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Ariz. R. Crim. P. 31.21



DIVISION ONE
FILED: 02/03/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CARMEN B. ,) 1 CA-JV 10-0140
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz.R.P. Juv.
ARIZONA DEPARTMENT OF ECONOMIC) Ct.; Rule 28 ARCAP
SECURITY, and CAMERON B.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD507210

The Honorable David K. Udall, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Mesa
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee/Arizona Department of Economic
Security

Robert D. Rosanelli Phoenix
Attorney for Appellant/Carmen B.

K E S S L E R, Judge

¶1 Carmen B. ("Mother") appeals the juvenile court's
order terminating her parental relationship with her daughter,
Cameron B. ("Daughter"), pursuant to Arizona Revised Statutes

("A.R.S.") sections 8-533(B)(3), (B)(8)(a), (B)(8)(b), and (B)(8)(c) (Supp. 2010).¹ For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In May 2008, just three months after Daughter's birth, the juvenile court found Daughter dependent after the Arizona Department of Economic Security ("ADES") alleged neglect and substance abuse within Mother's and father's ("Father") household. ADES became involved with Daughter after Mother tested positive for methamphetamine ("meth") at Daughter's birth in February 2008. ADES allowed Daughter to remain in Mother's home as long as Mother complied with services provided by ADES. Mother failed to comply and ADES placed Daughter in the custody of her paternal grandparents in May 2008.

¶3 In August 2009, ADES filed a motion for termination of the parental relationship for both Mother and Father, which it later amended in November 2009. ADES alleged that Mother's rights should be terminated because of her substance abuse under § 8-533(B)(3), and Daughter was in out-of-home placement for six months under § 8-533(B)(8)(b), nine months under § 8-533(B)(8)(a), and fifteen months under § 8-533(B)(8)(c).

¶4 Initially, the juvenile court terminated Mother's parental rights in December 2009 after it held a termination

¹ We cite to the most current version of the statute when it has not been substantively revised since the date of the underlying conduct.

hearing in Mother's absence because Mother failed to appear at the hearing. However, the court vacated the first judgment after Mother claimed her counsel advised her of the wrong time for the hearing.²

¶15 In March 2010, the juvenile court held another termination hearing. The court heard from the ADES caseworker ("Caseworker"), Mother, Doctors Hunt and Menendez, and the paternal grandfather. Caseworker testified that ADES required Mother to comply with reunification services, including substance abuse treatment counseling through TERROS, random urinalysis ("UA") testing, and complete a psychological evaluation, a psychiatric evaluation, parent aide services, and domestic violence counseling.

¶16 Caseworker testified that Mother missed counseling appointments both in her home and at outside facilities. However, Mother completed the psychological and psychiatric evaluations and the domestic violence counseling.

¶17 Caseworker testified that Mother missed fifty-nine of ninety-four UA tests from April 2008 through September 2009, tested positive for meth three times, submitted substituted urine five times, and gave diluted urine two times. From September 2009 until February 2010, the court required Mother to

² The juvenile court also terminated Father's parental rights without contest. Father is not a party to this appeal.

randomly test at a supervised facility, but she did not comply. During that time, she missed thirteen tests and had two positive tests. In February 2010, Mother twice tested positive for codeine, morphine and oxymethadone; however, Mother testified she had ingested a cough syrup prescribed to her that contained codeine. She did not have a prescription for medication that contained the other substances. While Mother tested negative about three weeks before the termination hearing, she did not test the two weeks before the hearing as required. Mother also missed six of the seven scheduled hair-follicle tests.

¶18 Caseworker testified that Mother would not address her substance abuse and termination of her parental rights was in Daughter's best interest. Caseworker testified Mother missed at least one, if not two, visits per month with Daughter. She believed that Mother was still using meth at the time of the termination hearing because Mother refused to take random UA tests or comply with substance abuse treatment, and she was very anxious, unfocused, very emotional, evasive, and blamed others for her wrongdoing. Caseworker also testified that Mother was not capable of parenting Daughter, which would continue for an indeterminate or prolonged period of time, because she had unstable housing and employment, did not comply with services required of her, and surrounded herself with unsafe environments. She testified that Daughter had been living with

her paternal grandparents since she was a couple of months old, Daughter had bonded with them, they wanted to adopt her, and they could meet Daughter's needs.

