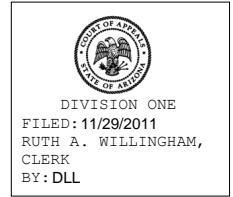


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



MARIA F.,) No. 1 CA-JV 11-0106
)
) DEPARTMENT C
Appellant,)
) **MEMORANDUM DECISION**
v.)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
ARIZONA DEPARTMENT OF ECONOMIC) ARCAP 28)
SECURITY, JOCELYNE H., BRIAN H.,)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD17845

The Honorable Christopher A. Coury, Judge

AFFIRMED

Christina Phillis, Maricopa County Public Advocate Mesa
By Suzanne Sanchez, Deputy Public Advocate
Attorney for Appellant

Thomas C. Horne, Attorney General Tucson
By Claudia Acosta Collings, Assistant Attorney General
Attorneys for Arizona Department of Economic Security

H A L L, Judge

¶1 Maria F. (Mother) appeals the juvenile court's order terminating her parental rights to Jocelyne H. and Brian H. (the children).¹

FACTUAL² AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent to Jocelyne and Brian, born February 8, 2000, and October 8, 2001, respectively. In February 2009, Mother took Jocelyne to St. Joseph's hospital for an alleged seizure. Mother insisted that Jocelyne wear a diaper because she had incontinence and was constipated. Jocelyne initially refused to walk or talk. All preliminary and invasive tests were negative for seizure conditions and colon obstructions. Mother failed to provide any documentation to support Jocelyne's alleged medical conditions. Hospital staff were concerned that Jocelyne was being coerced by Mother not to walk or talk and it was ultimately determined that she was capable of both. School personnel informed the hospital staff that Jocelyne had jumped in front of a moving vehicle two weeks prior to her hospital admission and a year before that had turned on the gas in her home, "both in attempts to commit

¹ The children's father, Felipe Armando Hernandez, also had his parental rights terminated. He is not a party to this appeal.

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).

suicide." Mother explained that Jocelyne was depressed because she was teased at school for her incontinence, but school officials reported that Jocelyne had never urinated or soiled herself at school and had no history of being targeted by students. Additionally, while Jocelyne was at the hospital, Mother would "disappear" and leave Brian at the hospital unattended on several occasions, despite hospital staff explicitly explaining that was not permitted.

¶13 Mother also revealed that Brian had never been enrolled in school because of "moderate mental retardation," incontinence, and a seizure disorder. However, Mother failed to provide records to substantiate these conditions. Mother also confined Brian to a wheelchair, but hospital staff noticed that when Mother left Brian unattended at the hospital he "was seen running about the floor and playing with the X-box like a normal child his age both physically and mentally." Mother revealed that she was receiving \$674.00 a month in SSI benefits for Brian's condition. However, further investigation demonstrated that Brian "show[ed] no signs of retardation, only a slight delay suspected to be related to lack of exposure."

¶14 After several days at St. Joseph's hospital, Jocelyne was transferred to a behavioral health center in Tucson for suicidal ideation. Mother did not attempt to visit or contact Jocelyne for the first three days because she was concerned

Jocelyne would "begrudge her." When Mother arrived, she was "quickly outraged" that Jocelyne had paint on her gown, although hospital staff explained Jocelyne had been doing art therapy. Mother threatened to call the police and withdrew Jocelyne against medical advice, despite staff explaining that Jocelyne needed to remain at the facility for her own safety. When Mother brought Jocelyne to a pediatric appointment post discharge, Child Protective Services (CPS) removed the children from Mother's care and placed them together in a foster home.

¶15 In its dependency petition, the Arizona Department of Economic Security (ADES) alleged that Mother could not parent due to medical neglect because she withdrew Jocelyne from the hospital against medical advice; neglect due to purposely keeping Brian home from school claiming he was mentally retarded, despite initial evaluations revealing otherwise; physical abuse because Mother repeatedly requested Jocelyne be subjected to invasive medical procedures without evidence demonstrating a need; and failure to protect the children.

¶16 The juvenile court found the children dependent, made them wards of the juvenile court and committed 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: parent aide services, supervised visitation, counseling and therapy. A

psychiatric consultation and evaluation, family preservation, and a bonding assessment.

¶17 The Foster Care Review Board (FCRB) issued findings and recommendations in August 2009, December 2009, and June 2010 and concluded that the children's out-of-home placement was necessary and that the placement was safe, appropriate and least restrictive. In June 2010, the FCRB recommended implementing a concurrent case plan goal of adoption and noted that although Mother had been compliant with services, it was "unsure if [Mother] has demonstrated the necessary behavioral changes to determine if she can appropriately parent and meet the children's needs." The FCRB additionally noted that Jocelyne "exhibit[ed] self-harming behaviors before visits with [Mother] and [did] not want to participate in the visits."

¶18 Kathryn A. Menendez, Ph.D., conducted a bonding and attachment assessment of Mother, Jocelyne, and Brian in May 2010. Dr. Menendez concluded that "there is a lack of bond and a mal-attachment that exists between" Mother and the children. She stated that Mother "does not demonstrate insight regarding her inappropriate parenting and possible exploitation of her children." She noted that the children were not in wheelchairs or diapers and "appear[ed] to be functioning more closely to their developmental age and expectations." Dr. Menendez concluded that Mother "failed to demonstrate any well developed

parenting skills" and "failed to show sensitivity to each of the children's needs."

¶9 In July 2010, Christina Lebovitz, Ph.D., conducted separate psychological evaluations of the children. She concluded that "[l]ong-term placement is in [their] best interest, based on indications of chronic parental fabrication of medical problems and instability."

¶10 Marta DeSoto, Ph.D., conducted a psychological evaluation of Mother in August 2010. Dr. DeSoto diagnosed Mother with personality disorder (a combination of borderline, antisocial, and obsessive compulsive traits), anxiety disorder not otherwise specified, and neglect of children. Dr. DeSoto had "serious concerns regarding [Mother's] ability to parent her children successfully. [Mother's] emotional and psychological functioning does appear to be significantly interfering with her ability to parent." Dr. DeSoto opined that Mother's personality disorder was "most concerning" and "guide[d] her inability and/or unwillingness to assume responsibility and reveal[ed] a deficient introspective ability." Dr. DeSoto elaborated that Mother was "unreliable and not trustworthy as an adult and/or parent" and that the "prognosis that [Mother would] be able to demonstrate minimally adequate parenting skills in the foreseeable future [was] poor." Dr. DeSoto further stated that children under the care of Mother would be "at risk of further

neglect and/or abuse," Mother had "no insight whatsoever into the situation and [was] unable to admit any appreciable responsibility regarding her past actions," and "continue[d] to put her unresolved issues in front of the care of her children." Although Dr. DeSoto acknowledged that Mother had been participating in services, she found that Mother had "failed to demonstrate the understanding that would lead to true emotional growth" and Mother "suffer[ed] from a great deal of anxiety that would interfere with her parenting." Finally, Dr. DeSoto opined that Mother's condition "may continue for a prolonged, indeterminate period of time." Dr. DeSoto recommended individual and group therapy if the juvenile court terminated Mother's parental rights.

¶11 CPS case manager Tameka Myers submitted several reports to the juvenile court throughout the case. She reported that although Mother loved the children, "her decision-making regarding serious things that directly affect[ed] [the children's] wellbeing could not appear more aberrant." Myers further noted that even though Mother readily engaged in services, she "failed to demonstrate any well developed parenting skills, especially on how to nurture and support the emotional needs of the children." Myers also stated that Mother failed to maintain stable housing. Myers recommended changing the case plan to severance and adoption.

¶12 In December 2010, ADES moved for termination of the parent-child relationship, alleging that Mother was unable to discharge her parental responsibilities because of mental illness and the children were in an out-of-home placement for fifteen months or longer.

