DIVISION ONE
FILED: 09/15/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TIMOTHY S., CATHERINE O.,	)	1 CA-JV 10-0142
	)	
Appellants,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, TYLER O., CODY O.,	)	Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JS 11395

The Honorable Samuel A. Thumma, Judge

AFFIRMED

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N O R R I S, Judge

¶1 Timothy S. ("Father") appeals the termination of his parental rights to T.O., and Catherine O. ("Mother") appeals the termination of her parental rights to C.O.[1] As discussed below, we reject Father's argument we should reverse the juvenile court's termination order because the Arizona Department of Economic Security ("Department") did not, contrary to the court's findings, make diligent efforts to provide Father with appropriate reunification services. We also reject Mother's argument the juvenile court should have conducted an in camera interview of C.O. and her assertion the evidence failed to support termination under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (Supp. 2010).

FACTS AND PROCEDURAL BACKGROUND

¶2 Because the juvenile court's 24-page minute entry summarizes in detail the lengthy procedural history of this case, we need not repeat it here. After the conclusion of a multi-day contested severance hearing, the juvenile court terminated Father's parental rights to T.O.[2] on the ground of 15 months in out-of-home placement under A.R.S. § 8-533(B)(8)(C),

[1]In her opening brief, Mother also argues insufficient evidence supported the juvenile court's conclusion M.O. was dependent, but, as she acknowledged in her reply brief, M.O. "is not properly the subject of the present appeal."

[2]T.O. was born on August 5, 2001.

and terminated Mother's parental rights to C.O.[3] on four grounds: 15 months in out-of-home placement, prior termination under A.R.S. § 8-533(B)(10), mental illness under A.R.S. § 8-533(B)(3), and history of substance abuse under A.R.S. § 8-533(B)(3).

¶3 Although both Father and Mother prematurely noticed their appeals, the premature notices were "followed by entry of an appealable judgment." *Schwab v. Ames Constr.*, 207 Ariz. 56, 58, ¶ 9, 83 P.3d 56, 58 (App. 2004). Thus, we have jurisdiction pursuant to A.R.S. § 8-235 (2007).

DISCUSSION

I. Father's Appeal

¶4 Father argues we should reverse the juvenile court's order terminating his parental rights to T.O. because the Department did not, contrary to the court's findings, make "a diligent effort to provide appropriate reunification services" as required by A.R.S. § 8-533(B)(8),[4] and instead allowed T.O. "to dictate" the services the Department offered -- services Father essentially asserts were inadequate. We disagree; the

[3]C.O. was born on November 1, 1999.

[4]We reject T.O.'s contention Father waived this argument because he did not request an evidentiary hearing on the Department's efforts to provide reunification services. The record reflects Father challenged the Department's efforts, and requesting an evidentiary hearing is only one "option" for challenging the Department's actions. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235 n.8, ¶ 15, 256 P.3d 628, 632 n.8 (App. 2011).

juvenile court did not abuse its discretion in finding the Department made diligent efforts to provide reunification services.

¶5 The juvenile court may terminate the parent-child relationship upon finding clear and convincing evidence demonstrating a statutory ground for termination and a preponderance of the evidence demonstrating termination is in the child's best interests. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010); *see* A.R.S. § 8-533(B). We review the "juvenile court's termination order in the light most favorable to sustaining the court's decision[5] and will affirm it 'unless we must say as a matter of law that no one could reasonably find the evidence [supporting the statutory grounds for termination] to be clear and convincing.'" *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955)). Although the Department "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." *Mary Ellen C. v. Ariz. Dep't of*

[5]As the trier of fact in a termination proceeding, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004).

Econ. Sec., 193 Ariz. 185, 193, ¶ 37, 971 P.2d 1046, 1054 (App. 1999) (quoting *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994)). The Department must "undertake measures with a reasonable prospect of success" in reuniting the family. *Id.* at 192, ¶ 34, 971 P.2d at 1053.

¶6 Here, Father had no relationship with T.O. after T.O. was 14 months old because Father was incarcerated. During Father's incarceration, T.O. developed major psychological problems and, in 2008, threatened to commit suicide. The Department attempted to facilitate two visits between Father and T.O. while Father was in prison, but there "was a problem getting the paperwork done" for the first attempt and T.O. "began to get very stressed . . . or upset" once the process was initiated for the second attempt. After this second attempt, T.O.'s therapist "saw [his] behaviors begin to disintegrate, and he said there shouldn't be a visit to the prison for him."

