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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



DIVISION ONE
FILED: 10-07-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

LAURA C. ,)
)
 Appellant,)
)
 v.)
)
 ARIZONA DEPARTMENT OF ECONOMIC)
 SECURITY, DEVEN C. ,)
)
 Appellees.)
)
)

1 CA-JV 10-0058
DEPARTMENT A
MEMORANDUM DECISION
(Not for Publication -
Rule 103(G), Ariz. R.P.
Juv. Ct.; Rule 28
ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. JD507428

The Honorable Raymond P. Lee, Judge

AFFIRMED

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

Robert D. Rosanelli Phoenix
Attorney for Appellant

K E S S L E R, Presiding Judge

¶1 Laura C. ("Mother") appeals the juvenile court's order terminating her parent-child relationship with her son, Deven C. ("Son").¹ For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 On review, we examine the facts in the light most favorable to sustaining the juvenile court's judgment. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citing *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994)).

¶3 Mother gave birth to Son in 2005. In July 2008, Mother was hospitalized due to a methamphetamine overdose and left Son under the care of then-boyfriend and methamphetamine user Karl L. Son got out of the home and walked through the neighborhood alone at 3 a.m. until Mesa police officers found and returned him to the residence of Karl L. Officers notified ADES, who took custody of Son and placed him with an out-of-home foster family.

¶4 ADES filed a dependency petition alleging that Mother was unable to parent due to substance abuse issues, neglect, and an unfit home. In August 2008, the juvenile court found Son dependent as to Mother and set a case plan for family reunification, which included Mother's participation in random

¹ Father's parental rights were also terminated, but Father has not appealed that termination.

urinalysis testing, substance-abuse treatment, parent-aid services, supervised visitation, and a psychological assessment.

¶15 Mother missed several out-patient groups, continued to use methamphetamine, and did not have stable housing or employment. She ultimately asked for in-patient treatment in October 2008, and successfully requested to stay 15 days longer than the normal 45-day program. Mother completed the program in January 2009.

¶16 In February 2009, the juvenile court found that ADES made reasonable efforts to finalize the permanency plan and continued the goal of reunification. However, Mother relapsed in May 2009 by using methamphetamine, and the court approved ADES' request to change the case plan goal to severance and adoption at a permanency planning hearing in June 2009.

¶17 Mother received a psychological assessment by Dr. Juliano in June 2009. She admitted to using crystal methamphetamine since 2001 and had used a week before her evaluation. Dr. Juliano's report indicated that Mother's prognosis to be an effective parent was poor because she did not exhibit any patterns of stability in establishing sobriety or finding housing and employment.

¶18 ADES' motion for termination of Mother's parent-child relationship alleged that Mother neglected Son so as to cause a substantial risk of harm to his health or welfare. Ariz. Rev.

Stat. ("A.R.S.") section 8-533(B)(2) (Supp. 2009). The motion also alleged that Mother was unable to parent because of a history of chronic drug abuse that would likely continue. A.R.S. § 8-533(B)(3). Further, it alleged Son had been in out-of-home placement for over nine months with Mother substantially neglecting to remedy the circumstances that caused Son's removal from her care. A.R.S. § 8-533(B)(8)(a). ADES amended its motion in December 2009 to allege that Mother could not parent Son because of a mental illness that would likely continue, that Mother has been unable to remedy the circumstances that caused Son to be in an out-of-home placement for over 15 months, and that she would not be able to exercise proper and effective care and control in the near future. A.R.S. § 8-533(B)(3) and (B)(8)(c).

¶19 A contested severance hearing was held in January 2010, at which Mother testified to using methamphetamine as recently as three days earlier. Dr. Juliano testified that Mother was not a parenting option when she uses methamphetamine. The case manager testified that staying with Son's current foster placement was in his best interest and that the family was willing to adopt him.

¶10 The juvenile court issued its "Findings of Fact, Conclusions of Law, and Order" and ordered severance of Mother's parental rights pursuant to A.R.S. § 8-533(B)(3), (B)(8)(a), and

(B)(8)(c). Mother did not timely appeal; however, the juvenile court excused the late filing of the Notice of Appeal. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1), and 12-2101(A), (B) (2003).

DISCUSSION

I. Standard of Review

¶11 Mother argues that the juvenile court erred in finding that: (1) ADES made a diligent effort to provide her with appropriate reunification services, and (2) that she neglected Son.

¶12 On appeal, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a 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); see also *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975). To sever parental rights, a juvenile court must first find by clear and convincing evidence the existence of at least one statutory ground provided in A.R.S. § 5-833(B). *Michael J.*, 196 Ariz. at 248-49, ¶ 12, 995 P.2d at 684-85; *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 190, ¶ 26, 971 P.2d 1046, 1051 (App. 1999) (citing *Maricopa Cnty. Juv. Action No. JA 33794*, 171 Ariz. 90, 92-93, 828 P.2d 1231, 1233-34 (App. 1991)). If grounds for severance are found, the court must also find by

a preponderance of the evidence that severance is in the best interest of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

II. Diligent Effort to Provide Reunification Services

¶13 Mother contends that because ADES did not provide her with additional in-patient treatment, ADES did not meet its statutory burden of making a diligent effort to provide appropriate reunification services under § 8-533(B)(8)(a) and (c). We disagree.

¶14 The juvenile court severed Mother's parent-child relationship pursuant to § 8-533(B)(8)(a) and (c), which requires that the court find by clear and convincing evidence:

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a *diligent effort to provide appropriate reunification services* and that one of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to § 8-806 and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

. . .

(b) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in

an out-of-home placement and there is substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

(emphasis added)

¶15 ADES fulfills its statutory burden of making a diligent effort when it provides the parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES must undertake measures that offer a reasonable opportunity of success of reunifying the parent and child; ADES is not, however, required to undertake futile rehabilitative measures. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053.

¶16 The record contains substantial evidence to support a finding that ADES met its reunification burden. Mother admitted that ADES provided her with drug testing, parent-aide services, psychological evaluations, one in-patient treatment program, and intensive out-patient treatment. However, Mother argues that ADES did not meet its statutory burden because it did not execute Dr. Juliano's post-assessment recommendation of providing her with additional in-patient treatment. We disagree.

¶17 The record shows that in-patient treatment did not have "a reasonable prospect of success." *Mary Ellen C.*, 193

Ariz. at 192, ¶ 34, 971 P.2d at 1053. ADES provided Mother with in-patient treatment prior to Dr. Juliano's assessment, but she relapsed after that program and did not subsequently attempt to reengage in any out-patient treatment.

¶18 ADES is not required to provide every conceivable service, and Dr. Juliano concluded that the case plan services were sufficient. *Maricopa Cnty. Juv. Action No. JS-5209 & JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984). He testified that it is "hard to really say that intensive services would necessarily be required," and he recommended in-patient treatment because Mother "was just sort of floating around." ADES implemented Dr. Juliano's alternative recommendation of intensive out-patient treatment and provided Mother with time and opportunity to participate, but she continued to show little effort during the additional six months of treatment ADES provided after filing its motion to terminate her parental rights.²

¶19 Based on the record, there is substantial evidence supporting the juvenile court's finding that ADES made a

² Mother's argument largely relies on cases in which severance was based on grounds of mental illness. However, Dr. Juliano's assessment and testimony refer to services aimed at combating Mother's chronic substance abuse: her behavior and circumstances were due "more because of the substance abuse than a mental illness." Dr. Juliano testified that the services ADES provided were "targeting what they needed to target, which are the substance abuse issues."

diligent effort to rehabilitate Mother by providing appropriate reunification services prior to termination of Mother's rights under § 8-533(8)(a) and (c).

III. Substantial Neglect to Remedy Circumstances Causing Out-of-Home Placement

¶20 Mother argues that the juvenile court erred in severing her parental rights on grounds of neglect under A.R.S. § 8-533(B)(2). However, the juvenile court did not sever on this ground; severance was ordered under § 8-533(B)(8)(a) which requires a finding that Mother substantially *neglected* to remedy the circumstances that caused Son to be in out-of-home placement for at least nine months. Severance under § 8-533(B)(8)(a) was supported by clear and convincing evidence; we affirm the severance order on this ground as it is not clearly erroneous. *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.³

¶21 Parents who make "appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties" *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). On the other hand, compliance with remedial programs

³ "If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds." *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

requires "more than trivial or de minimus efforts" *Id.* at 576 n.1, 869 P.2d at 1229 n.1.

¶122 The record shows that Mother did not make good faith efforts to comply with remedial programs. During the first nine months Son was in out-of-home placement, Mother refused several urinalysis tests and testified that she "gave up." She was closed out of out-patient treatment in October 2009 because she failed to attend groups or follow through with her treatment plan. When a parent "makes only sporadic, aborted attempts to remedy her addiction . . . a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id.* at 576, 869 P.2d at 1229. The case manager testified that Mother's dedication to treatment was "sporadic" and that she did not fully comply with her case plan after she relapsed. Her continued use of methamphetamine until three days before the trial indicated her substantial neglect to remedy her substance abuse issues.

¶123 The record supports the juvenile court's findings. Mother's lack of consistency and use of methamphetamine throughout this case and until the trial demonstrates her substantial neglect to remedy the circumstances causing Son to be in out-of-home placement. The juvenile court reasonably

concluded that the statutory grounds for termination were met. Therefore, we find no error.⁴

CONCLUSION

¶24 For the above reasons, we affirm the juvenile court's severance order based on A.R.S. § 8-533(B)(8)(a) and that severance is in Son's best interest.

/S/
DONN KESSLER, Presiding Judge

CONCURRING:

/S/
DANIEL A. BARKER, Judge

/S/
JON W. THOMPSON, Judge

⁴ While Mother does not contest that severance was in the best interest of Son, we conclude that a preponderance of the evidence supports the juvenile court's ruling on that issue. "[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." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Dr. Juliano testified that Son is at a very high risk for neglect when Mother is using methamphetamine. The case manager testified that severance was in Son's best interest because he did not "deserve to wait to see" if Mother would be capable of following through. He testified that severance would provide Son with "permanency. He would have stable housing. He would live in a safe environment. He would have all of his needs met." The case manager testified that the family accepted Son "as a brother like another biological brother."