¶13 The juvenile court held a contested severance hearing in May 2011. Dr. DeSoto testified at the hearing that Mother lacked insight into her counseling, had blunted mood or affect, and attempted to justify her actions or blame her actions on others. Dr. DeSoto reiterated her findings of anxiety disorder and personality disorder and noted that Mother was egocentric and immature, all of which interfered with her ability to parent and she felt those conditions would continue for an indeterminate and prolonged period of time. Dr. DeSoto acknowledged recommending group therapy for Mother, but specified that she recommended the group therapy if Mother's rights to the children were terminated.

¶14 Dr. Lebovitz testified that it was in the children's best interest to terminate Mother's parental rights.

¶15 CPS case manager Myers testified that the children had been in an out-of-home placement for twenty-six months and Mother failed to remedy the circumstances which caused the children to be put in an out-of-home placement. Myers stated that ADES made diligent efforts to provide reunification

services to Mother. Myers said that although Mother participated in all the services offered to her, she was not currently able to parent the children. Myers also said that Mother failed to maintain stable employment and stable housing throughout the case. Myers additionally testified that the children were adoptable, an adoptive home had been identified and was the least-restrictive placement for the children's needs, and the children were bonded to the placement. Myers concluded that it was in the best interests of the children for Mother's rights to be terminated and the children would benefit from a termination.

¶16 The juvenile court found that ADES proved by clear and convincing evidence that Mother's parental rights should be terminated to the children because Mother was unable to discharge her parental responsibilities due to mental illness, Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (Supp. 2010), and the children had been in an out-of-home placement for a cumulative total of fifteen months or longer, A.R.S. § 8-533(B)(8)(c). The court noted that ADES made a diligent effort to provide appropriate reunification services. The court additionally found that ADES proved by a preponderance of the evidence that termination was in the best interest of the children.

¶17 Mother timely appeals. 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

¶18 Mother asserts that the juvenile court abused its discretion by terminating her parental rights because ADES failed to offer Mother an essential service that ADES's expert recommended.³ See *Jordan C. v. Dep't of Econ. Sec.*, 223 Ariz. 86, 96, ¶ 29, 219 P.3d 296, 306 (App. 2009) (citing *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999)). 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). "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.*

³ Mother does not challenge the juvenile court's findings of mental illness, out-of-home placement, and best interest, and we will therefore not address these findings on appeal.

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)).

¶19 Although ADES must make a "diligent effort" to provide services before terminating a parent's rights due to an out-of-home placement, A.R.S. § 8-533(B)(8), and a "reasonable effort" before terminating a parent's rights due to mental illness, ADES is not required to provide the parent with "every conceivable service." *Mary Ellen C.*, 193 Ariz. at 192, ¶¶ 33, 37, 971 P.2d at 1053. Mother contends Dr. DeSoto testified that group therapy was "a critically necessary service" that prevented her from receiving necessary treatment and resulted in an erroneous termination order. See *Jordan C.*, 223 Ariz. at 96, ¶ 29, 219 P.3d at 306.

¶20 We disagree. On appeal, Mother's counsel has misconstrued Dr. DeSoto's recommendations. Dr. DeSoto clearly concluded in both her report and at the termination hearing that group therapy was only necessary if the court terminated Mother's parental rights.⁴ It was not a service she recommended in an effort to reunify the family.

¶21 The record demonstrates that Mother was provided with ample and appropriate reunification services. Mother was

⁴ Dr. DeSoto also testified that if the court did not terminate Mother's parental rights to the children, then Mother would benefit from participating in individual and family therapy.

offered and participated in parent aide services, supervised visitation, counseling and therapy, and a psychiatric consultation and evaluation, family preservation, and a bonding assessment. CPS case manager Myers testified that ADES provided Mother with diligent and appropriate reunification services and the juvenile court also made the same finding. We hold that ADES made reasonable and diligent efforts to provide Mother with the appropriate reunification services and group therapy was not "a critically necessary service."

CONCLUSION

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

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Presiding Judge

_____/s/_____
ANN A. SCOTT TIMMER, Judge