¶9 Mother admitted using meth one month before ADES removed Daughter from her home. She also told a TERROS counselor that she had taken Daughter to a home where she used meth and she admitted the police found her home trashed and found a meth pipe around her purse after ADES called in a welfare check.

¶10 After ADES removed Daughter, Mother admitted testing positive for meth and missing UAs. She conceded that she used meth while pregnant with Daughter and Daughter's sibling, born in August 2009.³ She admitted using synthetic urine during UA tests, but blamed her actions on threats from Father, even though he was incarcerated at the time. Mother conceded that she tested positive for oximorphine and morphine just one month before the termination hearing, but claimed the drugs were from cough medicine prescribed for pneumonia.

¶11 Mother admitted failing to complete substance abuse counseling through Magellan, but insisted she completed a course through Southwest Behavioral, even though the Caseworker believed the latter course was a course on domestic violence

³ ADES also sought termination of Mother's parental rights as to Daughter's sibling, but in a separate proceeding.

only. She denied being addicted to meth. Mother repeatedly refused to enter a residential treatment center, including after testing positive for meth while pregnant with Daughter's sibling.

¶12 Mother also testified that Father abused her many times. She claimed he may have put meth in her food while she was pregnant with Daughter's sibling. Regarding whether she could provide a stable environment, Mother testified that at the time of the trial, she had been unemployed for about four years, although she looked "everywhere," and that she lived with her parents rent-free and used food stamps. Finally, despite her admissions, Mother claimed she could support Daughter and would have assistance from her parents.

¶13 The court also heard from Dr. Hunt, who performed a psychological consultation on Mother and concluded she blames others for her wrongdoing and avoids taking responsibility for her actions. He noted that she had a meth addiction and opined that the relapse rate for a person addicted to meth was ninety percent the first year of attempting sobriety. He also testified that missed UA tests are considered positive tests for purposes of treatment. Regarding reunification, he stated that a person must not use drugs for at least nine months to be considered in remission. He testified that if Mother did not "comply with drug treatment, counseling, and avoid domestic

violence situations," she would not be a potential candidate for reunification.

¶14 Dr. Menendez also completed a psychological evaluation and a psychological consultation on Mother. She determined Mother's meth use was her "most handicapping issue" in interrupting her ability to parent. She testified that a person addicted to meth is not in remission until eleven months of sobriety and the relapse rate is ninety-two percent in the first six months. She testified that evidence that someone is in denial about her drug addiction or submits synthetic urine indicates that she has not taken steps towards recovery. Dr. Menendez stated that Mother would need twelve months of confirmed sobriety before Daughter should be placed in her care. She believed Mother was under the influence of a substance at the time of the evaluation. She was concerned about inadvertent neglect and Mother's ability to consistently demonstrate responsibility, care, supervision, and attentiveness to her parenting role.

¶15 Daughter's paternal grandfather testified that he rarely placed Daughter in daycare, he would like to adopt her and had bonded with her, had enough room for her in his home, and that she was doing well. He said he was aware of domestic violence allegations between Father and Mother but never witnessed violence in his home.

¶16 The juvenile court terminated Mother's parental relationship with Daughter, finding that ADES proved by clear and convincing evidence that Mother's parental rights should be terminated under A.R.S. § 8-533(B)(3), (B)(8)(a), (B)(8)(b), and (B)(8)(c). The court also found by a preponderance of the evidence that termination was in the best interest of Daughter. The court adopted the testimony of Caseworker regarding Mother's failure to comply with reunification and treatment services; ongoing substance abuse; missed, substituted and diluted UAs; missed hair-follicle tests; as well as her testimony that Mother was not fit to parent and that termination was in Daughter's best interest. The court also adopted the testimony of Doctors Hunt and Menendez regarding the poor prognosis for Mother's rehabilitation.

¶17 Mother timely appealed from the juvenile court's signed minute entry. We have jurisdiction pursuant to A.R.S. § 8-235 (2007), 12-120.21(A)(1) (2003), and -2101(A),(B) (2003).

