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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/13/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CRYSTAL C.,) No. 1 CA-JV 11-0047
)
Appellant,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, E.B.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD508247

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Vierling Law Offices Phoenix
By Thomas A. Vierling
Attorneys for Appellant

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

T I M M E R, Presiding Judge

¶1 Crystal C. ("Mother") appeals the juvenile court's
order severing her parental rights to E.B. pursuant to Arizona

Revised Statutes ("A.R.S") section 8-533(B)(3) (2007) on the grounds of mental illness and mental deficiency and that severance is in E.B.'s best interests. She argues the court erred in finding that: (1) Mother was unable to discharge parental responsibilities because of a mental illness or mental deficiency and her condition would continue for a prolonged indeterminate time, (2) Arizona Department of Economic Security ("ADES") made reasonable efforts to provide Mother with appropriate reunification services, and (3) terminating Mother's parental rights was in E.B.'s best interests. For the following reasons, we affirm.

BACKGROUND¹

¶12 Mother and Adam B. ("Father") are the biological parents of E.B., who was born August 30, 2009. Staff at the hospital where E.B. was born became quickly concerned about Mother's hostility as well as her inability to take direction. Consequently, the day after E.B.'s birth, staff filed a report with Child Protective Services ("CPS") expressing concerns about potential neglect. The report alleged, among other things, that Mother was "unable to parent due to a mental health condition and[/]or developmental disability."

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).

¶13 Subsequently, CPS conducted a Team Decision Making ("TDM") meeting on September 9, which included Mother and the maternal grandmother ("Grandmother"). After the meeting, CPS concluded Mother had an "inability to parent and care for [E.B.]." Specifically, the CPS team concluded Mother was stubborn, hard to direct, had problems dealing with people, and needed to get back on her medication for her mental illness. During the meeting, Mother agreed to accept reunification services, and Grandmother agreed to act as "in home safety monitor" to protect E.B.

¶14 Reunification services subsequently floundered, and CPS took E.B. into temporary legal custody on November 16. Thereafter, ADES filed an in-home dependency petition on November 17. The petition alleged, among other things, that Mother was unable to parent E.B. due to mental illness, and that Mother had been diagnosed with mental retardation, bipolar disorder, schizoaffective disorder, and anxiety. Mother did not dispute these allegations. The juvenile court found E.B. dependent as to Mother after a hearing held December 11. Physical custody of E.B. was given temporarily to Grandmother.

¶15 On April 20, CPS filed a report with the juvenile court recommending severance and adoption. In support of this recommendation, CPS case manager Claudia Hoff cited Mother's inability to consistently meet with her parent-aide or "separate

her needs from those of her daughter." CPS also reported that E.B. had been diagnosed with "failure to thrive" and had special needs.

¶16 The juvenile court held a report and review hearing as well as a permanency planning hearing on April 27. Subsequently, the court changed the case plan to severance and adoption and ordered ADES to file a motion for severance within ten days. On May 12, ADES moved to terminate the parental rights of Mother, Father, and John Doe.²

¶17 At a contested severance hearing held on January 12, 2011, the juvenile court found two statutory grounds existed for terminating Mother's parental rights to E.B. First, the court found that Mother was "unable to discharge her parental responsibilities because of mental illness and there [were] reasonable grounds to believe that the condition will continue for a prolonged indeterminate time." See A.R.S. § 8-533(B)(3). Second, the court found that Mother was "unable to discharge her parental responsibilities because of a mental deficiency and there [were] reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." See *id.*

² John Doe was subsequently dropped from the case in an amended motion filed by ADES after Father's paternity was confirmed. Although Father was originally party to this appeal, Father's counsel found no non-frivolous issue to raise. Accordingly, this court dismissed Father's appeal on June 16, 2011 pursuant to Rule 106(G)(1), Arizona Rules of Procedure for the Juvenile Court.

