

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



DIVISION ONE  
FILED: 08/31/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CELESTE J., ) No. 1 CA-JV 10-0014  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, CLEMENTINO J., ) 103(G) Ariz.R.P. Juv. Ct.;  
) Rule 28 ARCAP  
Appellees. )  
)  
)

---

Appeal from the Superior Court in Maricopa County

Cause No. JD12703

The Honorable A. Craig Blakey, Judge

**AFFIRMED**

---

Steven Clark, P.C. Phoenix  
By Steven G. Clark

Terry Goddard, Attorney General Prescott  
By Pennie J. Wamboldt, Assistant Attorney General  
Attorney for Arizona Department of Economic Security

---

G E M M I L L, Judge

¶1 Celeste J. ("Mother") appeals the trial court's order terminating her parental rights to her son, C.J. For the following reasons, we affirm.

### **Facts and Procedural Background**

¶12 C.J. was born on August 17, 2005. At that time, Mother had two other children in the custody of Child Protective Services ("CPS"). CPS took custody of C.J. because Mother had not been compliant with the services offered to her. At a Review of Temporary Custody Hearing held two months later, the juvenile court determined it was necessary to keep C.J. in CPS custody "to prevent neglect," but it ordered that Mother be allowed to visit C.J. "not less than two times per week." In October 2005, the court ruled that C.J. was dependent as to Mother.<sup>1</sup>

¶13 CPS offered Mother parenting classes, parent aide services, individual counseling, psychological and psychiatric evaluation, transportation, and substance abuse testing. Mother consistently tested negative for drugs, and CPS eventually discontinued the testing. She completed the parenting classes and made some progress with the parent aide services, demonstrating "more patience and understanding" with her children. She did not consistently attend counseling, however,

---

<sup>1</sup> The court did not state its reasons for ruling, but the record indicates the parties agreed in a mediation agreement that C.J. was dependent. The court later approved the agreement. The Arizona Department of Economic Security had alleged in its dependency petition that C.J. was dependent because Mother had two other children already in its care, she had mental health issues that made her unable to effectively parent, and she was unable to provide C.J. the basic necessities of life.

or maintain stable employment. A psychologist who evaluated her concluded that she was unable to care for her children and that they would be at risk for neglect while in her care. A psychiatrist who evaluated Mother determined she had a personality disorder, would be unable to provide a safe and stable environment for her children, and made short-term decisions that would place the children at risk.

¶4 In February 2006, the juvenile court granted ADES's motion to change the case plan to severance and adoption. ADES then moved to terminate Mother's parental rights on the ground she was unable to discharge her parental responsibilities because of mental illness or deficiency. Mother denied the allegation and requested a jury trial. In May 2006, a jury found that ADES had not proved the allegation by clear and convincing evidence.<sup>2</sup>

¶5 Following the trial, the court approved a plan of reunification with Mother. Mother continued to receive parent aide services and counseling, and she visited C.J. twice per week. She generally complied with the case plan but missed several counseling sessions. According to the caseworker, CPS

---

<sup>2</sup> ADES also sought to terminate Mother's parental rights to her two other children, and the jury heard evidence relating to all three children. The jury found that ADES had likewise failed to sufficiently prove the allegations regarding the two other children. Mother's parental rights to her other children were later severed in June 2007.

closed a number of counseling referrals for this reason and because Mother became "angry and did not want to participate" when the counselors began to "address issues" with her. In August 2006, Mother had another psychological evaluation. The report concluded she had a personality disorder and recommended she continue with counseling and parenting classes, but it noted "there will likely be a limit to what will produce enough change for her to be able to independently parent her children."

¶16 In August 2006, C.J.'s biological father ("Father") began to participate in the visits with C.J. Soon thereafter, the case plan regarding Father was also changed to reunification. In October 2006, Mother participated in a Best Interest Assessment and a psychiatric evaluation. Each report concluded that Mother was unable to provide a stable environment for her children because of a personality disorder. CPS placed C.J. in Father's physical custody in June 2007, and Mother was permitted one supervised visit with C.J. per week.

¶17 In January 2008, CPS removed C.J. from Father's physical custody because of neglect and because Father was allowing unauthorized visits with Mother. Mother's participation in the supervised visits had been "sporadic," and

her last visit with C.J. occurred in March 2008.<sup>3</sup> In June 2008, the visitation center closed Mother's case for visits due to too many cancelled visits. Following the visit in March 2008, CPS did not offer Mother additional reunification services. Mother contacted CPS in November 2008 and asked for additional visits with C.J., but CPS denied her request on the ground "it would be devastating to the child to reintroduce visits."

¶18 In February 2009, Mother, Father, and the case manager met for a team decision-making meeting to discuss C.J.'s case plan. At the meeting, Mother attempted to persuade Father that they should relinquish their parental rights to C.J. She stated that C.J. "deserves it, he deserves to have a family, he's been in care for too long and he need[s] permanency." Mother asked the case manager for a good-bye visit with C.J.

¶19 The juvenile court approved a case plan of severance and adoption two months later, in May 2009. ADES moved to terminate Mother's parental rights on the ground C.J. had been in an out-of-home placement for fifteen months or longer, Mother had been unable to remedy the circumstances that caused him to be in an out-of-home placement, and there was a substantial likelihood she would not be capable of effectively parenting C.J. in the near future.

---

<sup>3</sup> Mother saw C.J. one additional time, in September 2009, two months prior to the severance hearing, during a bonding assessment.

¶10           Around this time, in May or June 2009, Mother moved to the Gila River Indian Reservation and began to receive several services through the tribal government. Specifically, Mother participated in parenting classes, art therapy, counseling, and anger management therapy. Mother sought out these services on her own initiative, and CPS was not involved in providing them or referring Mother to them. In September 2009, however, CPS arranged for a bonding assessment, and the report concluded "there were no signs of any bond or attachment between [C.J.] and his mother." Mother also had another psychological evaluation, and the report concluded that "[p]ersonality factors . . . clearly interrupt day to day functioning" and that her "custodial potential is limited."

¶11           A contested severance hearing was held on November 18, 2009. The trial court terminated Mother's parental rights after finding ADES had sufficiently proved the allegation in the petition and that severance was in C.J.'s best interest. Mother filed a timely appeal, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235 (2007), 12-120.21 (2003), and 12-2101 (B) (2003).

#### **Analysis**

¶12           The juvenile court terminated Mother's parental rights based on C.J. being in an out-of-home placement for fifteen months or longer under A.R.S. § 8-533(B)(8)(c). Because the

juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses, and make appropriate factual findings, we will not reweigh the evidence but will only look to determine if there is substantial evidence to support the court's ruling. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). We will not disturb the court's ruling absent an abuse of discretion. *Id.*

¶13 In reaching its decision, the trial court relied in part on psychological evaluations of Mother conducted in January and December 2005 and in October 2006, and on psychiatric evaluations conducted in December 2005 and October 2006. Mother now contends the trial court erred when it relied upon these reports because they constituted "stale and incomplete information and testimony." We disagree.

¶14 We need not decide here whether the court would have erred had it relied *only* upon the psychological reports from 2005 and 2006. In addition to those reports, the trial court also relied upon a psychological evaluation from October 2009. This report was prepared just one month prior to the severance hearing. In the 2009 report, Dr. Menendez concluded "dependent, antisocial, impulsive and depressive" personality factors had "impeded [Mother's] ability to stay on track and respond to social services." She also stated that Mother had been "unable to shore up her cognitive, social and emotional resources to

establish independent functioning necessary" for parenting and determined that "[Mother's] custodial potential is limited." This report largely supports the earlier reports from 2005 and 2006, which found that a personality disorder interfered with Mother's ability to effectively parent.

¶15 Mother suggests in her opening brief that the trial court erred in giving weight to Dr. Menendez's report. She argues that, "[i]n her report, Dr. Menendez stated that she had to attempt to finish her report without having time to fully complete it, in that only two-thirds of the process was done." Mother also points out that, during the severance hearing, the case manager testified that Dr. Menendez "stated that she [(Dr. Menendez)] believed that to make a full report and recommendations as to [Mother], that a more recent psychological evaluation was needed."

¶16 We disagree that these facts establish that Dr. Menendez's report was unreliable or that the trial court should not have assigned weight to its conclusions. In her report, Dr. Menendez acknowledged she had had two meetings with Mother and that Mother had not attended the third meeting. In spite of this fact, and in spite of Dr. Menendez apparently telling the case manager that she needed more recent psychological evaluations to make a full report, Dr. Menendez specifically concluded in her report that "sufficient information was

garnered from the present testing and the record review to establish a valid evaluation." Accordingly, we cannot conclude that the juvenile court erred in relying either on this assertion or on Dr. Menendez's report.

¶17 Mother next argues her due process rights were violated because ADES did not provide services to her from 2007 to 2009. She contends she was "abandoned by ADES" and that, "[w]ithout affording [Mother] an opportunity to be reunified with the child, ADES effectively precluded any bonding with the child. The Court, by severing with the evidence presented, effectively violated [Mother's] due process rights."

¶18 ADES was required to "prove by clear and convincing evidence that it had made a reasonable effort to provide [Mother] with rehabilitative services or that such an effort would be futile." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 193, ¶ 42, 971 P.2d 1046, 1054 (App. 1999); see also A.R.S. § 8-533(B)(8) (ADES must make diligent effort to provide appropriate reunification services prior to termination). Generally, ADES must "undertake measures with a reasonable prospect of success" in reuniting the family. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053. "Although CPS need not provide 'every conceivable service,' it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for

the child." *Id.* at ¶ 37 (quoting *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994)).

¶19 The juvenile court did not err in concluding ADES made reasonable efforts to provide Mother with services that would result in reunification. Beginning in 2005, CPS offered Mother parenting classes, parent aide services, individual counseling, psychological and psychiatric evaluation, transportation, and substance abuse testing. Mother largely took advantage of these services. The case worker testified, however, that Mother's second referral for counseling was closed out when the counselor "started talking about responsibility" and "[Mother] lost interest in the classes and started missing . . . the therapy sessions." Mother obtained another referral for counseling, but "as soon as they started to . . . address issues, [Mother] would become hostile or . . . angry and did not want to participate." That referral was closed out "due to no-shows, also. And so, it went on with the third one and the fourth one."

¶20 Mother was also offered visitations with C.J., initially meeting with C.J. twice per week. Then, after C.J. was placed in Father's physical custody, CPS offered Mother one supervised visit per week. Mother's attendance at the visitations, however, was "sporadic," and the visitation center eventually closed Mother's case for visits due to too many

cancelled visits.

¶21 Unlike in *Mary Ellen C.*, 193 Ariz. at 193, ¶ 38, 971 P.2d at 1054, wherein this court found ADES had failed to provide adequate reunification services, ADES's reunification efforts here were not "belated, fitful, and indifferent." Rather, ADES offered a variety of services to Mother over a span of several years. Although ADES stopped offering services to Mother for a period of time, it did so only after Mother failed to take full advantage of those services that were already being offered, as outlined above. This record contains sufficient evidence to support the juvenile court's determination that ADES made reasonable efforts to provide Mother with rehabilitative services. See *Mary Ellen C.*, 193 Ariz. at 187, ¶ 1, 971 P.2d at 1048 (ADES not required to provide futile rehabilitative measures).

¶22 There was also sufficient evidence to support the juvenile court's finding that severance was in C.J.'s best interest. To support such a finding, ADES was required to prove that C.J. would affirmatively benefit from the termination. See *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990). This means that "a determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Id.* at 5, 804 P.2d at 734. The best

interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child, *id.* at 6, 804 P.2d at 735, or even that the child is adoptable, *JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶123 Here, the case manager testified that C.J.'s foster parents are "willing to adopt him if he becomes available for adoption." She also stated that they are currently meeting his social, educational, psychological, and emotional needs, and that C.J. loves his foster parents, is "very attached to them," and refers to them as Mom and Dad. Additionally, as the juvenile court found, there was evidence presented at the hearing that Mother and C.J. have not bonded and that resuming visits with Mother would be traumatic for C.J.

#### Conclusion

¶124 For these reasons, we affirm the trial court's order terminating Mother's parental rights to C.J.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PHILIP HALL, Judge