DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TIFFANY C.,	)	No. 1 CA-JV 11-0179
	)	
Appellant,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, A.C., A.C., T.C., K.S.,	)	Rule 103(G) Ariz. R. P. Juv. Ct., Rule 28 ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD9596

The Honorable A. Craig Blakey II, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
By Jamie R. Katelman, Assistant Attorney General
Attorneys for Appellees

Law Office of David W. Bell — Mesa
By David W. Bell
Attorney for Appellant

B R O W N, Judge

¶1 Tiffany C. ("Mother") appeals from the juvenile court's order terminating her parental rights to four of her children.[1] For the following reasons, we affirm.

BACKGROUND[2]

¶2 Mother is the biological parent of D.R., born March 1993; T.C.1, born September 1995; D.C., born December 1999; A.C.1, born November 2001; A.C.2, born January 2003; T.C.2, born February 2008; and K.S., born May 2010. All seven children have different fathers.[3] Mother has an extensive history with Child Protective Services ("CPS") dating back more than a decade, and the Arizona Department of Economic Security ("ADES") has filed five separate petitions alleging that Mother was unable to care for her children.[4]

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

[2] We view the evidence 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).

[3] The juvenile court terminated the respective fathers' parental rights on June 30, 2011, and they are not parties to this appeal.

[4] In 2000, Mother's parental rights were terminated as to D.R. and T.C.1, due to abandonment and Mother's substance abuse issues. D.C. was born substance-exposed to cocaine, and she was placed into CPS custody upon her discharge from the hospital. Mother's parental rights were terminated as to D.C. in 2001. ADES filed a dependency petition regarding A.C.1 and A.C.2 in 2003, after A.C.2 was born substance-exposed to cocaine. Mother

¶3 Although Mother's rights were terminated to D.R., he returned to live with Mother in 2007. On October 20, 2008, A.C.2 told Mother that D.R. had molested her and A.C.1. Mother became enraged and beat D.R. with a stick and then a baseball bat. D.R. went to a neighbor's house, and the neighbor called 9-1-1.

¶4 During the resulting police investigation, Mother admitted to Detective VanGordon that she was aware D.R. had previously molested A.C.2 but did not report the abuse because she had disciplined D.R. Mother also acknowledged that in June or July 2008, she saw a photograph of A.C.2's genitals on D.R.'s cell phone. Despite her knowledge of previous incidents of molestation, Mother continued to leave her daughters home alone with D.R.

¶5 ADES filed a dependency petition as to A.C.1, A.C.2, and T.C.2 on October 28, 2008, alleging in part that Mother was unable to parent due to her neglect in protecting the girls from being sexually molested by D.R. Mother initially contested the dependency allegations, but after she failed to appear at a hearing, the juvenile court found A.C.1, A.C.2, and T.C.2 dependent on January 12, 2009. The court approved a case plan of family reunification.

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resolved the issues of that dependency, and her daughters were returned to her care in 2004.

¶6 ADES provided Mother with reunification services, but Mother's lack of cooperation and minimal compliance were evident. CPS offered Mother psycho-educational classes for caregivers of children who have suffered trauma. Mother attended inconsistently, was disruptive to the group, and focused on her own childhood trauma rather than on her children's. Mother's initial urinalysis tests were negative, but she failed to disclose her substance abuse history during her first assessment, and TERROS did not recommend any services. Mother attended some of the recommended anger management group counseling sessions, but she failed to complete the program. Mother attended most of her supervised visits with the children, but she did not participate in any one-on-one parenting skills sessions with her first two parent aides. During her psychological consultation with Dr. Moe, Mother stated that she did not believe she did anything wrong in hitting D.R. or in failing to protect her daughters from him.

¶7 Mother slapped A.C.2's cheek during a supervised visit in March 2009. Mother explained she did so because A.C.2 "had a bunch of food in her mouth and she like purposely opened her mouth and . . . was like not listening at that time." When the parent aide attempted to end the visit, Mother threatened to kidnap the children. After this incident, the parent-aide

agency and the children's therapists recommended that CPS discontinue Mother's visits.

¶8 After visits with Mother stopped, A.C.1 and A.C.2 told their respective therapists, Jennifer Chaillie and Tammy Ohm, about additional physical abuse by Mother and sexual abuse by D.R. that occurred prior to their removal in October 2008.

¶9 Mother resumed using cocaine three days before she gave birth to K.S. in May 2010. He was born substance-exposed to cocaine, and ADES immediately filed a dependency petition. The court found K.S. dependent on August 26, 2010.

¶10 After K.S. was born cocaine exposed, ADES required Mother to participate in another substance-abuse assessment and additional urinalysis testing. Mother missed seven of eight required urinalysis tests, and the one sample she submitted tested positive for cocaine. Mother attended a substance abuse assessment in August 2010, but tested positive for cocaine during that assessment. In late-August 2010, Mother started an intensive outpatient substance abuse program. Mother completed the program but did not comply with the recommended aftercare services. In addition, Mother continued to abuse alcohol.

