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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: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PATRICIA B.,) No. 1 CA-JV 11-0111
)
Appellant.) DEPARTMENT C
v.)
) **MEMORANDUM DECISION**
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, DYLAN W.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
Appellees.) ARCAP 28)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 18347

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Anne M. Williams
Attorney for Appellant

Tempe

Thomas C. Horne, Arizona Attorney General
By Amanda L. Holguin, Assistant Attorney General
Attorneys for Appellee

Mesa

H A L L, Judge

¶1 Patricia B. (Mother) appeals the juvenile court's order severing her parental rights to Dylan W. For the reasons that follow, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 Mother is the biological parent of Dylan, born on August 8, 2005. On August 13, 2009, Child Protective Services (CPS) received a report alleging Mother was neglecting Dylan. Staff at Mother's apartment complex reported that four-year-old Dylan was found "wandering around the apartment complex" wearing his pajamas and no shoes. The staff members attempted to contact Mother at her apartment, but received no response. The report also alleged that Dylan had been observed "wandering the apartment complex" alone three times during the previous two-week period.

¶13 CPS requested that Mother install locks on her doors to prevent Dylan from leaving the apartment without supervision. Mother did not comply with CPS's request. On August 21, 2009, Dylan was taken into CPS custody and placed with his paternal aunt and uncle.

¶14 On August 26, 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging that Mother is unable to parent Dylan due to neglect and mental health issues. On October 13, 2009, Mother failed to appear at the contested dependency hearing. Following the State's

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).

presentation of evidence, the juvenile court found Dylan dependent to Mother.

¶15 On January 7, 2011, ADES filed a motion to terminate Mother's parental rights. ADES alleged that (1) Dylan has been cared for in an out-of-home placement for a cumulative total period of nine months or longer, pursuant to court order, and Mother substantially neglected or willfully refused to remedy the circumstances causing the out-of-home placement, and (2) Dylan has been cared for in an out-of-home placement for a cumulative total period of fifteen months or longer, pursuant to court order, and Mother has been unable to remedy the circumstances causing the out-of-home placement and there is a substantial likelihood that she will be incapable of exercising proper parental care in the near future.

¶16 At the June 1, 2011 contested severance hearing, Mother testified on her own behalf. She acknowledged that Dylan repeatedly left their apartment by himself, but explained that he never entered the pool area "so he hadn't gotten that far to be that unsafe." Mother also admitted that she "didn't make the effort" to put locks or latches on the apartment door to prevent Dylan from leaving by himself.

¶17 Mother acknowledged that she has been diagnosed with bipolar disorder and has been receiving mental health services through Magellan for approximately fifteen years. She further

acknowledged that she is unemployed and explained that she has "little time" to find a job, but claimed she would probably be more "motivated" to find employment if Dylan were returned to her care.

¶18 When asked about her case manager, Mother testified that he explained to her that CPS's services were put in place to reunify her with her son. Mother stated that she did not participate in TERROS substance-abuse services, however, because she "didn't think it was for me" and "didn't think [she] needed it." Although TERROS attempted to contact her on repeated occasions through telephone calls and letters, Mother "decided that wasn't the type of counseling that was right for [her]." Likewise, Mother testified that she did not submit to urinalysis testing because she did not "feel that's necessary" and she "didn't agree with it." Mother also explained that she has not visited Dylan since December 2010 because traveling to the visits made her carsick.

¶19 When asked specifically why she did not participate in services, Mother testified that she did not "feel [she] need[ed] to participate in services" and explained that she has "a lot of other things that [she is] trying to do." She further testified that participation in services was "inconvenient." Mother affirmed that CPS has given her "enough assistance" with services, but explained she did not "need to do this with CPS

. . . I don't feel that's what I need." She claimed that she "gave up on doing the services" but "didn't give up on [her] son."

¶10 Mother's case manager, Patrick Thompson, testified that Mother had been offered substance abuse services, random urinalysis testing, bus passes, parent aid services, and supervised visitation. He stated that, during their initial meeting, Mother acknowledged a history of drug use, but she nonetheless refused to participate in substance abuse services. Thompson also testified that Mother missed more than thirty urinalysis tests. When asked why Mother did not have more visitation with Dylan, Thompson explained that Mother frequently was inaccessible, and she failed to provide updated contact information after she moved. Thompson further testified that, based on his observation of Mother's few visits with Dylan, they are not bonded and Mother does not understand how to interact with her son. Finally, Thompson stated Dylan's prospective adoptive placement with his paternal aunt and uncle is meeting all of his medical, social, and physical needs and Dylan is thriving in that safe and stable environment.

¶11 After taking the matter under advisement, the juvenile court terminated Mother's rights to Dylan, finding: (1) ADES made diligent efforts to provide reunification services, (2) Dylan has been in an out-of-home placement for a cumulative

period of nine months or longer pursuant to court order, (3) Dylan has been in an out-of-home placement for a cumulative period of fifteen months or longer pursuant to court order, (4) Mother was unable to remedy the circumstances causing the out-of-home placement and there is a substantial likelihood that Mother will be incapable of exercising proper care of Dylan in the near future, and (5) termination of Mother's parental rights is in Dylan's best interest. Mother timely appealed. We have jurisdiction under Arizona Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(a).

DISCUSSION

¶12 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 interest. A.R.S. § 8-533(B) (Supp. 2009); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). 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 judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted).

¶13 On appeal, Mother first asserts that the juvenile court erred by finding that ADES provided reasonable services and made diligent efforts to reunify the family. See A.R.S. § 8-533(B)(8)(c) (Supp. 2010) (allowing parental rights to be terminated when ADES makes a "diligent effort to provide appropriate reunifications services," the child has been in an out-of-home placement for fifteen months or longer, and "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement").

¶14 Before parental rights may be severed pursuant to A.R.S. § 8-533(B)(8)(c), ADES must provide parents "with the time and opportunity to participate in programs designed to help [them] become [] effective parent[s]." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not required, however, to "provide every conceivable service," or one that would be "futile." See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053 (App. 1999). Moreover, ADES is not required to duplicate a service that the parent has received from another source. See *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989).

¶15 Here, the record reflects that ADES offered Mother numerous services to help her become a more effective parent, including substance abuse treatment, transportation assistance, a parent aide, and supervised visitation. By Mother's own admission, she chose not to participate in the services because she did not feel they were "necessary" and found them "inconvenient." On appeal, Mother argues that ADES failed to provide adequate services by not providing her with a psychological evaluation. As Mother notes, ADES included a psychological evaluation among its intended services. Mother's case manager testified he was unable to schedule an evaluation, however, because Mother was not accessible by telephone, she had moved without providing updated contact information, and she failed to check-in as requested. Mother also argues that ADES failed to provide adequate services by simply encouraging her to continue with her Magellan counseling for her mental health issues rather than independently providing her mental health services, or at least assessing whether the Magellan services were adequate. Given Mother's own testimony that she elected not to participate in CPS's services, as well as her trial admissions that her participation with Magellan services was sporadic, we conclude that offering any additional services would have been duplicative and futile. Therefore, the juvenile

court did not err by finding that ADES provided reasonable services and made diligent efforts to reunify the family.

¶16 Finally, Mother contends that the juvenile court erred by admonishing her to be "completely compliant" with services at the February 12, 2010 report and review hearing. Mother argues that the juvenile court misstated the law and "prejudged the evidence as to what it would take for Mother to satisfy the Court."

¶17 As reflected in the juvenile court's February 12, 2010 minute entry, the court admonished Mother "to be completely compliant with services by the time of the next hearing" and reminded her "of the consequences for failure to do accordingly." The juvenile court's explanation of the "consequences" is not part of the appellate record. Regardless, as noted by the State, the record reflects that the juvenile court applied the correct standard at the termination hearing. The juvenile court did not sever Mother's parental rights because she failed to completely comply with all services. Rather, the juvenile court found that Mother refused to participate in almost all services because "she did not believe she needed any of [them]." The juvenile court further noted that Mother's refusal to provide contact information thwarted ADES's attempts to provide remedial services. Therefore, even assuming the juvenile court's February 12, 2010 admonishment to

Mother misstated the law, the court ultimately applied the correct standard and Mother has failed to demonstrate any resulting prejudice. See *State v. Martinez*, 218 Ariz. 421, 430-31, ¶ 40, 189 P.3d 348, 357-58 (2008) (upholding a defendant's convictions and sentences, notwithstanding the trial court's misstatement of the law in the jury instruction, because there was no resulting prejudice).

CONCLUSION

¶18 For the foregoing reasons, we affirm the juvenile court's order severing Mother's parental rights to Dylan.

_ / s / _____
PHILIP HALL, Judge

CONCURRING:

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

_ / s / _____
PATRICIA K. NORRIS, Judge