The court also determined that ADES had made reasonable efforts to provide Mother with rehabilitative services and that severance was in E.B.'s best interests. See A.R.S. § 8-533(B); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 33-34, 971 P.2d 1046, 1053 (App. 1999). The juvenile court therefore severed Mother's parental rights to E.B. This timely appeal followed.

DISCUSSION

¶8 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 interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm unless the 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). With these principles in mind, we consider Mother's arguments.

I. Mental illness

¶9 Because termination is warranted upon a finding of any one of the grounds listed in A.R.S. § 8-533(B), we need examine only whether ADES presented evidence to support one of the grounds relied on by the court. *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205. We commence our review with the juvenile court's mental illness findings.

¶10 Pursuant to A.R.S. § 8-533(B)(3), the juvenile court was authorized to terminate Mother's parental rights upon finding that: (1) she is unable to discharge her parental responsibilities due to mental illness, and (2) reasonable grounds exist to believe her condition will "continue for a prolonged indeterminate period." This court has defined the term "mental illness" under § 8-533(B)(3) as "a substantial mental condition which renders the person unable to discharge parental responsibilities." *Maricopa County Juv. Action No. JS-5209*, 143 Ariz. 178, 184, 692 P.2d 1027, 1033 (App. 1984). "The statute does not require that the parent be found unable to discharge any parental responsibilities but rather that the parent be unable to discharge 'the parental responsibilities.'" *Maricopa County Juv. Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985). This standard provides juvenile courts with "flexibility in considering the unique circumstances of each termination case." *Id.* at 409, 701 P.2d at 1217.

¶11 Mother maintains she does not have a mental illness that prevents her from discharging her parental responsibilities. Although the record indeed contains evidence supporting Mother's position, other evidence in the record supports the court's ruling, and we therefore defer to that ruling. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004) ("A 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 resolve disputed facts." (citation omitted)).

¶12 As early as 1990, Mother was diagnosed with mental illnesses, including severe attention deficit hyperactivity disorder, dysthymia, post-traumatic stress disorder, along with borderline intellectual functioning. James S. Thal, Ph.D., conducted psychological evaluations of Mother on February 23, 2010 and March 3, 2010. He diagnosed Mother as suffering from both bipolar and mood disorders not otherwise specified. In addition, Dr. Thal noted histrionic, schizoid, and borderline features in his diagnosis. Tests conducted by Dr. Thal indicate Mother possesses borderline intellectual functioning.³ Dr. Thal opined that Mother's mental illnesses would prevent her from

³ Intelligence tests conducted by Dr. Thal indicate that Mother has a composite I.Q. of 71 (3rd percentile for her age group).

adequately parenting E.B. in the foreseeable future. He

concluded that:

[Mother] is a significantly mentally ill, intellectually limited, and emotionally unstable young woman who appears to be incapable of caring for her child at this time, and, perhaps, in the foreseeable future. This client disclosed a history of mood related issues dating back to early childhood and appears to have had little success in stabilizing her life. Her selection of male partners is likely to be problematic and produce further chaos in her life. [Mother] does not have a good understanding of her own mental illness and displays a disturbing tendency to project blame and responsibility for both her condition and any treatment onto others. Her parenting abilities are minimal but she is likely to be a very difficult client to work with. Her perceptions and interpretations of social stimuli seem to be critically impaired.

This is a parent who will have difficulty relating to and meeting the needs of a young child. This will likely be most evident in nurturing, forming attachments, and providing an emotionally secure environment for a very young child. In the worse [sic] case scenario, [Mother] could act out abusively toward a young child in her care. She made multiple statements about her extreme anger and desire to retaliate against others throughout this evaluation.

He also opined that counseling and mental health services would not help Mother "to the extent that she will be able to independently parent a young child." Dr. Thal therefore recommended "[s]everance and adoption" as it was "likely to be

the most appropriate and realistic case plan for the client and her child."

¶13 Although Mother contends that ADES presented only "conclusions and opinions and did not provide evidence of specific parenting deficiencies," the record, to the contrary, provides an exhaustive list of such deficiencies. Mother has rekindled a relationship and is living with Father, a man who she herself has described as a "deeply disturbed and violent individual" against whom she had a restraining order at the time of E.B.'s birth because he had kicked Mother in the stomach while she was pregnant. When asked what would constitute an elevated temperature for an infant, Mother responded "105," which is clearly a dangerously high fever rather than simply "elevated." Moreover, when asked how much sleep a child required, Mother responded "three to six hours," which further demonstrated her lack of parenting knowledge. Reports from CPS, Magellan Health Services, and other mental health providers support these findings and constitute a three-year catalogue of episodes of mental instability, mood volatility, and irresponsibility.

¶14 Mother's mental illness is also evidenced by reports from Grandmother and the CPS case manager. On December 8, 2010, the CPS case manager received several "urgent and panicked" telephone calls from Mother and Grandmother. The case manager

described Mother as "distraught and emotionally unstable." Grandmother reported that Mother was "verbally hostile and physically intimidating." She further related her fear for her safety and that of E.B. and Mother. Grandmother also stated that Mother's parenting had shown signs of regression, that Mother was frustrated with the minor details of parenting, and that she showed a lack of patience. Grandmother reported that Mother's "primary method of parenting E.B. [was] putting her to sleep." According to Grandmother, Mother would never be capable of parenting E.B.

¶15 As Mother points out, evidence in the record also supports her position that her illnesses do not prevent her from parenting E.B. For example, Mother submitted a single-paragraph letter from Sandra Figueroa, M.D., dated October 19, 2010, stating that although Mother was diagnosed with a "Mood Disorder Not Otherwise Specified," her mood was "currently stable," and she had been "very cooperative" with treatment. Mother argues that Dr. Figueroa's more recent October evaluation refutes Dr. Thal's earlier March evaluation recommending termination. Mother fails to cite any authority, however, stating that a last-in-time psychological evaluation prevails, and we are not aware of any. In comparison to Dr. Thal's report consisting of twelve pages of detailed diagnoses, recommendations, and conclusions supported by tests and particular examples from

personal observation, Dr. Figueroa's letter lacks the same depth and specificity. It was within the juvenile court's discretion to accept Dr. Thal's opinions. *Oscar O.*, 209 Ariz. at 334, ¶ 4, 100 P.3d at 945.

¶16 Mother argues that a TDM report from April 19, 2010 also refutes Dr. Thal's diagnosis because the report concluded that Mother had developed a "bond" with the child and has "basic parenting skills." That same report, however, states that Mother was not consistently attending her parent-aide appointments, that her parent-aide was concerned with Mother's ability to "stay calm while parenting," and noted that during the meeting Mother became so upset she had to be calmed down by Grandmother.

¶17 In sum, although Mother is able to highlight isolated excerpts of evidence that reflect well on her parenting ability, the overwhelming thrust of the evidence suggests Mother's mental illnesses severely impede her ability to parent. Consequently, sufficient evidence supports the juvenile court's finding that severance was appropriate under A.R.S. § 8-533(B)(3) due to Mother's mental illnesses. In light of this holding, we need not discuss whether termination is also appropriate under § 8-533(B)(3) due to mental deficiency.

II. Reasonable reunification efforts

¶18 Mother next argues that severance was inappropriate because ADES failed to make reasonable efforts to provide reunification services. Prior to severance based on mental illness, ADES must "demonstrate that it has made a reasonable effort to preserve the family." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 33, 971 P.2d at 1053. "Although CPS 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." *Id.* at ¶ 37 (citation omitted). CPS is required to undertake efforts "with a reasonable prospect of success," but not efforts that would be "futile." *Id.* at ¶ 34 (citation omitted).

¶19 The record demonstrates that ADES made ample attempts to provide Mother with appropriate reunification services. CPS case manager Hoff testified that Mother had been offered services by ADES including parenting classes, hands-on parent-aide classes, supervised visitation, psychological evaluation, anger management, individual counseling, and transportation. And even before filing a dependency petition, ADES had offered counseling and mental health services through Magellan and family preservation services through Arizona Healthy Families.

¶20 Mother argues that ADES did not provide her with enough time to utilize such services, but records in the

possession of Magellan indicate Mother was receiving counseling as early as October 2008 - approximately ten months prior to E.B.'s birth. In addition, Dr. Thal observed Mother's "lack of a personal commitment to treatment and an apparent inability to assume responsibility for her own mental health care." Despite these available services, Mother habitually missed parent-aide visits, counseling, anger management classes, and other services. Furthermore, services provided by Family Preservation had to be discontinued "due to repeated verbal conflicts between [Grandmother] and [Mother]."

¶21 Mother also asserts ADES improperly abdicated its duty to provide reunification services to Mother. In support of this contention, Mother highlights grievances she filed with Magellan and CPS describing her difficulty and frustration with obtaining proper services. The grievances filed December 14, 2009 and February 10, 2010, respectively, allege misdiagnosis, discrimination by CPS, and that Mother was not receiving the services required for reunification. Magellan's response states the bulk of the required services, or at least referrals for them, were in place by January 2010 - a full one year prior to the termination hearing. CPS's response to Mother's grievance indicates that not only were many of the services sought already in place, but that Mother had misinterpreted the actions and

statements of CPS case managers as discriminatory or threatening when they were not.

¶122 The juvenile court could reasonably conclude on the basis of the evidence before it that Magellan diligently provided required services and that Mother's grievances merely evidenced Dr. Thal's opinion that Mother "displays a disturbing tendency to project blame and responsibility for both her condition and any treatment onto others." See *supra* ¶ 12. The record shows Mother was provided an opportunity to engage in all mandated reunification services, but she did not fully participate or satisfactorily complete them.

¶123 Based on the foregoing, we conclude the juvenile court did not err in finding that ADES made reasonable efforts to provide Mother with necessary reunification services.

III. Best interests

¶124 Mother finally argues the juvenile court erred by finding it was in E.B.'s best interests to terminate the parent-child relationship because severance prevents Mother from having a bonded relationship with E.B. In considering E.B.'s best interests, the court was required to determine how E.B. would benefit from the severance or be harmed by the continuation of her relationship with Mother. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The court found that E.B. was adoptable, that she was residing with

Grandmother, who was committed to adopting her, that ADES was investigating adoption through the paternal great-grandparents as well, and that termination would further the plan of adoption in order to provide the child with a safe, stable, and permanent home that can meet her daily needs.

¶25 Sufficient evidence supports the court's ruling. CPS case manager Hoff testified that severance and adoption was in E.B.'s best interests because she needs a stable permanent home and because neither biological parent is capable of meeting E.B.'s specialized needs. She also testified E.B. was adoptable, that the paternal great-grandparents were committed to adopting E.B., and that she had received verbal approval of that home through an interstate compact for placement and children's studies. Dr. Thal opined that under the care of Mother, E.B. would "be most at risk for physical and emotional abuse as well as possible exposure to domestic violence." Finally, as previously described, Mother has repeatedly demonstrated unstable and impulsive tendencies, she has failed to demonstrate a commitment to good parenting by participating in the recommended ADES services, she continues to reside with a violent person, and she has unresolved mental health issues. Thus, although Mother loves E.B. and expresses a desire to take care of her, we cannot say the juvenile court abused its

discretion by finding that termination of Mother's rights was in E.B.'s best interests.

CONCLUSION

¶26 For the foregoing reasons, we affirm the judgment terminating Mother's parental rights to E.B.⁴

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Patrick Irvine, Judge

/s/
Daniel A. Barker, Judge

⁴ We amend the caption in this appeal to refer to the child by her initials.