DIVISION ONE
FILED: 12/27/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KRISTIN C.,	)	No. 1 CA-JV 11-0163
	)	
Appellant,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, J.C.,	)	Rule 103(G), Ariz. R.P. Juv. Ct., Rule 28, ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD16902

The Honorable Roger L. Hartsell, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Robert D. Rosanelli, Attorney at Law Phoenix
By Robert D. Rosanelli
Attorney for Appellant

B R O W N, Judge

¶1 Kristin C. ("Mother") appeals from the juvenile court's order terminating her parental rights to her daughter, J.C. ("the child").[1] For the following reasons, we affirm.

BACKGROUND

¶2 Mother and Maximiliano C. ("Father")[2] are the biological parents of the child, born in February 2009. They are also the biological parents of X.C., born in December 2007. Mother has two other children, E.T., born in May 2002, and I.T., born in October 2006; their father is Francisco T. In May 2008, Child Protective Services ("CPS") received a report that Father had physically abused E.T. As a result, CPS implemented a safety plan that prohibited Father from contacting E.T. or living with her, restricted Father's contact with X.C. and I.T. to supervised visits, and provided that Father was not to live in Mother's home. However, Mother permitted Father to stay in the home because she believed E.T. had lied about the abuse and Father was "a good guy." A month later, CPS received a report that X.C. was in the hospital with severe brain damage from suspected non-accidental injuries. Mother's parental rights to

[1] We amend the caption in this appeal to refer to the child solely by her initials.

[2] Father did not contest the motion for termination of the parent-child relationship and is not a party to this appeal.

X.C. were eventually severed, and E.T. and I.T. were placed with Francisco.

¶3 In April 2009, CPS received a report that Mother could not adequately protect the child based on continuing concerns about X.C.'s injuries, E.T.'s abuse allegations, and Mother's violation of the safety plan. As a result, CPS removed the child from Mother on April 20, 2009, and the Arizona Department of Economic Security ("ADES") filed a dependency petition on April 23, 2009. In July 2009, Mother waived her right to challenge the allegation of the petition, the juvenile court found the child dependent as to Mother, and approved a case plan of family reunification. The court further noted that services were "already in place."

¶4 Mother began receiving parent aide services in June 2009. She completed the services six months later with a certificate. However, CPS referred her for additional parent aide services, and in June 2010, Mother began receiving parent aide services from Arizona Baptist Children's Services for four hours a week. In September 2010, the court ordered CPS to increase Mother's visits to six hours a week. Ms. Massey, Mother's parent aide, had to conduct the visits at public places because Mother's home had no furniture or heat. Massey testified that she often needed to intervene during visits because Mother would not ensure the child's safety.

¶5 Mother participated in a psychological evaluation in February 2010 with Dr. Huggins, who diagnosed Mother with a personality disorder not otherwise specified with antisocial and borderline traits. Huggins concluded that "[Mother] is not able to adequately parent, and children in her care are at risk of neglect and physical abuse." Huggins opined that Mother had a "guarded to poor" prognosis.

¶6 Mother began attending counseling through Family Service Agency in April 2010, but attended only half of her counseling appointments from April to December 2010. Family Service Agency offered her a psychiatric evaluation to address her anxiety concerns, but she did not attend the evaluation.

¶7 Dr. Burruel-Homa conducted a bonding assessment of Mother and the child in October 2010. Burruel-Homa opined that Mother had a strong bond with the child, but expressed concern that Mother did not take responsibility for E.T.'s abuse allegations, had not participated in counseling, and needed to learn to cope with her anxiety and depression. Burruel-Homa concluded there was a high probability that the child would be at risk if returned to Mother.

¶8 On December 13, 2010, the court changed the case plan to severance and adoption and ordered ADES to file a motion for termination of parental rights. ADES filed the motion on December 20, 2010, alleging that Mother was unable to discharge

her parental responsibilities due to mental illness under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (Supp. 2011), the child had been in an out-of-home placement for fifteen months or longer pursuant to A.R.S. § 8-533(B)(8)(c), and severance was in the child's best interest.

¶9 A week later, Mother submitted to a psychiatric evaluation. She was prescribed several medications, but did not consistently take them.

¶10 Based on Mother's failure to consistently attend counseling sessions, CPS referred Mother to Ameripsych for in-home counseling in January 2011. Mother rescheduled the intake three times and attended only three counseling sessions prior to the severance hearing.

¶11 Despite their history of domestic violence, Mother permitted Francisco to move into her new apartment with their children in March 2011. They had an argument, and Francisco "body slammed" her onto the ground, shattered her ankle, and choked her. Mother was taken to the hospital.

¶12 The court held a contested severance hearing on May 9, 18, July 13, and August 1, 2011. The court then granted ADES' motion for termination, finding the State had proven by clear and convincing evidence the alleged grounds for severance and that severance would be in the child's best interests. Mother timely appealed.

DISCUSSION

¶13 To justify termination of Mother's parental rights, the juvenile court was required to find the existence of at least one statutory ground by clear and convincing evidence. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court was also required to find by a preponderance of the evidence that termination is in the best interests of the child.[3] *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶14 We view the evidence in a severance case in the light most favorable to sustaining the juvenile court's findings. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010). Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, we accept the juvenile court's findings of fact unless no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶15 Mother asserts the juvenile court erred by finding ADES had made a diligent effort to provide her with appropriate

[3] Mother does not challenge the juvenile court's finding that termination was in the child's best interests. We therefore accept the juvenile court's finding. *See Michael J.*, 196 Ariz. at 249, ¶ 13, 995 P.2d at 685.

reunification services. Specifically, she argues that ADES failed to provide her with the particular type of therapy that her psychologist recommended.

¶16 Before terminating parental rights, ADES must provide the parent "with the time and opportunity to participate in programs designed to help her to become an effective parent." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But while 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" to provide rehabilitative services 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. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 33, 37, 971 P.2d 1046, 1053 (App. 1999).

¶17 During the severance hearing, Huggins testified that Dialectical Behavioral Therapy ("DBT") "would [have been] the ideal form of therapy, because it's specifically designed to address individuals with borderline personality disorder and it also helps with substance abuse issues." However, Huggins did not make this recommendation in her report to ADES, nor does the record reflect that she recommended DBT at any point prior to her testimony at the severance hearing. Huggins also testified

that the counseling CPS provided to Mother would have been beneficial for her had she attended consistently.

¶18 By the time the severance hearing began, CPS had provided Mother over two years to participate in reunification services. Mother was offered parent aide services, a psychological evaluation, counseling and two psychiatric evaluations through Family Service Agency, supervised visits with a CPS case aide, a bonding assessment, and in-home counseling through Ameripsych. The record does not reflect that any additional services were recommended prior to the severance hearing or that Mother requested any additional services. We therefore conclude that the juvenile court did not abuse its discretion in finding that ADES made reasonable efforts to provide rehabilitative services to Mother.

¶19 Mother next argues the juvenile court erred in finding that severance was justified on the basis of the child being in an out-of-home placement for fifteen months or longer. Under A.R.S. § 8-533(B)(8)(c), the juvenile court may properly sever a parent's rights if (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood exists that the parent would not be able to properly care for the child in the near future.

¶20 The child had been in an out-of-home placement for twenty-seven months at the time of severance. Despite receiving services from ADES for more than two years, the juvenile court concluded that Mother had failed to consistently utilize the services offered or to remedy the factors preventing her from providing a stable and safe environment for the child.

¶21 The evidence presented at the severance hearing supported the juvenile court's conclusion that Mother had failed to remedy the circumstances causing the out-of-home placement. Consistent with her prior report, Huggins testified that Mother could not discharge her parental responsibilities due to her personality disorder. She stated that if the disorder remained untreated, Mother's disorder would continue to render her "at risk for aggressive tendencies and demonstrating inadequate coping skills." Huggins further noted that Mother's condition was a lifetime diagnosis and that people usually need to participate in therapy consistently for one to three years before they can control a personality disorder. She concluded that Mother's prognosis was poor and that it was impossible to say when Mother would be able to control her condition.

¶22 In addition, Mother failed to remedy her anxiety issues. Mother participated in a psychiatric evaluation after ADES filed the severance motion, but she failed to consistently take the medication she was prescribed or attend counseling. As

a result, Mother's CPS case manager, Ms. Van Wey, opined that Mother's anxiety continued to impair her ability to parent the child.

¶23 Mother also continued to exhibit poor judgment. CPS removed the child in April 2009 in part due her decision to allow Father to remain in the home after he abused E.T. Yet, nearly two years later Mother continued to show poor judgment in allowing Francisco to move into her home in spite of his history of domestic violence.

¶24 And despite making some improvements, all but one of the professionals assessing Mother opined that she still lacked sufficient parenting skills. Mother had received parent aide services for two years before the severance hearings started. Massey, who had been Mother's aide during that time, testified that Mother did not adequately supervise the child, ensure her safety, or provide her with developmentally appropriate activities. Huggins testified that "there's nothing to suggest that [Mother] has the emotional maturity or the adequate coping skills to deal with a variety of stressful situations that can be presented in . . . a single-parenting situation."

¶25 Mother counters that her "mental and emotional issues" do not prevent her from adequately parenting the child during visitations. Mother argues that "the only professionals who have actually observed [Mother's] current parenting abilities,

Ms. Sierra and Ms. Congeni, both testified that [Mother] has demonstrated that she is a capable parent." Sierra, who was assigned as Mother's new parent aide after the severance hearings started, testified that Mother had begun to implement the techniques she taught her. Sierra testified she favored unsupervised visits and that she had nothing negative to say about Mother's parenting. However, the juvenile court expressly found that Sierra's testimony held "little weight and little credibility." *See Jesus M.*, 203 Ariz. at 282, ¶ 12, 53 P.3d at 207 ("The resolution of such conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review."). And while Congeni testified that Mother had improved her parenting skills after the severance trial started, she opined that Mother was not ready for unsupervised visits because she was inconsistent as a parent.

¶26 Mother also continued to lack stable income and housing at the time of severance. Throughout much of the dependency, she lived in an apartment without furniture or heat. Mother had eight different residences between December 2010 and August 2011. By the end of the severance trial, she was living in a domestic violence shelter and could only remain there for four months. She also lacked a source of income.

¶27 As a result of these factors, Van Wey testified that Mother had not reached a point where CPS believed that unsupervised visits would be safe and that the case would need to continue for significantly longer to reach that point. And even if Mother could reach a point where unsupervised visits would be appropriate, Van Wey opined that Mother would likely still have to provide safe unsupervised visits for at least nine months before CPS could return the child to Mother.

¶28 In sum, although Mother made some improvement in her parenting interactions with the child after the severance trial started, the record contains substantial evidence to support the juvenile court's conclusion that Mother would not be capable of exercising effective parental care in the near future due to her deficiencies in maturity and judgment and lack of stable income and appropriate housing. *See Maricopa County Juv. Action No. JS-501568*, 177 Ariz 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994) (explaining that more than trivial or minimal efforts at remediation are required to avoid severance pursuant to former version of A.R.S. § 8-533(B)(8)(a)). Therefore, the juvenile court did not err in severing Mother's parental rights under A.R.S. § 8-533(B)(8)(c).

¶29 Based on our conclusion, we need not address whether Mother's rights were appropriately terminated under A.R.S. § 8-533(B)(3) due to mental illness. *See e.g.*, *Raymond F. v. Ariz.*

Dep't of Econ. Sec., 224 Ariz. 373, 376, ¶ 14, 231 P.3d 377, 380 (App. 2010) (noting appellate court will affirm a severance order if any one of the statutory grounds has been proven).

CONCLUSION

¶30 Based on the forgoing, we affirm the juvenile court's order terminating Mother's parental rights.

/s/
_____
MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/
_____
PATRICIA K. NORRIS, Judge

/s/
_____
PHILIP HALL, Judge