

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

FILED BY CLERK

MAR 26 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ERIKA A.,)	2 CA-JV 2012-0111
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and EDWIN T.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J198906

Honorable Leslie Miller, Judge

AFFIRMED

Sarah Michèle Martin

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ESPINOSA, Judge.

¶1 Erika A. appeals from the juvenile court’s order terminating her parental rights to her son, Edwin T., born in December 2009, on the grounds of chronic substance abuse and court-ordered, out-of-home placement for six months or longer.¹ See A.R.S. § 8-533(B)(3), (8)(b). Erika challenges the court’s ruling that the Arizona Department of Economic Security (ADES) provided appropriate reunification services and that termination was in Edwin’s best interests. We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “On review . . . we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 On appeal, we view the evidence in the light most favorable to sustaining the juvenile court’s ruling. See *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In August 2011, Child Protective Services (CPS), a division of ADES, took custody of then eighteen-month-old Edwin following a report that Erika had physically abused Edwin, had used marijuana and cocaine, and had left “loose

¹The juvenile court also terminated the parental rights of Edwin’s father, who is not a party to this appeal.

pills” within Edwin’s reach. In September 2011, Erika admitted the allegations in an amended dependency petition, including that she had abused methamphetamine, cocaine, and amphetamine in July 2011, she was mistreating Edwin as a result of her drug abuse, she had cared for him when she was “high,” and the home where she resided with her mother and Edwin did not have running water and had structural and water damage.

¶4 ADES offered Erika various services, including parenting classes, scheduled urinalysis testing, substance-abuse counseling and monitoring, Family Drug Court, supervised visitation and transportation, Child and Family Team meetings, case management, and group testing and/or psychological testing. Although Erika’s case plan provided she would “obtain and maintain sobriety” and “maintain a . . . drug-free lifestyle,” at various times during the dependency Erika tested positive for drugs and failed to complete all of her scheduled urinalysis testing, in addition to providing a number of diluted urine specimens for her required drug tests. Additionally, Erika often was not home or ready when drivers arrived to transport her to scheduled services. Erika attended substance-abuse recovery group sessions, albeit inconsistently, observed one session of Family Drug Court, and regularly attended scheduled supervised visits with Edwin. The juvenile court nonetheless found her to be only partially compliant with her case plan at hearings in November 2011 and January 2012.

¶5 At the April 2012 dependency review hearing, the juvenile court ordered the case plan changed to severance and adoption, and ADES filed a motion to terminate Erika’s parental rights to Edwin based on chronic substance abuse and court-ordered, out-

of-home placement for six months or longer. *See* § 8-533(B)(3), (8)(b). Following a three-day contested severance hearing in June and August 2012, the court terminated Erika’s parental rights to Edwin on the grounds asserted in the petition, and found that termination was in Edwin’s best interests.

¶6 Erika does not argue the juvenile court lacked sufficient evidence to find termination warranted on the asserted grounds. Rather, she argues ADES did not “make a good faith effort to preserve the family” by assuring she was provided with appropriate reunification services and severance was not in Edwin’s best interests. In order to terminate parental rights on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made “reasonable” or “diligent” efforts to provide the family with appropriate reunification services. *See* § 8-533(B)(8) (“diligent effort” required by statute); *see also Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶¶ 14-15, 83 P.3d 43, 49 (App. 2004) (ADES must demonstrate “reasonable efforts” to preserve the family before parental rights terminated on chronic-substance-abuse ground). ADES fulfills this duty by providing a mother “with the time and opportunity to participate in programs designed to help her become an effective parent.” *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide a parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶7 To the extent Erika contends she would have benefitted from a timely psychological evaluation and that ADES was responsible for the delayed evaluation

report, which ADES received after the severance trial had begun, the record simply does not support her claim. Although CPS case manager Patricia Lara testified she had not ensured that Erika received services consistent with the report, the record shows the evaluation process was delayed as a result of Erika's actions.² Assessing the timing of the evaluation, the juvenile court summarized the history of delays specifically caused by Erika's failure to either appear for or schedule necessary appointments with the psychologist who evaluated her in April and May 2012. We thus infer the court concluded ADES was not at fault for the timeliness of the report. Similarly, the record does not support Erika's claim that ADES did not ensure her prompt placement in a residential-care facility, a long-awaited placement Erika lost because she did not accept the opening for a bed when it was offered to her.

¶8 Moreover, throughout the dependency, the juvenile court repeatedly found ADES had made reasonable efforts toward reunification, a finding Erika apparently did not challenge. And, in its written ruling terminating her parental rights, the court specifically found that despite ADES's diligent efforts to provide services, Erika's participation was "inconsistent" and "[s]he made little progress other than to recognize that she had a substance abuse problem." For all of the reasons clearly set forth in the court's ruling, we conclude sufficient evidence supported its determination that ADES had made reasonable, diligent efforts to reunify the family by providing Erika with

²At the end of the severance hearing, Erika moved to dismiss the state's case based, in part, on the timing of the psychological evaluation. The juvenile court denied that motion.

appropriate services. We need not repeat the court's analysis in its entirety here. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Erika also contends the juvenile court erred in concluding termination was in Edwin's best interests. Although she concedes Edwin is adoptable, Erika asserts that, "given the inadequate services provided to [her] and the child's bond with [her] and [his] grandmother, severance of his ties to his family is not in his best interests." At the severance hearing, Lara testified that, although Edwin enjoys his visits with his mother and grandmother and she "think[s]" he is bonded to them, terminating Erika's parental rights to Edwin is nonetheless in his best interests. Lara testified that Erika was not ready to have unsupervised visits with Edwin and explained, "I feel that [Erika] is not in a position to provide for [Edwin's] needs and care for him independently. I'm concerned about [Erika's] continued substance abuse." She also testified that Edwin is an adoptable child and that his current placement, which is meeting all of his medical and emotional needs, "can be" a potential permanent placement for him.

¶10 To support the finding that termination is in a child's best interests, a preponderance of the evidence must show that the child either will benefit from the severance or be harmed if the parental relationship continues. *See Mary Lou C.*, 207 Ariz. 43, ¶ 19, 83 P.3d at 50. Acknowledging that Edwin was bonded to Erika, the juvenile court nonetheless found she had not been able to resolve her substance-abuse issues despite more than one year of services and remained unable to care for Edwin, who

was “in need of permanency,” and severance was in his best interests. The evidence also supports the court’s finding that Edwin is adoptable, a fact Erika concedes, and that his present placement might become a permanent home for him. *See Maricopa Cnty. No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238 (juvenile court could consider whether current adoptive placement existed, whether child adoptable, or whether “the child[] would benefit from termination of the parent-child relationship”). Because reasonable evidence supports the court’s best interests finding, we will not disturb it.

¶11 The record amply supports the juvenile court’s termination of Erika’s parental rights to Edwin. We therefore affirm.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller

MICHAEL MILLER, Judge