

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07/26/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

WENDY R.,) 1 CA-JV 11-0020
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv. Ct.;
SECURITY, REYNA R., DAMIEN S.,) Rule 28 ARCAP)
GABRIEL S.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD 17426

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Jennifer Perkowski
Attorney for Appellant

Mesa

Thomas C. Horne, Arizona Attorney General Phoenix
By Jamie R. Katelman, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

N O R R I S, Judge

¶1 Wendy R. ("Mother") timely appeals the termination of her parental rights. She argues Child Protective Services ("CPS"), a division of the Arizona Department of Economic

Security ("Department"), did not make diligent efforts to reunite her with her children because it failed to give her a clear goal for remedying her domestic-violence problems. Because the record supports the juvenile court's finding CPS made diligent efforts toward reunification by giving Mother clear goals and directives -- create a safe home for her children by attending domestic-violence counseling and ending her abusive relationship with G.S. -- but Mother refused to meet them, we affirm the court's termination order.

FACTS AND PROCEDURAL BACKGROUND

¶12 In October 2008, the Department filed a dependency action, and the juvenile court found the children dependent as to Mother. The court ordered the Department to follow a case plan with the goal of family reunification and that Mother be offered a number of services, including domestic-violence counseling to seek to improve the relationship between Mother and G.S., the father of one of Mother's children.

¶13 Mother characterized her relationship with G.S. as "[h]ostile at times." In June 2008, G.S. struck Mother, who was pregnant, causing a broken nose and facial fractures. Mother stated G.S. had hit her and threatened to kill her on other occasions. In November 2009, police arrested Mother after a domestic-violence incident with G.S. Because of the ongoing abusive nature of the relationship, CPS regularly encouraged

Mother to end the relationship with G.S. "so that [her] children could be placed with [her]."

¶14 In January 2010, the juvenile court, in response to Mother's arrest in November 2009 and the failure of Mother and G.S. to attend domestic-violence counseling, entered a no-contact order for them and terminated their joint visits with the children. In March 2010, Mother reported to police that G.S. had choked her. According to a police report, in April 2010, Mother told a police officer she had contact with G.S. in person, by phone, and through text message.¹

¶15 In May 2010, the Department filed a motion to terminate Mother's parental rights on the statutory ground the children had been in out-of-home placement for more than 15 months, Ariz. Rev. Stat. ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2010), and the juvenile court changed the case plan from family reunification to severance and adoption. In July 2010, during supervised visits with the children, Mother communicated with G.S. three times by phone.

¶16 Following a contested severance hearing, the juvenile court found the Department had proved the statutory ground for termination by clear and convincing evidence.

¹At trial, Mother denied making these statements, but the officer who wrote the report testified she did make them.

DISCUSSION

¶7 On appeal, Mother argues CPS did not make diligent efforts to reunite her with her children because it did not give her a "definite, measurable goal to meet in addressing the domestic violence issues."² We disagree; CPS provided Mother with clear goals and directives: to create a safe home for her children by attending domestic-violence counseling and ending any relationship with G.S. The evidence at trial demonstrated Mother refused to meet them.

¶8 To sever a parent's rights on the basis of time in out-of-home care, the Department must show by clear and convincing evidence, *inter alia*, that "the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8); *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010). The Department makes a "diligent effort" by "provid[ing] the mother 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).

²The juvenile court's findings will be set aside only if clearly erroneous, and its decision to terminate parental rights is reviewed for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶9 Here, the juvenile court did not abuse its discretion because the record contains clear and convincing evidence CPS met the statutory burden. CPS repeatedly sent letters to Mother urging her to attend domestic-violence counseling; gave her referrals to agencies that offer such counseling; encouraged Mother since "nearly the beginning of this case" to end the relationship with G.S.; and emphasized to Mother that the only remaining barrier to the return of her children was attending counseling and ending the relationship with G.S. Due to CPS's repeated notices, Mother had both the "time and opportunity" to create a safe home for her children by attending the counseling and ending the relationship with G.S., but she refused to do so. See *id.* (Department is not required to "provide every conceivable service or to ensure that a parent participates in each service it offers").

¶10 Instead of actively engaging in the domestic-violence counseling CPS recommended, Mother attended only four sessions³ of counseling in April, May, and June of 2010 -- each occurring more than 15 months after her children had been removed from her care. And instead of ending the relationship with G.S., Mother continued to have contact with him through at least July 2010,

³Mother testified she attended 12 sessions but could provide documentary evidence of only four. The juvenile court found "the evidence supported only four."

even though she knew it violated the juvenile court's no-contact order and would jeopardize reunification with her children.⁴

¶11 In its ruling, the juvenile court stated:

In sum, [M]other admitted that she consciously chose to continue contact with [G.S.], a violent, abusive, untreated substance abuser, despite a court order, a restraining order, directives from CPS and the knowledge that she might permanently lose her children if she continued the contact. This Court is confident that if [M]other were reunited with her children, she would subject them to all of the risks outlined by Dr. [Glenn] Moe⁵: the adverse emotional impact of witnessing domestic violence; physical injury; emulation of the behavior; and engagement in domestic violence in adulthood. And, since [M]other has not completed treatment, has not been honest about key issues and continues to minimize [G.S.]'s behavior, she will not be capable of exercising proper and effective parental care and control in the near future.

The evidence in the record amply supports this ruling, and we will not disturb it. Because clear and convincing evidence demonstrates CPS made diligent efforts at family reunification but Mother refused to take the necessary steps to create a safe home for her children by attending domestic-violence counseling

⁴Mother admitted she "elect[ed]" not to end the relationship with G.S. because she "wanted [her] family together."

⁵At the request of CPS, Moe conducted an "Assessment of Attachment and Best Interest" of Mother with her three children.

and ending her relationship with G.S., the juvenile court did not abuse its discretion in terminating her parental rights.

CONCLUSION

¶12 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights.

_____/s/_____
PATRICIA K. NORRIS, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PHILIP HALL, Judge