FILED BY CLERK
SEP 27 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SARAH V., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, E., D., P., and G., Appellees.	2 CA-JV 2013-0059 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD201100122

Honorable Kevin D. White, Judge

AFFIRMED

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E C K E R S T R O M, Judge.

¶1 Appellant Sarah V. challenges the juvenile court's order of May 23, 2013, terminating her parental rights to her children, E., D., P., and G.,[1] on the grounds (1) she was unable to discharge her parental responsibilities because of chronic drug use and mental illness and (2) the children had been in out-of-home, court-ordered placement for more than six months or fifteen months. *See* A.R.S. § 8-533(B)(2), (B)(3), (B)(8)(b),(c). On appeal, Sarah alleges the Arizona Department of Economic Security (ADES) failed to "make a diligent effort to provide reunification services" to her and challenges the sufficiency of the evidence to establish that terminating her parental rights was in the children's best interests.

¶2 When reviewing an appeal from an order terminating a parent's rights, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005). Thus, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). That is, we will not disturb the ruling unless the factual findings are clearly erroneous. *Id*.

¶3 In 2010, D. tested positive for marijuana exposure at birth and Child Protective Services (CPS), a division of ADES, received a report that Sarah's older child, E. was being neglected. In May 2011, P. was born prematurely and also tested positive for marijuana exposure. Thereafter, in June 2011, CPS investigators went to the family's

[1]Sarah's parental rights to her first child, A., already have been severed, and A. is not a part of this action.

home and found it "cluttered with . . . 'junk'" and infested with flies and other insects. Dirty dishes covered the kitchen counters and sink and there was a hole to the outside between the wall and floor. ADES allowed E. and D. to remain with Sarah outside the home, but filed a dependency petition as to them. After P. was released from the hospital he was taken into ADES custody. The court subsequently adjudicated all three children dependent.

¶4 The hazards in the family's home were addressed and Sarah agreed to participate in services. But she ultimately failed to participate in random drug testing and E. and D. were removed from her care in July 2011. From that time through April 2012, Sarah was moderately compliant with her case plan, attending supervised visitation, substance-abuse treatment, and anger-management group. However, she continued to test positive for drug use, and later became inconsistent in attending visitation with the children.

¶5 In April 2012 Sarah completed a psychological evaluation, in which the psychologist concluded she had a "very serious dependent personality disorder," and recommended psychotherapy with a clinician familiar with such disorders, as well as substance-abuse services. CPS referred Sarah for psychotherapy, and the therapist informed her that if she missed three sessions without giving advance notice, her case would be closed. In July 2012, G. was born and taken into ADES custody after Sarah admitted using marijuana during her pregnancy.

¶6 After August 2012, Sarah did not participate in drug testings, failed to respond to communication from her CPS case manager, and missed "many visits" with

the children. She also missed three psychotherapy sessions without notice, and her case was closed. CPS again referred her for counseling, but Sarah did not contact the therapist. In January 2013, ADES moved to terminate Sarah's parental rights, and, after a contested severance hearing in April, the juvenile court granted the motion.

¶7 On review, Sarah first alleges ADES failed to make diligent efforts to provide her with services because, although it was aware she had "serious mental health issues," it "terminated" her "counseling services" after she failed to attend as instructed. She further maintains "ADES abandoned" her "after she was terminated from counseling and . . . refused to participate in drug testing."

¶8 ADES has a statutory obligation to make reasonable efforts to reunify the family. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 19, 219 P.3d 296, 303 (App. 2009). In determining that severance is appropriate, the juvenile court must consider the availability of reunification services to the parent and the parent's participation in the services and must find that ADES made a diligent effort to provide those services. A.R.S. § 8-533(B)(8), (D); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 14, 256 P.3d 628, 632 (App. 2011). But, ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). It is only required to "provide [the] parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for [her] child[ren]." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). And ADES is not required to provide services that are futile.

See Mary Lou C. v. Ariz. Dep't of Econ. Sec., 207 Ariz. 43, ¶ 15, 83 P.3d 43, 49 (App. 2004).

¶9 In this case, the juvenile court listed the numerous services provided by ADES in its finding-of-fact order, and repeatedly found throughout the dependency that ADES was making diligent efforts to provide appropriate reunification services. Sarah did not challenge those findings and nothing in the record shows she asked for different or additional services than those provided. We therefore agree with ADES that Sarah waived the right to challenge the appropriateness of the services ADES provided. As ADES points out, this court stated in *Christina G.* that a parent who does not challenge these findings and does not request a hearing on the kinds of services being provided, can be regarded as having waived the issue on appeal. 227 Ariz. at n.8, 256 P.3d at 632 n.8.

¶10 In any event, even if not waived, Sarah's argument lacks merit. After she was terminated from psychotherapy based on her own failure to comply with the attendance requirements, ADES "re-referred" her for services, but her case supervisor testified she "has never contacted to start up services again." Thus, Sarah's claim that ADES "abandoned" her is unfounded. Likewise, her claim that her treating therapist was "unaware" of an earlier assessment by another doctor is groundless. Although her therapist testified at the severance hearing that he did not "have access to th[e] report at the moment" and therefore could not testify as to its contents, he also testified he had reviewed the other doctor's evaluation.

¶11 Sarah also claims that the termination of her parental rights does not "serve the best interest of the children," because she "had completed some of the proffered

services." Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). The evidence presented at the severance hearing in this matter is sufficient to meet the applicable standard.

¶12 The best interest requirement may be met if there is a showing that a current adoptive plan exists for the children or that they are adoptable. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50. In this case, the placement for the three older children and the placement for the youngest child both testified that they desired to adopt the children. And both stated the children were doing well in their care. *See id.* ¶ 19 ("[T]he juvenile court may consider evidence that an existing placement is meeting the needs of the child[ren] in determining that severance is in [their] best interest[s]."). Sarah's argument on appeal essentially asks that we reweigh the evidence. But, "[b]ecause the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Id.* ¶ 8, *quoting Pima Cnty. Dependency Action No. 93511*, 154 Ariz.

543, 546, 744 P.2d 455, 458 (App.1987). Because the record shows that the children are adoptable and that Sarah essentially stopped participating in services in the months before the hearing, such evidence exists.

¶13 For these reasons, we affirm the juvenile court's order terminating Sarah's parental rights.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

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

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