

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ELIZABETH S., *Appellant*,

v.

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

No. 1 CA-JV 22-0151
FILED 11-22-2022

Appeal from the Superior Court in La Paz County
No. S1500JD202100011
The Honorable Jessica L. Quickle, Judge

AFFIRMED

COUNSEL

Carr Law Office, PLLC, Kingman
By Sandra Carr
Counsel for Appellant

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

MEMORANDUM DECISION

Vice Chief Judge David B. Gass delivered the decision of the court, in which Presiding Judge Samuel A. Thumma and Judge Cynthia J. Bailey joined.

G A S S, Vice Chief Judge:

¶1 Mother appeals the superior court's order denying a motion to continue the termination adjudication and granting a motion to terminate her parental rights to M.S., her biological child. M.S.'s father is not a party to this appeal. Because mother has not shown the court erred in proceeding with the adjudication as scheduled and because reasonable evidence supports the superior court's rulings, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 This court views the evidence, and reasonable inferences drawn from it, in the light most favorable to sustaining the superior court's decision. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13 (App. 2002).

¶3 Mother has three biological children, including M.S. who was born in June 2021. M.S. is the only child subject to this appeal. Mother has been involved with the Department of Child Services (DCS) since a 2017 domestic violence incident during which her first child was present. In 2020, mother was the victim of a more serious incident of domestic violence from which she says she suffers from anxiety and stress.

¶4 Mother has a long history of substance abuse, beginning with marijuana use as a teenager and methamphetamine for the last several years. All three of her children were born substance-exposed, and mother used drugs during each of her pregnancies. Mother testified the domestic violence incidents contributed to her substance abuse and inability to complete treatment programs, but she has been working to overcome those challenges.

¶5 The superior court authorized temporary custody for M.S. in June 2021, when she was two days old. Mother did not contest M.S.'s dependency. In August 2021, the superior court found M.S. dependent as to mother and apparently in September 2021 adopted a family reunification case plan. At a December 2021 permanency hearing, the superior court

ELIZABETH S. v. DCS, M.S.
Decision of the Court

changed the case plan to termination and adoption. In January 2022, DCS moved to terminate mother's parental rights on substance abuse and six-months out-of-home placement grounds.

¶6 During M.S.'s dependency, DCS provided supervised visits, drug testing, and drug-abuse treatments. Visits required a 250-mile round trip. DCS scheduled 23 visits, of which mother attended nine. Mother missed five visits, M.S.'s placement canceled four visits because of positive COVID-19 tests, and DCS failed to provide transportation for five visits. On January 30, 2022, DCS discontinued the visits because of mother's inconsistent participation.

¶7 During this time, mother's drug testing was inconsistent. The closest drug-testing site to mother was about 30 miles away from where she was staying. Because of the distance, DCS scheduled drug testing on days she was schedule to visit M.S. From the time M.S. was born until August 10, 2021, mother tested three times. She completed two tests in August 2021—both positive for amphetamine and one positive for methamphetamine. In January 2022, mother refused a hair follicle test but later tested positive for methamphetamine. Mother acknowledged she used drugs on-and-off during M.S.'s case and testified her sobriety date was two days before the termination adjudication.

¶8 Mother attempted several in-patient treatment programs for her substance abuse, both before and during M.S.'s dependency. Each time, mother would go into treatment, stay for a few days, and then leave. In August 2021, shortly before the dependency hearing for M.S., mother entered in-patient care, but left after five days. Mother also entered in-patient care five days before the termination adjudication began. Ultimately, as of the termination adjudication, mother had not completed any substance-abuse treatment program, in-patient or otherwise.

¶9 The superior court held the termination adjudication in March 2022. Father filed a written motion to continue the hearing for 90 days, arguing he was incarcerated and wanted more time to participate in services on his release from prison. The superior court denied the motion, finding father had "plenty of time" to contact his counsel and request additional services. After father's argument, mother's counsel said: "We support their motion and ask (inaudible) the same As for my client's current status, Judge, she is at the WestCare inpatient treatment facility. So additional time for her to afford those services would be appropriate." The superior court denied the request for a continuance. Mother raised no other issues regarding the denial.

¶10 After the two-day adjudication, the superior court terminated both parents' parental rights finding mother had "been unable to remedy the circumstances that caused [M.S.] to be in an out-of-home placement and there is reason to believe that [mother's] substance abuse will continue for a prolonged, indeterminate period."

¶11 Mother timely appealed. This court has jurisdiction under article VI, section 9, of the Arizona Constitution, and A.R.S. §§ 8-235, 12-120.21.A.1, and 12-2101.A.1.

DISCUSSION

¶12 On appeal, mother argues the superior court erred by: (1) denying father's motion to continue the termination hearing; (2) terminating her parental rights; (3) finding DCS made reasonable reunification efforts; and (4) finding termination is in M.S.'s best interests.

I. The superior court did not abuse its discretion when it denied the requested continuance.

¶13 A party requesting to continue a termination hearing must do so in good faith and show good cause. Ariz. R.P. Juv. Ct. 318. This court defers to the superior court's discretion regarding motions to continue and will affirm "absent a clear abuse of discretion." See *Yavapai Cnty. Juv. Action No. J-9365*, 157 Ariz. 497, 499 (App. 1988). An abuse of discretion is "an exercise of discretion which is manifestly unreasonable, exercised on untenable grounds or for untenable reasons." *Williams v. Williams*, 166 Ariz. 260, 265 (App. 1990).

¶14 Though parental rights are fundamental liberty interests, the child's best interests and prompt finality are paramount in termination cases. See *Kelly v. Kelly*, 252 Ariz. 371, 375, ¶ 19 (App. 2021); *John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, 324, ¶ 15 (App. 2007). The superior court must hold a termination hearing within 90 days of a permanency hearing for severance and adoption. Ariz. R.P. Juv. Ct. 353(b)(3). To continue a termination hearing beyond the 90-day time limit, the court must find "continuance is necessary for the full, fair and proper presentation of evidence" and will not adversely affect the child's best interests. *Id.* Longer continuances require parties to file a motion for extension of time setting forth the reasons why extraordinary circumstances exist. Ariz. R.P. Juv. Ct. 353(b)(4).

¶15 Mother argues she orally joined father's motion to continue during the adjudication and the superior court erred by not addressing her

ELIZABETH S. v. DCS, M.S.
Decision of the Court

motion. DCS contends mother did not move to continue the hearing, in part because she did not file a motion as required by Rule 353(b)(4) of the Arizona Rules of Procedure for the Juvenile Court.

¶16 Because mother did not file a written motion to continue and her joinder was somewhat ambiguous, she arguably waived the issue. We, however, decline to find waiver here. *See City of Tempe v. Fleming*, 168 Ariz. 454, 456 (App. 1991) (this court has discretion to suspend the waiver rule—a procedural, not jurisdictional, rule (citations omitted)). Even so, we deny relief because mother has not shown the superior court abused its discretion in finding no good cause to continue.

II. Reasonable evidence supports the superior court’s findings for termination based on prolonged substance abuse.

¶17 A superior court may terminate parental rights if clear and convincing evidence establishes at least one statutory ground and if a preponderance of the evidence shows termination is in the child’s best interests. *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 150, ¶ 8 (2018). Because the superior court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts,” this court will affirm an order terminating parental rights if reasonable evidence supports the order. *See Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citations omitted). This court does not reweigh the evidence and defers to the superior court. *See id.*

¶18 As to a parent’s substance abuse, a superior court may terminate parental rights if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” A.R.S. § 8-533.B.3. Though chronic abuse must be long-lasting, it need not be constant, and temporary abstinence does not negate a history of abuse. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 377, 379, ¶¶ 16, 29 (App. 2010). To determine whether a parent’s condition will continue for a prolonged indeterminate period, the superior court may consider “the length and frequency of [the parent’s] substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses.” *Jennifer S. v. Dep’t of Child Safety*, 240 Ariz. 282, 287, ¶ 20 (App. 2016).

¶19 Mother contends she took “substantial steps to overcome her addiction” because she learned more about her past trauma, developed

ELIZABETH S. v. DCS, M.S.
Decision of the Court

coping strategies for anxiety, has a plan to live in a sober living facility, and demonstrated parenting skills during visits. Mother attributes her sporadic testing to transportation issues. Nonetheless, mother also admits to having a long history of drug use and, as of the termination hearing, acknowledged being clean for two days, using March 23, 2022, as her “sobriety date.”

¶20 Despite transportation issues, the superior court found mother failed to complete any substance-abuse treatment or classes, did not test regularly, admitted to recently relapsing, and had positive tests for methamphetamines. The record supports these findings.

III. Reasonable evidence supports the superior court’s finding DCS made reasonable reunification efforts.

¶21 Next, mother argues DCS failed to make reasonable efforts to provide services during M.S.’s dependency. DCS presumptively must make reasonable efforts to provide services to parents and their children. *Shawnee S. v. Ariz. Dep’t of Econ. Sec.*, 234 Ariz. 174, 177, ¶ 12 (App. 2014); A.R.S. § 8-846.A. But DCS need not “provide every conceivable service” or ensure parents participate in offered services. *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994).

¶22 Mother argues the instability of case workers and transportation “negated the finding of reasonable efforts.” The superior court acknowledged some transportation issues outside of mother’s control interfered with her drug testing but her “participation in substance-abuse treatment and drug testing was sporadic” throughout the case. Additionally, mother had a history of missed visits, attending less than half her supervised visits. The superior court also noted mother’s claim of having had eight case workers, though the record shows she had four related to M.S.’s dependency.

¶23 Despite the number of caseworkers and transportation issues, the superior court found DCS provided mother with in- and out-patient drug treatment, and mother failed to complete programs or maintain sobriety. Reasonable evidence supports the superior court’s finding DCS made reasonable reunification efforts. *See id.*

IV. The superior court did not err in finding termination is in M.S.’s best interests.

¶24 Last, mother argues the superior court erred in finding termination was in M.S.’s best interests because mother’s visits went well, and M.S. developed a bond with mother but not her placement.

ELIZABETH S. v. DCS, M.S.

Decision of the Court

¶25 Termination is in a child’s best interests if either the termination will benefit the child or failing to terminate will harm the child. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (App. 2016). The superior court found termination was in M.S.’s best interests because “it would further the plan of adoption and provide [M.S.] with safety, stability, and permanency.” See *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5 (App. 1998) (noting a court “may properly consider in favor of severance” factors such as “the immediate availability of an adoptive placement” and “whether an existing placement is meeting the needs of the child”).

¶26 Though this court may consider the bond between a parent and child, the existence of such a bond is not dispositive. See *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 98–99, ¶ 12 (App. 2016). Further, waiting indefinitely for mother to become a capable and effective parent is not in M.S.’s best interests. See *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994). As such, reasonable evidence supports the superior court’s best-interests findings.

CONCLUSION

¶27 We affirm.



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