STANDARD OF REVIEW

¶18 "The juvenile court, as the trier of fact in a termination proceeding, 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, 53 P.3d 203, 205 (App. 2002) (citation omitted). 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." *Id.* We view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

DISCUSSION

¶19 Mother argues that the juvenile court erred by holding that she could not parent because of substance abuse and she had willfully refused or substantially neglected to remedy the circumstances that caused Daughter to be placed outside of her home.

¶20 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground provided in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). It must also find by a preponderance of the evidence that termination is in the best interests of the child. *Id.*; *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).⁴ We consider "those circumstances existing at

⁴ The juvenile court must also find that ADES made reasonable efforts to reunify the family or that such efforts would have been futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶¶ 31-34, 971 P.2d 1046, 1052-53 (App. 1999) (citation omitted). Mother has not argued that

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).

I. The juvenile court did not err in terminating Mother's parental rights under A.R.S. § 8-533(B)(3).

¶21 Mother argues that the juvenile court's determination that she could not parent because of drug use and that her drug use would continue for a prolonged indeterminate period was clearly erroneous. We disagree.

¶22 To terminate a parent's rights under A.R.S. § 8-533(B)(3), the juvenile court must find that: "1) [the] parent has a history of chronic abuse of controlled substances or alcohol; 2) [the] parent is unable to discharge parental responsibilities because of [her] chronic abuse of controlled substances or alcohol; and 3) there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010). Additionally, "drug abuse need not be constant to be considered chronic." *Id.* at ¶ 16.

ADES did not make reasonable efforts to reunify the family; therefore, we do not address this issue.

A. Mother had a history of chronic drug use.

¶23 Mother essentially claims that there was insufficient evidence to establish chronic substance use because she was an occasional drug user and she stopped using drugs when she was no longer in an abusive relationship.

¶24 The record supports the juvenile court's finding that Mother's meth use was chronic. Mother used meth while pregnant with Daughter and with Daughter's sibling, including on the day of Daughter's birth. Mother admitted using meth during the months after Daughter's birth, and the police found a meth pipe in her home when Daughter resided there. While she tested positive for meth only a few times between May 2008 and the termination hearing, she missed fifty-nine of ninety-four scheduled UA tests and six of seven hair-follicle tests. She had five substituted and two diluted tests. Doctors Hunt and Menendez testified that a missed drug test is considered a positive test for treatment purposes. Furthermore, the juvenile court told Mother in January 2010 that a missed, substituted or diluted test would be considered a positive test, but she continued to miss scheduled UAs until the termination hearing in March 2010. Mother also repeatedly failed to complete the required programs, including in-home drug treatment counseling. Mother's meth use and missed, substituted and diluted UA tests continued even after Father entered prison in May 2009.

¶25 Therefore, Mother's admitted meth use and missed UA and hair-follicle tests support a finding that she had a history of chronic drug use.

B. Mother demonstrated an inability to discharge parental responsibilities.

¶26 Pursuant to § 8-533(B)(3), the juvenile court "must find that [a parent's] drug abuse hinders [her] ability to be an effective parent," *Raymond F.*, 224 Ariz. at 377, ¶ 19, 231 P.3d at 381, but the court need not require the State to prove that the parent could not discharge all of her parental duties, *Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985). "[T]he term 'parental responsibilities' . . . refer[s] to those duties or obligations which a parent has with regard to his child." *Id.* at 408-09, 701 P.2d at 1216-17. "The term is not intended to encompass any exclusive set of factors but rather to establish a standard which permits a [juvenile court] judge flexibility in considering the unique circumstances of each termination case . . ." *Id.* at 409, 701 P.2d at 1217.

¶27 The juvenile court found that Mother was unable to discharge her parental responsibilities because of chronic drug use. Mother contends that her past meth use and other issues do not "prevent her from discharging her parental responsibilities" either now or in the foreseeable future.

¶128 The record supports the juvenile court's conclusion. Mother used meth while pregnant with Daughter and her sibling and used while Daughter was living with her. She could not keep appointments with Caseworker, drug treatment counselors, or for drug tests. Mother failed to take responsibility for her drug use and missed appointments. She blamed Father for her drug use, and blamed not having money for gasoline for missed appointments. However, Mother used meth and missed, substituted, and diluted UAs while Father was incarcerated, and missed UAs and appointments even though ADES either came to her home or provided Mother with transportation to get to appointments. Mother also testified that she was unemployed for four years and received food stamps. Caseworker testified that Mother had unstable housing and surrounded herself with disreputable people.

¶129 Based on the record, the juvenile court did not abuse its discretion in finding that Mother was unable to parent because of drug use.

C. The evidence supports a reasonable belief that Mother's chronic drug use will continue.

¶130 To support termination under § 8-533(B)(3), "ADES must also prove there are reasonable grounds to believe that the condition causing an inability to parent will continue for a prolonged and indeterminate period." *Raymond F.*, 224 Ariz. at

378, ¶ 25, 231 P.3d at 382. Evidence of a parent's "significant history of drug use, recent drug use, and failure to complete various reunification services [is] sufficient [] to show that [the parent's] drug abuse [will] continue for a prolonged, indeterminate period." *Id.* at 378-79, ¶ 26, 231 P.3d at 382-83 (citing *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998)). Further, a parent's inability to maintain sobriety in a non-custodial and unstructured environment while aware that doing so will result in termination of her parental rights is "evidence [that the parent] has not overcome [her] dependence on drugs and alcohol." *Id.* at 379, ¶ 29, 231 P.3d at 383.

¶31 Mother essentially argues that because she is no longer in an abusive relationship with Father, she is free from drugs.

¶32 The record supports the juvenile court's determination. Mother's history of drug use includes using meth while pregnant with Daughter and her sibling; failing to complete reunification services, including drug treatment counseling; testing positive for meth, morphine, and oxymethadone; missing over half of the scheduled UA tests and substituting or diluting others; and missing six out of seven scheduled hair-follicle tests. Contrary to Mother's assertion, she used meth and was not compliant with random drug testing and

treatment programs after Father began his incarceration in May 2009.

¶133 Therefore, the juvenile court did not err in finding that Mother's condition would continue for a prolonged indeterminate period of time.

¶134 "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. Because we find that the juvenile court did not err in terminating Mother's parental rights under A.R.S. § 8-533(B)(3), we do not address the additional grounds for termination under A.R.S. § 8-533(B)(8)(a), (b), and (c).

II. The juvenile court did not err in finding that termination was in the Daughter's best interest.⁵

¶135 The juvenile court must find by a preponderance of the evidence that termination is in the best interests of the child. *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685; *Kent K.*, 210 Ariz. at 288, ¶ 41, 110 P.3d at 1022. Termination is in the best interests of the child if the child will benefit from the termination or would be harmed if the relationship continued. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15,

⁵ While Mother does not argue that the juvenile court erred in finding that termination was in Daughter's best interest, in our discretion we address the issue.

200 P.3d 1003, 1008 (App. 2008). Factors the court may consider include the child's adoptability or potential adoptive placement and whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶36 The juvenile court found by a preponderance of the evidence that the termination of Mother's parental rights was in Daughter's best interest, finding that Daughter had bonded with her paternal grandparents, her grandparents would adopt her and provide for her needs, and she would remain with her sibling, who was also in the grandparents' custody.

¶37 The record supports the juvenile court's finding. Mother was given the chance to care for Daughter after her birth, but Mother failed to do so. Daughter has lived almost her entire life with her paternal grandparents. Daughter's grandfather testified that he rarely placed Daughter in daycare, that he wanted to adopt her and had bonded with her, had enough room for her in his home, and that she was doing well. Caseworker testified that the grandparents' home was a safe, sober, healthy, and nurturing environment where Daughter was able to see her other family members. Meanwhile, Mother continued to use meth and other drugs and show her irresponsibility by missing more than half of her drug tests and not completing reunification services.

¶138 The above evidence is sufficient to support the juvenile court's finding that ADES proved by a preponderance of the evidence that terminating Mother's parental rights was in the best interest of Daughter.

CONCLUSION

¶139 For the foregoing reasons, we affirm the juvenile court's decision terminating Mother's parental rights to Daughter.

/S/

DONN KESSLER, Presiding Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Judge

/S/

SHELDON H. WEISBERG, Judge