

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: 09/27/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DANIELLE N.,
Appellant,
v.
ARIZONA DEPARTMENT OF ECONOMIC
SECURITY, RICCARDO N., ALARA N.,
Appellees.

) No. 1 CA-JV 11-0074
)
) DEPARTMENT E
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD13582

The Honorable Christopher A. Coury, Judge

AFFIRMED

Robert D. Rosanelli
Attorney for Appellant

Phoenix

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

Phoenix

H A L L, Judge

¶1 Danielle N. (Mother) appeals the juvenile court's order terminating her parental rights to R.N. and A.N. (the children).¹

FACTUAL² AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of R.N. and A.N., born December 7, 2005, and August 23, 2008, respectively. On January 15, 2010, Child Protective Services (CPS) received a report that Mother and the children "were living in a car in the parking lot of an apartment complex. They had reportedly been living there for several days. . . . [A.N.] was reported to have a sore throat and difficulty breathing. Mother did not have medication for her. Mother was reported to have been diagnosed as bipolar, with anxiety and depression, and her medication is not believed to be effective for her needs." Mother had five prior unsubstantiated CPS reports alleging neglect, physical abuse, emotional abuse, and drug abuse. On January 15, CPS took temporary custody of the children and Mother was arrested that

¹ R.N.'s father, Henry A., and A.N.'s father, David W., have also had their parental rights terminated. However, they are not parties to this appeal. Mother is also the biological mother of two other children, who are residing with their maternal grandparents. Mother's rights have not been severed to either child.

² 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).

same day for criminal damage. CPS placed the children in a licensed foster home the following day. CPS held a team-decision making meeting on January 20 to discuss Mother's situation and Mother was unable to attend because she was still incarcerated.

¶3 In its dependency petition, the Arizona Department of Economic Security (ADES) alleged that Mother "has neglected the children by failing to provide for the basic necessities of life including the failure to provide supervision, food, clothing, shelter or medical care and that inability and/or unwillingness causes substantial risk of harm to the children's health or welfare." It further alleged that Mother had been "neglecting her children due to her mental health" and failed to participate in mental health services, despite being diagnosed with bipolar disorder.

¶4 The juvenile court found the children dependent, made them wards of the juvenile court and committed them to the care, custody and control of ADES. The juvenile court ordered a family-reunification plan and ADES provided Mother with the following services to assist with the plan: parenting classes, parent-aide services, counseling, substance-abuse assessment and treatment, substance-abuse testing, psychiatric evaluation, visitation, and transportation.

¶15 The Foster Care Review Board (FCRB) issued findings and recommendations in June 2010. It found that Mother had not been compliant or participated in services, did not have stable housing, and the children's out-of-home placement was necessary.

¶16 In September 2010, CPS case manager Vicki Bonassin notified Mother that her parent-aide referral had been "closed out as unsuccessful." She also informed Mother that the one urine analysis test (UA) Mother had submitted on March 8, 2010, was positive for marijuana. Although Mother was instructed to call every day to find out if she was required to submit a UA, she only called a total of thirty-five times from March 2010 to March 2011. ADES considers failure to provide a UA on the selected date as a positive result. Mother also failed to provide forty-two required UAs from March 2010 to March 2011 and only submitted a total of three UAs in that time.

¶17 CPS submitted a report to the juvenile court in October 2010, stating that Mother's current whereabouts were unknown; she did not have stable housing; and they believed she was still abusing substances and not attending to her mental-health issues. CPS concluded that "[r]eunification services should not continue because [Mother] is not doing reunification services nor has she stayed in touch with [her] case manager." CPS elaborated that Mother "never sought the counseling requested of her . . . Therefore, [Mother] was not successful in

substance[-]abuse treatment, nor for her mental[-]health issues which specifically included domestic violence." Parent-aide services were also terminated due to Mother's "non-compliance."

¶8 Thereafter, the juvenile court changed the case plan to severance and adoption and ordered ADES to file a motion for termination of the parent-child relationship. ADES filed a motion for termination arguing that the children had been in an out-of-home placement for nine months or longer, ADES made diligent efforts to provide Mother with appropriate reunification services, and Mother substantially neglected or willfully refused to remedy the circumstances that caused the children to be in care.³ Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(8)(a) (Supp. 2010). ADES subsequently filed an amended motion for termination, which added that the children had been in an out-of-home placement for fifteen months or longer. A.R.S. § 8-533(B)(8)(c).