¶11 Mother participated in a psychological evaluation with Dr. Menendez in August 2010. Menendez diagnosed Mother with cocaine dependence, borderline personality disorder, and antisocial personality disorder. Menendez opined that

"[p]rognosis is quite poor that [Mother] can rectify her parenting barriers within a reasonable inordinate period of time."

¶12 In October 2010, the juvenile court approved changing the case plan to severance and adoption. ADES moved to terminate Mother's parental rights, alleging that (1) Mother had willfully abused a child or failed to protect a child from willful abuse under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2) (Supp. 2011); (2) Mother was unable to parent the children because of her history of chronic substance abuse under A.R.S. § 8-533(B)(3); and (3) A.C.1, A.C.2, and T.C. had been in an out-of-home placement for nine and fifteen months or longer under A.R.S. § 8-533(8)(a) and (c). ADES also alleged that termination of Mother's parental rights was in the children's best interests under A.R.S. § 8-533(B).

¶13 The juvenile court held contested severance hearings on March 21 and 23, April 26, and May 16, 2011.[5] At the hearings, Rebecca Ohton, the CPS case manager, the children's therapists, and Menendez testified that the children all have special therapeutic needs. Menendez opined that each child would "require special services and therapeutic interventions

[5] Mother failed to appear for the third day of trial. She later explained, "I had some health problems at the time, and plus I was just really, I would say . . . upset and nervous."

for the foreseeable future." She also stated that due to the severity of the psychological issues involved, including A.C.1's sexually reactive behaviors, the four children should remain in separate homes.[6] Ohton, Menendez, and Ohm each opined that Mother would not be able to parent the children or meet their special needs in the foreseeable future.

¶14 Ohton also expressed concern that Mother continued to lack stable housing and employment. Mother had more than a dozen different residences during the dependency. She was kicked out of a domestic violence shelter after she stayed out all night with K.S.'s father, with whom she had a violent relationship. Mother continued to have contact with him as late as the last day of the severance hearings. Shortly before the severance hearings began, Mother signed a one-year lease for an apartment, but Mother failed to document how she could afford the substantial rent payment and a BMW on the basis of her alleged, legal sources of income.[7]

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[6] Although A.C.1 and A.C.2 were initially placed together, in June 2010 they had to be separated because A.C.2 revealed to her therapist that A.C.1 was inappropriately touching her during the night. The girls' therapists and Menendez all opined that the girls could not be safely returned to the same home and should not have unsupervised contact. In addition, A.C.1 disclosed to her therapist that she had fondled T.C.2.

[7] The business address listed on Mother's tax preparation website does not exist. A cross-search of Mother's business phone number corresponded to a personal ad for a "Fetish Pantyhose Foot Model" offering "Spanking" and "Mistress

¶15 In July 2011, the juvenile court found that ADES had proven the alleged severance grounds and that terminating Mother's parental rights was in the children's best interests. The juvenile court later signed a final order terminating Mother's parental rights and Mother timely appealed.

DISCUSSION

¶16 Mother argues that insufficient evidence supports the termination of her parental rights under A.R.S. § 8-533(B)(2) (willful abuse) and (B)(3) (chronic substance abuse). She also asserts that the juvenile court erred in finding that ADES made diligent efforts to provide appropriate reunification services. We disagree with both arguments.

¶17 The juvenile court may terminate a parental relationship only upon clear and convincing evidence supporting one of the enumerated grounds in § 8-533. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). The court must also find by a preponderance of the evidence that termination is in the best interests of the child.[8]

Services." In addition, Mother has a well-documented history of prostitution, including an arrest for prostitution during this dependency.

[8] Mother does not challenge the juvenile court's finding that termination was in the child's best interests. Accordingly, we accept the court's best interest finding. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 13, 995 P.2d 682, 685 (2000).

Kent K. v. Bobby M., 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205. We therefore "accept the court's findings of fact unless no reasonable evidence supports them and will affirm a severance order unless it is clearly erroneous." *Id.*

I. Severance Based on Willful Abuse

¶18 Mother asserts that the juvenile court erred in finding Mother failed to protect her children from willful abuse under § 8-533(B)(2). Severance of parental rights under § 8-533(B)(2) is proper if the parent has "neglected or willfully abused a child," which "includes serious physical or emotional injury or situations in which the parent knew or should reasonably have known that a person was abusing or neglecting a child." A.R.S. § 8-522(B)(2).

