care. Because the therapist questioned whether Mother was ready for such a confrontation, DCS urged her to re-enroll in individual therapy, but it took her another five months to do so.

¶11 Meanwhile, eight months before the termination hearing, police conducted forensic interviews with A.F. and O.F. The interviews confirmed that Father had sexually abused them for several years, and that the abuse occurred in the home. Although Mother denied she had knowledge of the abuse, the interviews confirmed that some of the abuse occurred while Mother was present and that she repeatedly suspected Father was sexually abusing the children but nonetheless failed to protect them.

¶12 In June 2021, DCS moved to terminate Mother’s parental rights to O.F. based on 15 months in an out-of-home placement. Following the January 2022 termination hearing, the juvenile court granted the motion. The court found in part that DCS made reasonable reunification efforts by providing Mother with an array of services, including clinically-supervised parenting time that allowed her to show she could meet O.F.’s needs in a structured environment. The court also found that DCS met its burden of proving that termination was in O.F.’s best interests. Mother timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶13 Before the juvenile court can terminate parental rights, DCS must prove (1) by clear and convincing evidence at least one statutory ground in A.R.S. § 8-533 and (2) by a preponderance of the evidence that termination is in the child’s best interests. *Jennifer S. v. Dep’t of Child Safety*, 240 Ariz. 282, 286, ¶ 15 (App. 2016). “We review the court’s termination decision for an abuse of discretion and will affirm unless no reasonable evidence supports the court’s findings.” *Jessie D. v. Dep’t of Child Safety*, 251 Ariz. 574, 579, ¶ 10 (2021). The juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses,

and make appropriate findings.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

A. Reasonable Efforts

¶14 In seeking to terminate parental rights based on 15 months’ time-in-care, DCS must make reasonable efforts to provide a parent with appropriate reunification services. A.R.S. § 8-533(A)(8), (D). DCS does so by allowing the parent the “time and opportunity to participate in programs designed to improve [her] ability to care for the child.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 94, ¶ 20 (App. 2009). DCS is not required, however, to wait indefinitely for a parent to engage in services, nor is it obligated to provide services that lack a reasonable prospect of success. *Christina G. v. Ariz. Dep’t of Econ. Sec.*, 227 Ariz. 231, 235, ¶ 15 (App. 2011); *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994).

¶15 Mother argues insufficient evidence supports the juvenile court’s finding that DCS made reasonable efforts to provide her with appropriate reunification services. Mother first asserts that DCS failed to provide her with the time and opportunity to participate in services designed to increase her insight and knowledge about protecting O.F. from sexual abuse and parenting child victims of sexual abuse. Similarly, Mother argues her parent-aide service did not address these issues, as her evaluating psychologist had recommended. The record does not support these contentions.

¶16 When K.A. disclosed Father’s sexual abuse, DCS provided Mother with four months of in-home services that focused specifically on increasing her threat awareness and ability to protect and nurture her children. Mother was very resistant to the lessons, and ultimately did not prevent Father’s abuse of O.F. In the current dependency, DCS referred Mother for a six-month parent-aide program, which included individual sessions designed to increase her self-awareness, recognize O.F.’s needs, understand her protective role, recognize threats and take protective action, meet her own emotional needs, and set aside her needs for O.F. Mother told the parent aide she did not need the service and only participated because DCS asked. She failed to meet four of her seven goals. Fourteen months before the termination hearing, DCS helped Mother self-refer for individual therapy to increase her insight and protective capacities, but her participation was minimal.

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¶17 Over the same time period, DCS provided O.F. with behavioral-health services to help process her traumatic experiences and prepare her for the possibility of family therapy. DCS also provided Mother with clinically supervised visits for eight months, but she could not demonstrate an ability to meet O.F.'s emotional needs, requiring the therapist to continually model for Mother appropriate responses to O.F. The record shows that for over three years, DCS consistently referred Mother or helped her self-refer for services designed specifically to address the safety concerns preventing reunification.

¶18 Mother contends that DCS failed to provide her with adequate parenting-education services. She points to the lack of parenting classes, including trauma-specific classes, and references two instances during which DCS did not meet its obligation to assist her with such services: November 2019 to March 2020 and September 2020 to June 2021.

¶19 As noted, DCS provided Mother with in-home instruction, a parent aide, and counseling services, all of which were intended to help Mother parent a child with trauma. Given that Mother refused to meaningfully engage with the services already provided, she has not shown she would have benefitted from additional trauma-specific classes. DCS is not required "to undertake rehabilitative measures that are futile[.]" *Mary Ellen C. v. Ariz. Dep't. of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34 (App. 1999), nor is it required to duplicate a service the parent receives elsewhere, *see In re Pima Cnty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989).

¶20 Moreover, Mother's own actions contributed to the gaps in services she identifies. For example, after her incarceration, the case manager referred Mother for a psychological evaluation in February 2020 and began providing a parent aide in March 2020. In September 2020, the service closed unsuccessfully because Mother was not receptive. Later that month, Mother began individual counseling but quit after two sessions. The provider reported that Mother "did not feel there were things she needed to improve, so she was not open to the concepts of nurturing parenting."

¶21 Mother also argues that DCS waited too long to inform her of specific treatment goals for her individual therapy. From the outset, however, DCS listed specific behavioral changes in its court reports that Mother received. Those changes included developing coping and anger-management skills, identifying healthy partners, understanding grooming signs, and articulating a plan to keep O.F. safe. And when Mother first self-referred for therapy, DCS reported the purpose was to help her

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“understand the impact that her behaviors have on [O.F.] and to increase her ability to plan and articulate ways to protect” her. Mother told her therapist that she wanted help only with addressing her anger towards Father for the abuse. Regardless, even if DCS erred by not conveying earlier the specific therapeutic goals to Mother’s service provider, she could not have achieved them in just the two sessions she attended.

¶22 Mother asserts that DCS should have provided her with family counseling, and in any event, DCS hindered her ability to resolve its concerns by preventing her and O.F. from discussing the child’s past trauma. The juvenile court considered this issue, however, and found that even if DCS “could have provided some additional family therapy services,” they would have been futile given “Mother’s lack of insight and progress with her own individual therapy.” The record supports the court’s finding.

¶23 Although O.F. wanted to discuss her past trauma with Mother, O.F.’s therapists questioned whether this would be productive, noting Mother had previously denied her role in allowing the abuse to occur, and was unlikely to offer O.F. an apology. DCS referred Mother to individual counseling to help her gain insight and empathy so she could respond appropriately if O.F. confronted her. Despite the recommendation, Mother waited until four months before the termination hearing to re-engage in individual counseling.

¶24 Mother next argues that the record suggests she was not invited to child and family team meetings until over two years into the dependency. But Mother has failed to show when she raised this objection in the juvenile court. *See Shawanee S. v. Ariz. Dep’t of Econ. Sec.*, 234 Ariz. 174, 178, ¶ 13 (App. 2014) (DCS’s “obligation . . . does not free a parent from the need to raise a timely objection if the parent believes services are inadequate.”). Regardless, she has not pressed any argument on appeal that DCS’s alleged failure to invite her to team meetings constitutes fundamental error. *See Brenda D. v. Dep’t of Child Safety*, 243 Ariz. 437, 447, ¶ 37 (2018).

B. Best Interests

¶25 Termination is in a child’s best interests if the totality of the circumstances establishes that the child will either benefit from the termination or be harmed if it is denied. *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 148, 150 ¶¶ 1, 13 (2018). “When a current placement meets the child’s needs and the child’s prospective adoption is otherwise legally

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possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 12 (2016).

¶26 Mother does not dispute that O.F. was placed in an adoptive home and her needs were being met; instead, she argues that because DCS did not make reasonable efforts, the court could not have considered the totality of the circumstances in determining O.F.'s best interests. Because her reasonable-efforts argument is unsuccessful, she has failed to meaningfully challenge the court's best-interests findings. Even so, those findings confirm that the court considered the totality of the circumstances, including Mother's participation in reunification services.

CONCLUSION

¶27 We affirm the juvenile court's termination order.



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