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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

NATASHA D., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and AARON D., Appellees.	2 CA-JV 2012-0129 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. JD201200005

Honorable Robert Duber II, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 Natasha D. appeals from the juvenile court's November 2012 order granting the Arizona Department of Economic Security's (ADES's) motion to discontinue reunification services in the dependency proceeding involving her infant daughter, Aaron D., and denying her request that, notwithstanding the discontinuation of services, ADES be ordered to provide visitation. For the reasons that follow, we affirm the court's order.

Background

¶2 Shortly after Aaron was born in September 2012, Child Protective Services (CPS), a division of ADES, received a report that Natasha had tested positive for methamphetamine and that Aaron's meconium tested positive for amphetamines. CPS took temporary custody of Aaron, and ADES filed a dependency petition on October 4, 2012. On October 19, the juvenile court entered an order terminating Natasha's parental rights to her son Adrian, who would turn three the following month. Also in October, ADES filed a petition to terminate Natasha's parental rights to Aaron on the ground of chronic substance abuse, *see* A.R.S. § 8-533(B)(3), and sought a determination that it was not required to provide Natasha with reunification services. *See* A.R.S. § 8-846(B)(1)(e); Ariz. R. P. Juv. Ct. 57.

¶3 After an evidentiary hearing, the juvenile court found ADES had established by clear and convincing evidence that Natasha's rights to another child had been terminated, that she had not successfully addressed the issues that led to that termination, and that she was unable to discharge her parental responsibilities. Finding

this established an aggravating circumstance under § 8-846(B)(1)(e), the court granted ADES's motion, ruling it was not required to provide reunification services to Natasha. Before the close of the hearing, Natasha asked whether the court's decision encompassed visitation, and the court repeated that it would not order ADES to provide services designed to reunify the family. The court emphasized it was not prohibiting visitation and that ADES could, in its discretion, provide for or facilitate visits between Natasha and Aaron; but because the court had found an aggravating factor under § 8-846(B), it would not order ADES to do so. The court further suggested Natasha could "file a motion with regard to access" if she chose to do so, but absent such a motion, ADES was entitled to "exercise [its] judgment" with respect to visitation. This appeal followed. *See Francisco F. v. Ariz. Dep't of Econ. Sec.*, 228 Ariz. 379, ¶ 8, 266 P.3d 1075, 1077-78 (App. 2011) (order entered pursuant to § 8-846(B) "final, appealable order").

Discussion

¶4 In reviewing this § 8-846(B) ruling, we view the facts in the light most favorable to sustaining the juvenile court's findings and will affirm the court's decision unless it is clearly erroneous or unsupported by the evidence. *Cf. In re Maricopa Cnty. Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994) (affirming termination of visitation rights); *see also Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (evidence sufficient unless no reasonable fact-finder could have found it satisfied applicable burden of proof). Thus, we do not reweigh

the evidence, *see Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), because the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). But we review legal issues de novo, including those requiring statutory interpretation. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 9, 83 P.3d 43, 47 (App. 2004).

¶5 Section 8-846(A) requires a juvenile court to order ADES "to make reasonable efforts to provide services" to a child and his parent when the child has been removed from the home. But a court may relieve ADES of the obligation to provide reunification services if it finds, by clear and convincing evidence, that "[t]he parent's rights to another child have been terminated, the parent has not successfully addressed the issues that led to the termination and the parent is unable to discharge parental responsibilities." § 8-846(B)(1)(e). Natasha does not dispute that her parental rights to Adrian were terminated or that her abuse of methamphetamine had twice led to his removal from her care and, ultimately, to the termination of her rights.[1] And, although