¶19 Mother admitted to police she was aware D.R. had previously molested A.C.2 but did not report the abuse. She also acknowledged that she saw a photograph of A.C.2's genitals on D.R.'s cell phone three or four months before A.C.2 told her D.R. had touched her. Mother told VanGordon she did not inform D.R.'s psychiatrist about the photograph or report the incident to the police because she "tried to handle it herself." Mother

said she had talked a lot about the incident with D.R. and did not believe that he would do it again. Despite her knowledge of previous incidents of molestation, Mother continued to leave her daughters home alone with D.R.

¶20 At the severance trial, however, Mother claimed she did not become aware of any abuse until A.C.2 told her on October 20, 2008 that D.R. had molested her and A.C.1. While she admitted that she saw the photograph on D.R.'s phone, she testified that when she questioned her daughters about whether D.R. had touched them, they denied any abuse had occurred. Mother testified VanGordon must have misunderstood her because "I do talk fast, and I was really upset that day."

¶21 Mother asserts that the juvenile court erred in finding the State presented clear and convincing evidence that Mother knew or should have known of the abuse in light of the conflicting testimony. However, the juvenile court is in the best position to judge the credibility of witnesses and weigh the evidence. *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."). The juvenile court's finding that Mother knew or should have known about the abuse prior to the October 20, 2008 incident was supported by police reports, CPS reports, and VanGordon's

testimony. In making this finding, the juvenile court necessarily found this evidence more credible than Mother's testimony. Thus, we conclude the juvenile court did not err in finding that Mother failed to protect her children from willful abuse by D.R.

¶22 We note further that although K.S. was born after the reported abuse, Mother's rights could still be severed as to him if there was an adequate nexus between the prior abuse and the risk of future abuse to him. *See Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ___, ¶¶ 16-19, 257 P.3d 1162, 1165-66 (App. 2011). K.S. was born less than two years after Mother failed to protect A.C.1 and A.C.2 from D.R.'s sexual abuse and herself inflicted physical abuse on D.R. In addition, many of the circumstances surrounding the prior abuse remained at the time of K.S.'s birth. Mother continued to (1) engage in a lifestyle incompatible with the parenting of young children; (2) lived with K.S.'s father, with whom she had a violent relationship; and (3) had not obtained stable housing or employment. Mother failed to recognize that she needed to change her behavior, telling Moe she did not believe she had done anything wrong in beating D.R. or in failing to protect her daughters from sexual abuse. Mother continued to allow D.R. to have telephone contact with the girls after they were removed from her care. Mother's lack of awareness of appropriate

parenting behavior was also apparent when she slapped A.C.2 during a supervised visit for playing with her food. We therefore conclude there was an adequate nexus between the earlier abuse and the risk of future abusive behavior towards K.S.[9]

II. Adequacy of Reunification Services

¶23 Mother also argues that termination of her parental rights was improper because ADES did not provide adequate reunification services. Assuming without deciding that ADES was required to provide reunification services and make reasonable efforts to preserve the family under § 8-533(B)(2), we address Mother's contention that ADES failed to do so. Specifically, Mother asserts that ADES failed to provide adequate and timely counseling, a timely psychological evaluation, or appropriate visitation.

¶24 Before terminating parental rights, ADES "must provide [the] parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). But ADES

[9] Based on our conclusion, we need not address whether Mother's rights were appropriately terminated under the other grounds alleged by ADES. *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).

"is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is ADES required to undertake futile rehabilitative measures. *Mary Ellen C.*, 193 Ariz. at 192-93, ¶¶ 37-38, 971 P.2d at 1053-54.

¶25 Mother argues that CPS failed to provide appropriate reunification services for Mother because it did not immediately implement Moe's recommendation in June 2009 that Mother be provided a CPS-contracted counselor. When asked about the delay, Ohton explained that because Mother was eligible for AHCCCS, CPS policy dictated that Mother seek counseling through Magellan, the State mental health care provider.

¶26 CPS first recommended that Mother attend individual counseling in April 2009 following the slapping incident. In May 2009, Mother informed Ohton that she had a counselor specializing in sexual abuse issues. Ohton attempted to follow-up with Mother multiple times about her progress in counseling, but Mother never responded. In September 2009, Mother told Ohton she had found another counselor, but when Ohton contacted the counselor, she learned the counselor was not sufficiently experienced to handle Mother's issues. Ohton contacted Mother's anger management group counselor to determine whether Mother could also receive individual counseling there, and the

counselor told Ohton that she could refer Mother to another counselor accepting AHCCCS for individual counseling. However, Mother chose not to utilize that provider. Ohton also offered to help Mother obtain another counselor through Magellan, but Mother declined her assistance. Mother stated she preferred to seek her own counselor and pay for the services herself. Mother contacted two counselors, but when Ohton followed up, she learned that Mother did not undergo counseling with either. When Mother informed Ohton in early 2010 that she was no longer eligible for AHCCCS, Ohton contacted Moe, who signed a referral request for a CPS-contracted counselor in February 2010. Ohton submitted the referral to the district office for approval in March 2010, and Mother started individual counseling with Thomas Aubrey in May 2010.

¶27 In *Mary Ellen C.*, we held that the State failed to make reasonable efforts to rehabilitate the parent before terminating her parental rights. 193 Ariz. at 193, ¶ 42, 971 P.2d at 1054. In that case, CPS offered no significant reunification services for almost a year after removing the child. *Id.* at 192, ¶ 35, 971 P.2d at 1053. And despite its expert's recommendation that the mother needed intensive psychiatric services, CPS merely suggested the mother should self-refer to the State mental health provider but never

followed up to discover that she was receiving an inadequate level of services or to assess her progress in therapy. *Id.*

¶28 By contrast, here CPS offered Mother a number of reunification services, including a psychological consultation, psycho-educational classes for caregivers of children who have suffered trauma, anger management counseling, supervised visitation, parenting skills training, urinalysis testing, substance abuse assessments, and substance abuse treatment. While Ohton asked Mother to seek counseling through an AHCCCS provider, unlike in *Mary Ellen C.*, she offered multiple times to help her obtain a counselor and followed up with each counselor Mother contacted to determine whether the services were appropriate and to assess Mother's progress. Ohton submitted a referral for a CPS-contracted counselor when Mother informed her that she was no longer eligible for AHCCCS. While Mother did not ultimately participate in individual counseling until a year after Moe recommended that service, even Mother acknowledged that the delay was not CPS's fault. *See Maricopa County Juv. Action No. JS-501904*, 180 Ariz. at 353, 884 P.2d at 239 (noting that a parent's "failure or refusal to participate in the programs and services DES offered or recommended does not foreclose termination of her parental rights").

¶29 In addition, Mother challenges CPS's decision to provide her with a masters-level therapist instead of a PhD-

level therapist as Moe recommended. However, Moe also stated that "an experienced [masters-level] therapist would suffice." Mother emphasizes Menendez's testimony at the severance hearing that she would have recommended a PhD-level therapist for Mother if she had been consulted earlier in the case. However, Menendez also acknowledged that Aubrey was in the process of completing a PhD-level program and stated, "I'm impressed with Mr. Aubrey's training and commitment and I would have been okay with that referral." Moreover, even Mother testified that her counseling with Aubrey was helpful and that she did not need additional counseling.

¶30 Mother next argues that the State failed to make diligent efforts to aid in reunification because it did not provide a timely psychological evaluation. Although the juvenile court found A.C.1, A.C.2, and K.S. dependent in January 2009, CPS did not refer Mother for a psychological evaluation until July 2010. However, other than speculation, Mother does not suggest how an earlier psychological evaluation would have made the outcome of this case any different. *See Maricopa County Juv. Action Nos. JS-4118/JD-529*, 134 Ariz. 407, 409, 656 P.2d 1268, 1270 (App. 1982) ("[T]he Department's responsibility has limits. There always comes a point where the trial court must decide whether the natural parent is making a good-faith effort to reunite the family."). Menendez did not recommend any

additional services for Mother beyond those CPS had already provided. In addition, Menendez's diagnoses and assessment of Mother's prognosis did not differ markedly from those contained in the psychological evaluation CPS provided Mother in 2003 during the first dependency involving A.C.1 and A.C.2.

¶31 Mother also asserts that ADES failed to provide appropriate visitation. Mother's visitation with A.C.1, A.C.2, and T.C.2 was stopped in March 2009 after Mother slapped A.C.2 during a supervised visit and threatened to kidnap the children. The parent-aide agency, the children's therapists, and Moe all recommended discontinuing visitation. Moe stated in June 2009 that Mother needed to complete intensive individual therapy before visits could be resumed. Moe also stated that face-to-face contact should not resume until Mother's and the children's therapists agreed that their clients were ready. In the meantime, Moe suggested exchanging cards and photographs, which was coordinated through the children's therapists. Despite frequent discussions about the issue of reestablishing visits throughout the remainder of the case, due to the severity of the children's psychological and behavioral issues, none of the therapists believed the children were ready to resume face-to-face visitation. Additionally, Menendez recommended that visits not be resumed until Mother had achieved more stability. In light of the experts' continued recommendations that face-to-

face visitation should not resume, we conclude that ADES did not fail in its duty to provide reunification services when it declined to approve additional visitation.

¶32 Accordingly, the juvenile court did not abuse its discretion in finding that ADES provided Mother adequate reunification services.

CONCLUSION

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

/s/
_____
MICHAEL J. BROWN, Judge

CONCURRING:

/s/
_____
PETER B. SWANN, Presiding Judge

/s/
_____
JON W. THOMPSON, Judge