

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: 11/01/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KRISTY Z., ) No. 1 CA-JV 11-0038  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R.P. Juv.  
SECURITY, SAMUEL Z., ) Ct.; Rule 28 ARCAP)  
)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Navajo County

Cause No. JD 2008-0100

The Honorable Michala M. Ruechel, Judge

**AFFIRMED**

Roser Law Office, PLLC  
By Samuel J. Roser  
Attorney for Appellant

Snowflake

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

Mesa

**T H O M P S O N**, Judge

¶1 Kristy Z. (Mother) appeals from the juvenile court's order terminating her parental rights to Samuel Z.<sup>1</sup> For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

¶2 Samuel was born in 2000. Child Protective Services (CPS) first became involved with the family in April 2001 after receiving a report alleging physical abuse. The case manager noted "bizarre behaviors" by Mother, and neighbors reported loud screaming and seeing Samuel bruised and dirty with dried feces on his legs. CPS received several reports of neglect over the next seven years. Those incidents included erratic behavior by Mother, instances of rage and verbal abuse directed at Samuel for no apparent reason, a threat to leave Samuel at a church, and reports of homelessness. Mother spoke of demons and of people being possessed, and blamed Samuel's poor behavior on devils, demons, and witches.

¶3 In September 2008, police responded to a possible child abuse report after witnesses saw Mother grab Samuel by the

---

<sup>1</sup> Russell S. (Father) is not a party to this appeal.

<sup>2</sup> We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, and we defer to the fact-finder's resolution of any conflicts in the evidence. See *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007); *Lashonda M.*, 210 Ariz. at 82, ¶ 16, 107 P.3d at 928.

neck and throw him into his chair. Mother was agitated and apprehensive, and she could not make any rational response to the allegations because of her mental instability. She and Samuel were homeless and dirty. Mother was taken to Pineview Behavioral Health Center, and Samuel was taken into care on October 1. The Arizona Department of Economic Security (ADES) filed a dependency petition on behalf of Samuel, and the juvenile court found Samuel dependent. The initial case plan was family reunification.

¶4 The case manager reported that Mother needed to be stabilized on her medication, consistently taking her medication, and obtain suitable and safe housing in order for reunification to take place. In the July 2009 progress report, the case manager reported that Community Counseling Center (CCC) was ensuring Mother was taking her medication by having her pick them up daily and ingest them in the presence of CCC staff. Her case manager opined that if Mother could take her medication independently this would indicate she was mentally stable and ready to care for herself. Although she was managing her own bills, rent, and utility payments, Mother's case manager was concerned that she had declined the services of a public fiduciary which would have ensured that her living arrangements remained stable.

¶15 In a psychological evaluation with Dr. James Thal, Mother stated that she had not been gainfully employed for eight years. Mother minimized her mental health treatment and denied any symptoms of mania, mood instability, depression, or anxiety, stating that she did not have a need for any behavioral health treatment. She expressed that she did not want to take her medications and did not believe that her prescriptions were beneficial. Dr. Thal concluded that Mother was "mentally unstable, forgetful, distracted, and disorganized," and that "the risk of [Mother] being noncompliant with her medication heightens the risk factors in this case considerably" rendering her incapable of "providing minimally adequate care for [Samuel]." He further opined that there were no additional services that could "realistically be provided to address [Mother's] chronic mental health issues and prepare [Mother] to parent her child within a short period of time." In a separate psychiatric evaluation, Dr. Foran observed that Mother "demonstrates poor insight into her illness and (uses) poor judgment"; she "has a history of extremely poor medication compliance with questionable capacity to" administer medications. Dr. Joel Parker performed a psychiatric evaluation and noted that Mother had been "unstable for over one year and continu[ed] to be in denial about her condition." He opined that Mother "would not be a minimally adequate parent" and he

had "substantial concerns about [Mother's] ability to parent her son."

¶16 In November, Mother's case manager reported that Mother had declined parenting classes and personal counseling. Samuel expressed to the case manager that he did not want to go home with Mother because he was afraid she might beat him and he "won't be able to live like a normal family." Samuel would vomit before, during, and after the home visits. Mother quit services through CCC in January 2010.

¶17 In June, an emergency meeting was held after home visits were discontinued because of Mother's aggressive behavior toward Samuel. CCC decreased her visits to two hours every two weeks until Mother "demonstrated a willingness and ability to comply with all aspects of her prescribed medication regimen." At the next meeting, Mother broke into a verbal rage saying the "CPS case manager (and team) were the 'devil's spawn.'" At the end of July, Mother was compliant with the service plan, but said it was only to please the Adult and Family Team and that she had "no need for medications," and that her "visits with Samuel [don't] need to be supervised." Mother only picked up her medications sporadically.

¶18 ADES filed a motion to terminate the parent-child relationship on May 4, 2010. The motion asserted that Mother neglected the child or failed to protect the child from neglect,

that she was unable to discharge her parental responsibilities because of mental illness, and that Mother was unable to remedy the circumstances that caused the child to be in out-of-home placement for a cumulative total period of fifteen months or longer. See Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(2), (3), (8)(c) (Supp. 2010). ADES also argued that termination would be in Samuel's best interests. See A.R.S. § 8-533(B).

¶9 During the termination hearing, the case manager opined that Mother had not been able to remedy the circumstances that caused Samuel to be in an out-of-home placement and that she could not safely care for Samuel. Dr. Thal testified that Mother's mental illnesses significantly impacted her ability to parent Samuel, and that her condition would likely continue for a prolonged indeterminate period. Dr. Parker testified that Mother suffered from a mental illness of such gravity that there was nothing ADES could do to ensure Samuel's safety. Dr. Parker stated that based on the length of time that Mother had been mentally ill it was unlikely that she would be able to be stabilized in the foreseeable future. A program director at CCC testified that it was unlikely that Mother would be capable of exercising proper and effective care and control in the near future.

¶10 The juvenile court terminated Mother's parental rights by reason of out-of-home placement for fifteen months or longer

under A.R.S. § 8-533(B)(8)(c). Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007) and 12-120.21 (2003).

#### DISCUSSION

¶11 To justify the termination of parental rights, the juvenile court must find, by clear and convincing evidence, at least one of the statutory grounds set forth in A.R.S. § 8-533. A.R.S. § 8-537(B) (2007); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Under any of the § 8-533 grounds, the court must also consider the best interests of the children. A.R.S. § 8-533(B); *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685.

¶12 The 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 make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We therefore accept the juvenile court's findings of fact "unless no reasonable evidence supports those findings[.]" *Id.* We will affirm a severance order unless it is clearly erroneous. *Id.*; *Audra T. v. Ariz. Dep't Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶13 Section 8-533(B)(8)(c) provides that the juvenile court may terminate parental rights if: (1) "[t]he child has

been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order," (2) ADES "has made a diligent effort to provide appropriate reunification services," (3) "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement," and (4) "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." Mother does not dispute that Samuel had been in out-of-home placement for longer than fifteen months at the time of severance; nor does she allege that ADES did not make a diligent effort to provide appropriate reunification services. Mother does argue that the juvenile court abused its discretion in finding that she failed to remedy the circumstances that caused Samuel to be in an out-of-home placement and that she likely would be incapable of exercising effective parental care in the near future.

#### **1. Failure to Remedy Circumstances**

¶14 Mother alleges the court erred in finding that she was unable to remedy the circumstances that caused Samuel to be in out-of-home placement because she maintained a permanent living arrangement, was independently consistent with self-administration of her daily medications, and never showed open aggression toward Samuel. We consider the circumstances existing at the time of the severance proceedings to determine



whether a parent has failed to remedy the circumstances which caused the child to be in an out-of-home placement. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶15 At the time of severance, Mother had stable housing for the past year and had developed a support system within her church. However, Mother never acknowledged her mental health issues or the need to take her medications. She expressed to the court that she would only take her medication as long as the court ordered her to. Even then, the record suggests that Mother only sporadically complied with her medication requirements. Mother consistently minimized or ignored her mental illness issues and the effects it was having on her son. Samuel experienced a significant amount of stress during visits and it was reported that he would frequently vomit or urinate on himself. He was fearful of returning to live with Mother because he was afraid she might beat him. At one point, home visits were discontinued because of Mother's aggressive behavior toward Samuel. Throughout, Mother's behavior was unpredictable and punctuated by bouts of rage.

¶16 Based on this substantial evidence, the court did not err in finding Mother had been unable to remedy the circumstances that caused Samuel to be in out-of-home placement.

## **2. Effective Parental care in the Future**

¶17 Mother argues that the court overlooked evidence that if she adheres to a "proper medication regime she could quite probably minimally adequately parent."

¶18 The evidence in the record does not suggest that Mother ever adhered to a proper medication regime except when CCC required her to pick up her medication daily and ingest it in front of a staff member. The overwhelming evidence at trial suggested that Mother did not demonstrate a willingness or ability to comply with her medication regime. Dr. Thal testified that Mother's condition would likely continue for a prolonged indeterminate period, and Dr. Parker opined that there was nothing ADES could do to ensure Samuel's safety. The record fully supports the juvenile court's findings.

CONCLUSION<sup>3</sup>

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

/s/  
JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/  
MAURICE PORTLEY, Judge

/s/  
JOHN C. GEMMILL, Judge

---

<sup>3</sup> Mother has not challenged the determination that severance was in the child's best interest.