¶7 In the months leading up to Father's release in late 2008, T.O. had nightmares, wetting accidents, and anxiety, which prompted a psychological consultation with Glenn L. Moe, Ph.D. After this consultation, Dr. Moe recommended no visits with Father due to T.O.'s refusal to communicate with Father, his lack of a relationship with Father, and his "high anxiety level." In June 2009, however, Dr. Moe reported T.O. "appear[ed] to have stabilized," and T.O. indicated he was

interested in visiting with Father, so the Child Protective Services ("CPS") case manager arranged a therapeutic visit. Despite his initial expression of interest, on the days leading up to the scheduled visit T.O. stated he did not want to go through with the meeting and, on the day of, refused to get out of the car and threatened to kick anyone who tried to make him visit Father.

¶8 At that point, Dr. Moe once again recommended no future visits with Father. Moreover, T.O.'s therapist stated if Father was reunified with T.O., T.O. would likely regress, "completely withdraw," "isolate," and possibly "become a danger to himself again." Accordingly, the Department thereafter diligently relied on the advice of mental health professionals who, in turn, duly considered the adverse psychological impact of T.O.'s visits to Father.

¶9 Furthermore, the Department made diligent efforts to provide Father with appropriate services other than visitation attempts. After Father was released from prison in December 2008, CPS referred Father for urinalysis testing, a TERROS assessment, psychological evaluation, parenting classes, and substance abuse counseling. When necessary, CPS also provided Father with transportation to these services. In addition, CPS coordinated with Father's probation officer to refer Father to counseling and anger management classes. George Bluth, Ph.D, a

clinical psychologist who interviewed Father, testified no other services were necessary for Father because his main problem was drug addiction and, "as far as [he] know[s]," the Department took appropriate steps to provide visitation with T.O. Also, to prepare T.O. for visitation with Father, CPS offered T.O. counseling and referred him to equine therapy. Therefore, reasonable evidence supported the juvenile court's finding the Department had made diligent efforts to provide Father with reunification services and to prepare T.O. to be reunified with Father. We thus affirm the court's order terminating Father's parental rights to T.O.

II. Mother's Appeal

A. In Camera Interview

¶10 Mother argues the court abused its discretion by not conducting an in camera interview of C.O. because it relied on the Department's experts' opinion C.O. was "parentified" despite conflicting evidence and without independently evaluating the experts' reliability by taking "the 'best evidence' of [C.O.]'s beliefs and psychological state." We disagree; the juvenile court did not abuse its discretion by not interviewing C.O. in camera.

¶11 Here, although the court initially noted it was not its normal practice to interview juveniles "one on one" in a termination case, it reserved its ruling on the motion. After

the close of the Department's evidence and after considering the guardian ad litem's opposition, the court denied Mother's request. In so doing, the court recognized C.O. had "expressed a desire to live with his biological mother" and "the testimony received so far" confirmed this. Accordingly, even if C.O.'s testimony would have demonstrated Mother had a relationship with C.O., the court's ruling acknowledged the evidence confirmed the existence of such a relationship. Nevertheless, the court found, based on other evidence, Mother's chronic drug abuse would interfere with her ability to responsibly parent C.O. for a prolonged and indeterminate period. *See infra* ¶¶ 14-19. Under these circumstances, the court did not abuse its discretion in not conducting an in camera interview of C.O. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 83, ¶ 19, 107 P.3d 923, 929 (App. 2005) (juvenile court abuses its discretion when it is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons") (quoting *Quigley v. Tucson City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (1982)).

B. Grounds for Terminating Parental Rights

¶12 Mother also argues the juvenile court abused its discretion by terminating Mother's parental rights to C.O. without "substantial" evidence Mother would be unable to discharge her parental responsibilities in the future.

According to Mother, the "primary issue in this matter is whether [she] was capable of staying sober in a manner sufficient to parent [C.O.]."[6]

¶13 Termination under A.R.S. § 8-533(B)(3) for a history of chronic substance abuse requires evidence Mother was "unable to discharge [her] parental responsibilities" because of her substance abuse and "reasonable grounds to believe that the condition will continue for a prolonged indeterminate period."[7] As this court has explained, the key fact suggesting a parent's substance abuse will continue indeterminately is the parent's consistent failure to abstain from drugs, particularly when the parent is aware the Department will take the children away if the parent uses drugs. *Raymond F.*, 224 Ariz. at 379, ¶ 29, 231 P.3d at 383. Based on our review of the record, we cannot say as a "matter of law that no one could reasonably find the evidence [supporting the grounds for terminating Mother's

[6]Although Mother did not discuss separately each statutory ground on which the court terminated her parental rights to C.O., she argues on appeal a common element underlying each ground -- whether she will be incapable of parenting C.O. properly in the near future because of her drug abuse. Because Mother does not challenge the other elements of the statutory grounds, however, we limit our analysis to whether the Department presented clear and convincing evidence of Mother's chronic drug abuse.

[7]This ground also requires evidence the Department made reasonable efforts to reunify or that such efforts would be futile. *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005). Mother, however, does not challenge this element on appeal.

parental rights] to be clear and convincing." *Denise R.*, 221 Ariz. at 95, ¶10, 210 P.3d at 1266; *see supra* ¶5.

¶14 Mother reported ingesting drugs intermittently since she was a teenager. Mother abstained from drug use during this case for enough time that CPS ceased requiring her to participate in urinalysis testing in June 2009. Accordingly, in August 2009, a family reunification team placed C.O. with Mother under its supervision. In October 2009, however, the CPS case manager reported Mother began acting "irrational[ly]" on the phone so she directed her to take a drug test immediately. Mother submitted a urinalysis test and a hair follicle test "a few weeks" after her phone conversation with the case manager, and both tests were positive for methamphetamine. The technical supervisor of the drug testing facility testified the hair follicle results indicated Mother had taken "a couple doses" of methamphetamine two to ten weeks prior to collection and the urinalysis results indicated Mother had also used within the last two to four days -- both time periods in which C.O. was in Mother's care.

¶15 When the case manager went to Mother's residence to remove C.O. after the positive drug test results, Mother told the case manager she "had a slip" because it was the anniversary of the day one of her other children had been adopted. At the severance hearing, Dr. Bluth testified Mother exhibited a

"pattern of relapse into drug use." He also testified Mother's mental illnesses affected her ability to abstain from drugs because she believed rules did not apply to her, her amphetamine dependence was ingrained, and her dependence would prevent her from parenting C.O. safely because she lacked a firm commitment to recovery. Richard Rosengard, D.O., a psychiatrist, testified it was "significant" that Mother was under the scrutiny of the family reunification team and understood the consequences of relapse, but used methamphetamine anyway. He also testified Mother was "at risk" for prolonged drug abuse "[b]ased on the past history of chronic recurrent abuse, her underlying depression and underlying personality disorder."

¶16 The evidence supported the court's finding Mother's drug abuse affected her ability to parent responsibly. When the case manager came to remove C.O., Mother whispered something to C.O., who then jumped over the back wall and ran away while Mother walked away from the case manager. C.O. later reported to the case manager that during the time Mother absconded from CPS he did not attend school or therapy, slept on a pool table, and did not always have access to food. Furthermore, Drs. Rosengard and Bluth testified Mother's substance abuse would affect her ability to parent responsibly for a prolonged indeterminate period of time as she was unable to attend to C.O.'s needs when on drugs.

¶17 Although Mother argues she has taken "numerous steps to ensure that there are no further slip-ups,"[8] the record supported the court's finding Mother's substance abuse would continue for a prolonged indeterminate period. The evidence showed Mother relapsed in October 2009 and failed to take the required urinalysis tests until the end of December 2009. Although Mother reported she had attended weekly narcotics and alcoholics anonymous meetings after her relapse and had participated in substance abuse counseling, Mother did not present evidence substantiating her weekly attendance, and, furthermore, Dr. Bluth reported Mother "obviously did not use the tools from her treatment" before she relapsed. Dr. Bluth also reported Mother's "commitment to recovery seems questionable, which is related to her underlying personality disorder where she tends to blame other people or circumstances for her problems rather than assuming responsibility for them" and a "child in her care would be at risk for neglect related to her problem with relapse and . . . [her] unstable lifestyle."

[8]Mother asserted she was living in a housing program that required its residents to submit to random urinalysis tests and to work towards employment or education. According to her lease agreement, however, if Mother failed to take a urinalysis test or if a test yielded positive results, the housing program could evict her immediately. Further, even if Mother had complied with all requirements, the lease term expired after two years. Thus, this housing program did not resolve the concerns of the court and the Department for C.O.'s well-being.

¶18 We acknowledge, as Mother points out, her Southwest Behavioral Health therapist and family reunification team counselor testified they had observed her exercising "good parenting" and "appropriate parenting skills." But the juvenile court reasonably found this testimony "did not negate the [underlying personality disorder] diagnoses and opinions of Drs. Bluth, Rosengard, and Moe."

¶19 Accordingly, the evidence supported the juvenile court's findings Mother was unable to discharge her parental responsibilities due to her chronic drug abuse and reasonable grounds existed to believe the condition that prevented her from being able to parent C.O. -- that is, her drug abuse -- would continue for a prolonged and indeterminate period. We therefore do not need to address the other statutory grounds identified by the court in terminating parental rights. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 103, ¶ 26, 158 P.3d 225, 232 (App. 2007).

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to T.O. and Mother's parental rights to C.O.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Presiding Judge

/s/
PHILIP HALL, Judge