¶9 The juvenile court conducted a contested severance hearing in April 2011. Mother was incarcerated at the time because she had violated her probation stemming from a possession of drug paraphernalia conviction, but she was temporarily released to attend the hearing. Mother admitted

³ ADES also initially alleged that Mother was unable to discharge her parental responsibilities due to mental illness, but subsequently informed the juvenile court it would not proceed on that ground.

that despite being told she had to make a daily phone call to determine if she needed to submit a UA, she failed to do so. Mother also admitted that she refused to take an oral swab drug test or a hair follicle drug test. Mother testified that she was bipolar and had an anxiety disorder and depression, all of which require medication and psychiatric treatment. Mother admitted that if she fails to take her medication she "go[es] downhill." Mother attempted to commit suicide three times, the most recent of which was December 2010 or January 2011. She also failed to attend some of her psychiatric appointments while her children were out of her care.

¶10 Mother testified that she was not employed because after working for approximately four weeks at Arizona Care Providers in December 2010, she had to go on leave due to an injury. Prior to that job, she had "odd jobs on the internet" such as selling "things on Craig's List." Mother failed to provide any financial support to the children since they were removed from her care. She stated that she lived in her own apartment and her uncle and fiancé helped her pay her bills and rent. Mother stated that her fiancé was an appropriate person to care for her children. Mother testified that her two older children, not parties to this case, had not lived with her for at least two years.

¶11 CPS case manager Bonassin testified that Mother was not compliant with substance abuse testing, parent-aide services, or counseling, and Mother failed to remain in regular contact with Bonassin or notify Bonassin of her whereabouts. Based on the results of a background check, Bonassin was concerned about Mother's fiancé caring for the children. She further stated that after A.N. visited with Mother, she began having night terrors and, as a result, the visitations were suspended. A.N.'s night terrors stopped after the visits with Mother ended.

¶12 Bonassin testified that the children were adoptable, their current placement was willing to adopt them, and the placement was able to meet all their needs. Bonassin concluded that although she witnessed a loving and bonded relationship between Mother and the children, it was in the children's best interest to have Mother's parental rights terminated.

¶13 The juvenile court found that ADES proved by clear and convincing evidence that Mother's parental rights should be terminated due to the children's out-of-home placement for nine months in care, A.R.S. § 8-533(B)(8)(a), and fifteen months in care, A.R.S. § 8-533(B)(8)(c). The court additionally found

that ADES proved by a preponderance of the evidence that termination was in the best interest of the children.⁴

¶14 Mother timely appeals and argues that the record contains insufficient evidence to support the juvenile court's finding that Mother's parental rights should be terminated under A.R.S. §§ 8-533(B)(8)(a) and (c).

¶15 We have jurisdiction under A.R.S. §§ 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶16 In order to terminate parental rights, the juvenile court must find, by clear and convincing evidence, a minimum of one of the factors listed in A.R.S. § 8-533(B) and that termination is in the best interest of the children. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). 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

⁴ Mother does not challenge the juvenile court's best interest finding and we will therefore not address it on appeal.

judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶17 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.

¶18 Pursuant to A.R.S. § 8-533(B)(8)(c), the juvenile court was authorized to terminate Mother's rights to the children upon finding that ADES made a diligent effort to provide appropriate reunification services, the children had been in an out-of-home placement for a cumulative total period of fifteen months or longer, Mother had been unable to remedy the circumstances that caused the children to be in an out-of-home placement, and there was a substantial likelihood that

Mother would not be capable of exercising proper and effective parental control in the near future.

¶19 The children were in an out-of-home placement from January 16, 2010 to April 18, 2011, the date of the severance hearing. ADES offered Mother parenting classes, parent-aide services, visitation, mental-health services, substance-abuse assessment and treatment, substance-abuse testing, psychiatric evaluation, and transportation.

¶20 The record is replete with evidence of Mother's inability to care for her children. Mother was largely non-compliant in participating in parent-aide services, mental-health services, and substance-abuse testing and treatment. Mother refused to partake in required drug testing. Mother also tested positive for marijuana in one of three UAs she completed over a one year period. Mother has mental-health issues for which she has not sought and/or accepted adequate care. She attempted suicide three times, most recently while her children were in an out-of-home placement. Mother failed to independently obtain stable housing. Mother is unemployed and was only employed for approximately four weeks over the duration of the case. Mother cannot adequately financially support the children or properly and effectively care for the children. She has been incarcerated twice since the children were removed from her care. Finally, Mother is engaged to a man CPS determined

was unacceptable to be in the presence of the children. Thus, sufficient evidence supports the juvenile court's finding that severance was appropriate under A.R.S. § 8-533(B)(8)(c). We defer to the juvenile court's ruling and its weighing of the evidence. *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."). In light of this holding, we need not discuss whether termination was also appropriate under A.R.S. § 8-533(B)(8)(a).

CONCLUSION

¶21 For the foregoing reasons, we affirm the judgment terminating Mother's parental rights to the children.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSEN, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge