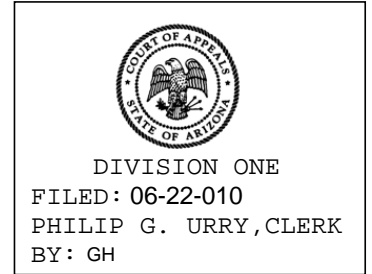


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



VICTORIA M.,) 1 CA-JV 09-0222
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv. Ct.
SECURITY, DIVINE M.,) Rule 28 ARCAP)
)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD17323

The Honorable Crane McClennen, Judge

AFFIRMED

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by Lisa M. Timmes
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Scottsdale

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P O R T L E Y, Judge

¶1 Victoria M. ("Mother") appeals the termination of her parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Mother and her child left Phoenix and settled in Seattle, Washington, in February 2008. The Washington Child Protective Service ("CPS") agency began to receive allegations that Mother was neglecting the child. A dependency proceeding was initiated and the child was placed in foster care on February 22, 2008. The dependency was transferred to Arizona in September 2008 when the child was placed with a maternal aunt in Phoenix.

¶3 The Arizona Department of Economic Security ("ADES") filed a dependency petition in the juvenile court on October 3, 2008. The petition alleged Mother was unable to care for her child due to neglect and mental illness. Additionally, the petition alleged that the Washington CPS could not locate Mother after the child had been placed in foster care and CPS believed Mother had returned to Arizona.

¶4 Mother appeared at the initial dependency hearing and denied the allegations. She, however, agreed during mediation

¹ We view the facts in the light most favorable to upholding the juvenile court's determination. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

to participate in the following services: psychological evaluation; substance abuse assessment and treatment; random urinalysis testing; a self-referral to Magellan;² and visitation with the child at ADES's discretion. The juvenile court subsequently found the child dependent and set the case plan for family reunification, based on the agreed-upon reunification services, as well as parent-aide services and transportation, if necessary.³

¶15 The case plan was changed to severance and adoption six months later. ADES then filed a motion for termination and alleged that Mother had abandoned the child under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2009)⁴ and the child had been in an out-of-home placement for nine months or longer under A.R.S. § 8-533(B)(8)(a). After the contested severance hearing, the court terminated Mother's parental rights and entered the formal order of termination on November 24, 2009. Mother appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1), and -2101(B) (2003).

² Magellan Health Services of Arizona, Inc., is the Regional Behavioral Health Authority of Maricopa County, and manages the publicly funded behavioral health care delivery system.

³ The juvenile court also found the child dependent as to her biological Father. His parental rights were subsequently terminated. He filed an appeal, but it is not presently before us.

⁴ We cite to the current version of A.R.S. § 8-533 because the statute has not been amended in a way material to this decision.

DISCUSSION

¶16 Before terminating parental rights, a juvenile court must find by clear and convincing evidence the existence of one statutory basis for termination. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The court must also find that the termination is in the best interests of the child by a preponderance of the evidence.⁵ *Id.* We will affirm the severance order unless it is clearly erroneous, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002), and "the juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juvenile Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (quoting *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985)). "[W]e will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.

¶17 Mother argues there was insufficient evidence to support any statutory ground for termination. She argues that ADES did not prove by clear and convincing evidence that she "substantially neglected" or "willfully refused" to remedy the circumstances that resulted in the child being placed into

⁵ Mother does not challenge the juvenile court's determination that the termination was in the child's best interests.

ADES's care or that ADES made reasonable efforts to provide her with appropriate reunification services to support termination based on the child being in an out-of-home placement for nine months or longer.⁶

¶18 Termination based upon nine months in care requires proof that a child has been in court-ordered out-of-home placement for at least nine months, that ADES had "made a diligent effort to provide appropriate reunification services," and that the parent had "substantially neglected or wilfully refused to remedy the circumstances" necessitating the placement. A.R.S. § 8-533(B)(8)(a). The circumstances that caused the out-of-home placement are those "'existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (quoting *Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993), *abrogated on other grounds by Kent K.*, 210 Ariz. at 282-84, 110 P.3d at 1016-18). We focus on the effort of the parent to remedy the circumstances and not the parent's success in doing so. *Marina P.*, 214 Ariz. at 329, ¶ 20, 152 P.3d at 1212.

⁶ We need not address whether there was sufficient evidence to support the ground of abandonment because we need only find one statutory basis to affirm the juvenile court's termination of Mother's rights. See *Kent K.*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018.

¶9 The juvenile court found that "Mother only submitted four to five (4-5) random urinalysis tests and participated in a psychological consultation" and that she "refused to visit her daughter for the first six (6) months of the underlying dependency, failed to keep in regular contact with the Department, and failed to even provide a working phone number or address at which she could be contacted." Mother also failed to participate in any parent-aide services, or substance abuse assessment and evaluation.

¶10 Mother argues that she made attempts to visit the child. She, however, did not visit her child for the first six months of the dependency proceedings, and once she attempted visits, Mother often failed to visit the child because she did not follow up with her case manager and provide appropriate contact information. For example, Mother called her case manager on April 30, 2009, and requested a visit the following day. The case manager returned Mother's call and informed her that a visit could not be scheduled without more notice. Mother did not call back until May 7, 2009, and again requested a next day visit. After the case manager again told Mother that ADES needed more notice to schedule a visit, Mother did not contact her again until July.

¶11 Mother met her case manager in July 2009; a month after the severance motion had been filed. After Mother was

told she needed a psychological consultation before a visit, Mother attended and completed the consultation. The psychologist, however, opined that Mother was unstable and recommended she not be allowed to visit with the child until she had a full psychological evaluation. An evaluation was scheduled, but Mother had provided an incorrect address and the letter was returned. Mother subsequently went to the case manager's office three times; twice she left before anyone could speak with her, and she provided her case manager with a telephone number where she could not be reached.

¶12 Mother went to St. Luke's Behavioral Health Center in September 2009. She refused, however, to allow ADES access to a copy of the intake assessment. She allowed the St. Luke's intake worker to call ADES, who told ADES about her concerns with Mother's mental health, and informed ADES that she recommended that Mother sign herself into the hospital for treatment, but Mother refused.

¶13 While Mother argues that she was "working to the best of her ability within the bounds of her serious mental health issues" and that she made "genuine efforts to participate in services," there is reasonable evidence that Mother only made "sporadic, aborted attempts," see *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994), to participate. Mother only participated in a few of the

offered services, and failed to provide accurate contact information. Moreover, as noted by the juvenile court, "Mother failed to obtain stable housing and employment, and her current residence remains unknown." Accordingly, we find there was substantial evidence to support the juvenile court's determination that Mother "substantially neglected or willfully refused to remedy the circumstances."

¶14 We also agree with the juvenile court's finding that ADES "made a diligent effort to provide appropriate reunification services." "It is well established that [ADES], before acting to terminate parental rights, has an affirmative duty to make all reasonable efforts to preserve the family relationship," *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1, 971 P.2d 1046, 1047 (App. 1999), including providing a parent "with the time and opportunity to participate in programs," *Maricopa County Juv. Action. No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not obliged to undertake futile rehabilitative measures, it need only "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053.

¶15 ADES offered Mother a range of services. She argues that ADES failed to make diligent efforts because ADES should not have allowed "a seriously mentally unstable [woman] to obtain her own services" and because her psychological

evaluation was not set until after the case plan was changed to termination.

¶16 Mother, however, had agreed to refer herself to Magellan for evaluation and treatment during the mediation, and did not comply. Moreover, the fact that she went to St. Luke's for an intake assessment because she needed a psychological evaluation demonstrates that she could, and did, seek out mental health services, albeit untimely. Additionally, there was sufficient evidence to allow the juvenile court to determine that Mother's failure to provide appropriate contact information was a cause of the lack of success in scheduling services or advising her about the schedule.

¶17 Based on the services provided and because ADES "is not required to . . . ensure that a parent participates in each service it offers," *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239, we find there was sufficient evidence for the juvenile court to conclude that ADES provided appropriate reunification services. Consequently, the juvenile court had sufficient information to determine by clear and convincing evidence that Mother "substantially neglected" or "willfully refused" to remedy the circumstances that resulted in the child's out-of-home placement and that ADES made reasonable efforts to provide Mother with appropriate reunification services.

CONCLUSION

¶18 For the foregoing reasons, we affirm the judgment.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge