

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: 02/01/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

AMANDA R.,) No. 1 CA-JV 10-0191
)
Appellant.) DEPARTMENT A
v.)
) **MEMORANDUM DECISION**
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, LIBERTY R.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
Appellees.) ARCAP 28)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 508174

The Honorable Peter Thompson, Judge

AFFIRMED

Thomas A. Vierling
Attorney for Appellant Mother

Phoenix

Thomas Horne, Arizona Attorney General
By Eric Devany
Attorneys for Appellee

Mesa

H A L L, Judge

¶1 Amanda R. (Mother) appeals the juvenile court's order severing her parental rights to Liberty R. For the reasons that follow, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 Mother is the biological mother of Liberty, born on June 26, 2009. On September 23, 2009, Mother was arrested for possession of marijuana and felony child endangerment. At the time of Mother's arrest, Mother, biological father,² and Liberty were living in a motel. According to the arresting officers, the motel room was filthy, with dirty clothes, dog feces, and food wrappers strewn about.

¶13 Following Mother's arrest, Liberty was taken into custody by Child Protective Services (CPS) and transported to Scottsdale Osborn Hospital for examination. The attending pediatrician concluded that Liberty was malnourished and opined that she was neglected. Although Mother had tested positive for marijuana only at the time of Liberty's birth, the pediatrician also noted that Liberty presented as a child that had been exposed to methamphetamine.

¶14 On September 28, 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging that Liberty is a dependent child as to Mother due to Mother's substance abuse, neglect, housing instability, and mental

¹ We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

² Biological father's parental rights were also severed, but he has not challenged that severance in this appeal.

health. On November 5, 2009, the juvenile court found Liberty dependent as to Mother and CPS offered Mother numerous services, including parent-aide classes, substance abuse testing, assessment, and treatment, supervised visitation, and psychological evaluation.

¶15 On April 23, 2010, ADES petitioned to terminate the parent-child relationship between Mother and Liberty. The motion to terminate alleged that: (1) Liberty, a child under three years of age, has been in an out-of-home placement for a cumulative period of six months or longer pursuant to court order and Mother has substantially neglected or wilfully refused to remedy the circumstances causing the out-of-home placement; and (2) Mother is unable to discharge her parental responsibilities because of a history of chronic drug abuse and there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period.

¶16 On July 27, 2010, the juvenile court held a pretrial conference on the motion for termination. Despite numerous notices that the court could proceed with termination should she fail to appear for any scheduled hearings, Mother did not attend the conference. Mother's attorney stated that she had not had any contact with Mother since the previous hearing, approximately one month before, and that her attempt to reach Mother by mail was unsuccessful.

¶17 The juvenile court then proceeded with the termination hearing. The assigned case manager, Marilyn Sieczkowski, testified that Mother's current whereabouts are unknown. Sieczkowski also testified that Mother's behavior has been sporadic and unreliable. Mother has, at times, participated in some services, but overall she has been uncooperative and noncompliant. Sieczkowski testified that, as of the date of the hearing, Mother had not participated in drug testing for approximately four months. She participated minimally in drug counseling, but denied having ever used drugs, notwithstanding Liberty testing positive for marijuana exposure at birth and Mother's arrest for possession of marijuana. Mother failed to participate in parent-aide classes and missed numerous scheduled visits with Liberty. Sieczkowski opined that Mother is unable to discharge her parental responsibilities due to chronic drug abuse and that Mother has substantially neglected or wilfully refused to remedy the circumstances that have caused Liberty's out-of-home placement. Finally, Sieczkowski also opined that Liberty is an adoptable child and that severance is in her best interest.

¶18 At the close of the hearing, the juvenile court found that the State had proven both alleged statutory bases for termination and that termination was in Liberty's best interest. Mother timely appealed. We have jurisdiction under Arizona

Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(a).

DISCUSSION

¶19 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance and that a preponderance of the evidence shows severance is in the child's best interest. A.R.S. § 8-533(B) (Supp. 2010); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The juvenile court 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), and we will affirm the judgment unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted).

¶10 First, Mother contends that the juvenile court erred by terminating her parental rights under A.R.S. § 8-533(B)(8)(b) (Supp. 2010) because there was insufficient evidence to support a finding that she had substantially neglected or wilfully refused to remedy the circumstances that caused Liberty, a child under the age of three, to be in an out-of-home placement for six months or longer. Specifically, she asserts that she was not provided sufficient time and services to allow her to remedy the circumstances. We disagree.

¶11 Before parental rights may be severed pursuant to A.R.S. § 8-533(B)(8)(b), ADES must provide parents "with the time and opportunity to participate in programs designed to help [them] become [] effective parent[s]." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not required, however, "to provide every conceivable service," or one that would be "futile." See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053 (App. 1999).

¶12 Here, the record reflects that ADES provided Mother with numerous services, but her participation was minimal. Although Mother consented to a psychological evaluation and an initial substance abuse assessment, she was not forthcoming and denied having ever used illegal substances. Because Mother refused to acknowledge her drug use, the substance-abuse

counseling program declined to offer her any additional services. Sieczkowski attempted to obtain additional counseling services for Mother, but Mother failed to participate. Mother only submitted to four urinalysis tests during the entire dependency, and the eighteen missed tests are deemed positive. Mother's participation in parent-aide classes and scheduled visitation was sporadic and she repeatedly left the State without providing any contact information. Indeed, at the time of the termination hearing, Mother's whereabouts were unknown both to ADES and her attorney. Mother does not identify, and our review of the record does not reveal, any evidence to suggest that Mother may have been motivated or able to remedy the circumstances had ADES afforded her more time or provided her more services. Therefore, the juvenile court did not err by finding the State proved this statutory ground with clear and convincing evidence.³

¶13 Next, Mother argues that the juvenile court erred by terminating her parental rights because there was insufficient

³ Because we find the State proved a statutory basis for termination pursuant to A.R.S. § 8-533(B)(8)(b), we need not address Mother's alternative claim that there was insufficient evidence to support the juvenile court's additional finding that Mother's history of chronic substance abuse renders her unable to discharge her parental responsibilities pursuant to A.R.S. § 8-533(B)(3). See *Jesus M.*, 203 Ariz. at 280, 53 P.3d at 205 (citation omitted).

evidence to support a finding that severance was in Liberty's best interest. Again, we disagree.

¶14 The juvenile court must make a "finding as to how the child would benefit from a severance or be harmed by the continuation of the [parental] relationship" when considering the child's best interest. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (citations omitted) (emphasis in original). Evidence that a child is adoptable supports a finding that severance is in a child's best interest. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶15 In this case, Sieczkowski testified that Liberty, a very young child, is adoptable and that termination of the parent-child relationship is in her best interest. Thus, the record contains sufficient evidence to support the juvenile court's finding that severance is in the child's best interest.

CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court's order severing Mother's parental rights to Liberty.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
LAWRENCE F. WINTHROP, Judge