[1]Natasha's rights to Adrian were terminated on the ground she had relinquished her rights by consenting to his adoption. *See* A.R.S. § 8-533(B)(7). But in a report prepared for Aaron's preliminary protective hearing, a CPS case manager reported that Natasha "still has not remedied the circumstances that brought CPS into her life back in January of 2011" and "has not been able to overcome her addiction to illegal substances," despite her completion of "[i]n patient and extensive outpatient substance abuse treatment." *Cf. Mary Lou C.*, 207 Ariz. 43, ¶¶ 11-12, 83 P.3d at 48 (where chronic drug abuse underlying factual cause for two successive termination proceedings, court properly terminated parent's rights to second child pursuant to § 8-533(B)(10), based on having

Natasha states in passing that the court erred in finding her "unable to discharge [her] parental responsibilities," she does not develop or support this argument in any meaningful way. Accordingly, we do not address it. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 88, 181 P.3d 219, 242 (App. 2008) (appellate court will not address issues or arguments waived by party's failure to develop them adequately); *see also* Ariz. R. Civ. App. P. 13(a)(6) (argument "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (Rule 13, Ariz. R. Civ. App. P., applies to juvenile appeals).

¶6 Natasha does contend, however, that "there is evidence that [she] has addressed her history of drug abuse," citing her testimony at the hearing that she had not used drugs since Aaron's birth, had been "voluntarily residing in a sober living environment" for "two-and-a-half [or] three weeks," and was independently applying for counseling services. But we do not reweigh the evidence on review and will accept the juvenile court's findings as long as they are supported by reasonable evidence, as they are here. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶7 Moreover, to prove an aggravating circumstance relieving it of the obligation to provide services, ADES was required by § 8-846(B)(1)(e) to establish only

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"rights to another child terminated within the preceding two years for the same cause," despite previous termination's reliance on other statutory grounds).

that Natasha had not "successfully" addressed her substance abuse. The juvenile court was not required to conclude her recent and short-lived efforts overcame evidence of her "significant history of substance abuse" and her repeated failures to rehabilitate herself during Adrian's two dependencies, despite the "extensive" substance abuse treatment services ADES had provided. *Cf. Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶ 29, 231 P.3d 377, 383 (App. 2010) (parent's consistent failure to abstain from drugs during dependency proceedings evidence he had not overcome history of drug abuse).

¶8 When Natasha argued it would be "premature" to permit ADES to discontinue services because "she has not been given a chance to remedy the circumstance" causing Aaron's removal in this dependency, the juvenile court responded,

> You had a chance, you had a chance with another child. And if the State can show by clear and convincing evidence that the same circumstances exist[] as existed with the other child, then that's an aggravated circumstance [and] the statute says . . . there is no point in wasting time . . . [t]rying to reunify someone with a child when we already know that that's a useless event.

Although her argument is not entirely clear, relying on *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), Natasha appears to contend that ADES is constitutionally required to provide her with reunification services, notwithstanding the plain language of § 8-846(B). We agree with ADES that we need not address this argument because it is raised for the first time on appeal. *See Marco C. v. Sean C.*, 218 Ariz. 216, ¶ 6, 181 P.3d 1137, 1139-40 (App.

2008). In any event, as the court suggested at the hearing, even constitutional concerns do not require ADES "to undertake rehabilitative measures that are futile." *Mary Ellen C.*, 193 Ariz. 185, ¶ 34, 971 P.2d at 1053; *see also Christina G. v. Ariz. Dep't. of Econ. Sec.*, 227 Ariz. 231, ¶ 25, 256 P.3d 628, 634 (App. 2011) (purpose of § 8-846 and Rule 57 "is to encourage ADES to seek a determination on futility when it appears that reunification services will no longer assist the parent").

¶9 Natasha next argues the juvenile court abused its discretion in denying "her constitutional right to associate with her child by failing to order [ADES] to provide her with visits during the pendency of the dependency proceedings." She suggests the juvenile court was required to order visitation because it had not found "extraordinary circumstances" warranted restriction of her visitation rights, *Maricopa Cnty. No. JD-5312*, 178 Ariz. at 375, 873 P.2d at 713, or that "visitation [would] endanger[] the child," *Michael M.*, 202 Ariz. 198, ¶ 11, 42 P.3d at 1166.

