

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: 09/20/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LEAH M.,) No. 1 CA-JV 11-0006
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, V.M., A.M.) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD507632

The Honorable Linda A. Akers, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Priestley Law Firm Mesa
By Sara L. Priestley
Guardian *Ad Litem* for Appellees V.M. and A.M

Robert D. Rosanelli, Esq. Phoenix
By Robert D. Rosanelli
Attorney for Appellant Leah M.

J O H N S E N, Judge

¶1 Leah M. ("Mother") appeals the superior court's order terminating her parental rights as to her twin daughters, V.M. and A.M., born in 2003. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In 2005 Mother was arrested, convicted and sentenced to prison for fraud and the sale of drugs in California. She eventually granted temporary custody to the girls' great-grandparents, who lived in Payson. After the death of the children's great-grandmother in 2006, Mother signed a temporary guardianship in favor of the children's maternal aunt.

¶3 Mother was released from prison later in 2006, but the conditions of her parole prohibited her from leaving California. Consequently, she remained separated from her children, who continued to live in Arizona. At an annual review in November 2008, Mother moved to terminate the guardianship and have the children returned to her. This prompted the children's guardian *ad litem* and the Arizona Department of Economic Security ("ADES") to file a dependency petition, which the court granted.

¶4 Initially the case plan was to reunify Mother with the twins. ADES provided supervised visitation, hair-follicle testing, substance-abuse treatment, parenting education and a bonding assessment. In February 2009, Mother tested positive for methamphetamines; she later explained that her lack of structure and coping skills, combined with the guardian's desire

to adopt the twins, led to her relapse. Mother also reported she planned to move back to Arizona to aid reunification, but she did not do so. She explained, "At this point I don't feel it would be in my children's best interest if I did move [to Arizona] because of the trauma it would cause the girls."

¶15 After Mother abandoned her plans to relocate to Arizona, ADES initiated a home study of her residence in California through the Interstate Compact on the Placement of Children ("ICPC"). The ICPC report recommended denying placement of the twins with Mother in California. The report noted Mother had "not made regular visits with her children to form a bond or attachment with the twins," had failed to provide any documentation for her current living situation, had a history of substance abuse and child abuse, and had failed to document successful completion of a drug treatment program.

¶16 In March 2010, ADES moved to terminate Mother's parental rights pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (2011).¹ After a three-day trial, the superior court severed Mother's parental rights to the twins.²

¹ Although this statute was amended after the relevant date, the revisions are immaterial to this appeal.

² Although the court had ordered Mother to appear in person at the severance trial, she appeared by telephone for the first two days of trial, and the battery of her cellular phone died both days mid-way through the proceedings, disrupting the

¶17 Mother timely appeals. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and pursuant to A.R.S. § 8-235 (2011).

DISCUSSION

¶18 The superior court ordered Mother's parental rights terminated pursuant to A.R.S. § 8-533(B)(8)(c), which required it to find, by clear and convincing evidence, 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]

* * *

[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer[,] . . . the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

A.R.S. § 8-533(B)(8)(c); see *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The relevant circumstances pursuant to § 8-533 are those "at the time of the severance that prevent a parent from being able to

hearing. Mother did not appear by telephone or in person for the final day of the hearing.

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) (citation and internal quotation marks omitted). The court also must find that severance is in the child's best interests by a preponderance of the evidence. A.R.S. § 8-533(B); see *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The superior court is in the best position to weigh the evidence; we accept the court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a termination 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).

¶9 Reasonable evidence supports the superior court's decision. ADES provided regular telephonic and in-person visits, yet Mother frequently missed the telephone calls and when she did visit with the children, she inappropriately discussed the case plan with them. This supported the conclusion of Dr. Connie Pyburn, a licensed psychologist, that Mother "is a virtual stranger to the twins" and that the girls "would need significant therapeutic intervention to transfer to her care."

¶10 Despite Mother's assertion that "[h]er criminal history has not prevented her from parenting the children since the year 2006," she had not relocated to Arizona by the time of

trial. Nevertheless, Mother suggests ADES should have done more to facilitate greater contact between her and the children. For example, Mother faults ADES for not providing "transportation to and from California for visitations." ADES, however, "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶11 The evidence also demonstrates that Mother was unable to resolve her drug-abuse problem. In February 2009, she tested positive for methamphetamines, a drug to which she admits an addiction. She testified that she used "crystal meth" during the guardianship, admitting, "I didn't really have any coping skills or any structure . . . in my life at that time and I messed up once." Additionally, between July 2009 and August 2010, Mother missed seven required urinalysis tests even though she knew that a missed test would be considered positive for banned substances. And in August 2010, approximately one month before the termination hearing, Mother ceased drug testing altogether despite being required to continue with the program.

¶12 Because Mother lived in California, ADES referred her to the Tarzana Treatment Center in Long Beach. Rather than participate in the Tarzana program, however, Mother claimed she had secured her own substance-abuse service provider, Douglas

Duffy. She provided no documentation for this contention, however, and despite several attempts to contact Duffy, ADES was unable to verify that Mother successfully completed any drug-abuse program. Similarly, although Mother asserted she had participated in programs through the Phoenix House, Sober Living and Alcoholics Anonymous, she did not provide ADES any verification to support her assertions. Although ADES sent her numerous letters requesting such verification, Mother testified she did not know she was supposed to provide that information.

¶13 Mother also was unable to demonstrate stable housing or employment. She testified her uncle orally agreed to let her stay in his California house rent-free in exchange for paying utility bills and property taxes. When ADES requested the uncle's contact information to verify the oral agreement, however, Mother failed to provide it.³ Likewise, although Mother testified she was employed, she did not provide ADES with any document to verify her employment.

¶14 On appeal, Mother does not dispute that termination of her parental rights is in the best interests of the twins. Substantial evidence supported that finding by the court. The ICPC report and Pyburn both noted that the current placement

³ Approximately one month before the termination proceeding, Mother's uncle was arrested. He was incarcerated at the time of trial.

served the girls' best interests. Mother concedes that the twins have developed an affectionate bond with the guardian. See *Kent K.*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018 (termination must be proved to be in the best interests of the child by a preponderance of the evidence).

CONCLUSION

¶15 Because reasonable evidence supports the superior court's decision, *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205, we affirm the order terminating Mother's parental rights as to V.M. and A.M.⁴

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Judge

/s/

PHILIP HALL, Judge

⁴ We amend the caption in this appeal to refer to the children by their initials.