¶10 But neither *Michael M.* nor *Maricopa County No. JD-5312* involved a juvenile court's determination under § 8-846(B) that no reunification services are "required to be provided," based on clear and convincing evidence of aggravating circumstances indentified in that statute. Instead, those cases appear to have involved parents who otherwise qualified for reunification services because no court had found aggravating circumstances under § 8-846(B) warranting an exception to that general rule. *See* § 8-846(A). Thus, the parents in those cases would otherwise have been entitled to

reunification services, *see* § 8-846(A), but for a juvenile court's order suspending visitation, one specific reunification service. *See Francisco F.*, 228 Ariz. 379, ¶ 8, 266 P.3d at 1077 (visitation considered reunification service). In contrast, here the court has determined Natasha is not entitled to any reunification services, based on the specific findings required by § 8-846(B).

¶11 For example, in *Maricopa County No. JD-5312*, 178 Ariz. 372, 873 P.2d 710, decided before § 8-846 was enacted,[2] the court applied the law governing visitation for non-custodial parents in domestic relations proceedings, which it found analogous to dependencies in which the child had been removed, to conclude "a parent should be denied the right of visitation only under extraordinary circumstances," and, specifically, "[a] court may only restrict a parent's visitation rights if visitation endangers the child as described in A.R.S. [§ 25-403.01(D)]."[3] *Maricopa Cnty. No. JD-5312*, 178 Ariz. at 375-76, 873 P.2d at 713-14, *citing Sholty v. Sherrill*, 129 Ariz. 458, 460, 632 P.2d 268, 270 (App. 1981) (addressing visitation rights of non-custodial parent in domestic relations proceeding). Although § 8-846 had been enacted when *Michael M.* was decided, § 8-846(B) only provided for a discontinuation of all reunification services to a parent when a

[2]*See* 1997 Ariz. Sess. Laws, ch. 222, § 52.

[3]Previously A.R.S. § 25-337, cited in *Maricopa County No. JD-5312*, 178 Ariz. at 376, 873 P.2d at 714. This provision has undergone substantive changes and renumbering since that reference. *See, e.g.*, 2012 Ariz. Sess. Laws, ch. 309, §§ 7, 18; 1996 Ariz. Sess. Laws, ch. 192, § 2. Because the proceedings here were governed by § 8-846, we need not consider those changes.

specified aggravating circumstance had been found, and provided no guidance for the discontinuation of a single service—visitation—in the absence of an aggravating factor. Thus, as in *Maricopa County No. JD-5312*, no dependency statute governed the determination of when visitation could be restricted for a parent otherwise eligible for reunification services under § 8-846(A). Without specific statutory direction for such a circumstance, the court in *Michael M.* appropriately applied the standards in *Maricopa County No. JD-5312* to a father generally entitled to services under § 8-846(A) who had been denied visitation. *Michael M.*, 202 Ariz. 198, ¶¶ 9, 11, 42 P.3d at 1165-66.

¶12 But unlike *Michael M.* and *Maricopa County No. JD-5312*, this case does not involve a juvenile court's decision to restrict visitation, as one among many services a parent might be provided under § 8-846(A), while continuing to require ADES to provide those other reunification services. Instead, Natasha challenges a determination, authorized and governed by § 8-846(B), that a statutorily defined aggravating circumstance relieves ADES of its obligation to provide any reunification service whatsoever. In this context, the plain language of § 8-846(B) compels the conclusion that the juvenile court did not abuse its discretion. In that statute, the legislature has enumerated the "aggravating circumstances" that must be proven to relieve ADES of its obligation to provide any reunification service, including visitation. Clear and convincing proof of one of those circumstances was all that was required to support the court's order.

Disposition

¶13 For the foregoing reasons, the juvenile court's order granting the state's motion pursuant to § 8-846(B) is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge