

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

OCT -9 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

NANCY L.,	)	2 CA-JV 2013-0063
	)	DEPARTMENT B
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and A.L.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause Nos. JD200001597 and JD201200002 (Consolidated)

Honorable Kevin D. White, Judge

AFFIRMED

Ritter Law Group, L.L.C.  
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K E L L Y, Presiding Judge.

¶1 Nancy L. appeals from the juvenile court’s order terminating her parental rights to her daughter, A.L., born in December 2006, on the grounds of history of chronic substance abuse and court-ordered, out-of-home placement for nine months or longer. *See* A.R.S. §§ 8-533(B)(3) and (B)(8)(a).<sup>1</sup> Nancy argues insufficient evidence supported the court’s finding that she was unable to discharge her parental responsibilities because of chronic substance abuse, that her abuse would continue for a prolonged indeterminate period, and that the Arizona Department of Economic Security (ADES) provided appropriate reunification services. We affirm for the reasons stated below.

¶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). We review 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). Therefore, “we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings” and the findings are clearly

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<sup>1</sup>Section 8-533(B)(3), A.R.S., provides that termination is warranted if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs [or] controlled substances . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” Section 8-533(B)(8)(a), A.R.S., provides for termination when “[t]he child has been in an out-of-home placement for a cumulative total period of nine months or longer . . . and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.”

erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 The record and the evidence presented at the severance hearing showed that in December 2011, Nancy was arrested for “trying to drive to the border for a drug run with [A.L.] in the vehicle.” During an interview shortly after the stop, Nancy admitted to Child Protective Services (CPS), a division of ADES, that she had used methamphetamine earlier that day and that the home she currently resided in, where there was ongoing marijuana and methamphetamine use and sales, was “not a safe place.” Nancy had been the subject of seven previous CPS reports, and her other four children had been removed from her care in the past. A.L. was taken into temporary custody and ADES filed a dependency petition. A.L. was adjudicated dependent as to Nancy after she submitted the issue of dependency to the juvenile court. ADES offered Nancy various services, including parenting classes, substance-abuse treatment, random drug testing, counseling, supervised visitation, transportation, and parent-aide services.

¶4 Although initially compliant with her case plan, in June or July 2012 Nancy went to California for one month without informing CPS of her whereabouts, and upon her return, she failed to resume participating in the services provided in her case plan. Nancy again tested positive for methamphetamine in August 2012, after which she apparently did not submit to any further drug tests. She did not have any visits with A.L. for “several months” in late 2012, nor did she inform her case manager where she was living during that time period. In November 2012, Nancy was arrested for possession of

methamphetamine and drug paraphernalia, and later was incarcerated for those offenses.<sup>2</sup> In addition, her parenting classes were terminated in December 2012 due to “lack of contact and participation.”

¶5 In February 2013, ADES filed a motion to terminate Nancy’s rights to A.L. on the grounds of chronic substance abuse and length of time in court-ordered care. *See* A.R.S. §§ 8-533(B)(3) and (B)(8)(a). At the conclusion of the contested severance hearing held on April 26, 2013, the juvenile court granted ADES’s motion to terminate Nancy’s rights to A.L.<sup>3</sup> on the grounds asserted in the petition and found that termination was in A.L.’s best interests. The court issued a signed order terminating Nancy’s rights to A.L. the following month.

¶6 On appeal, Nancy does not argue the juvenile court lacked sufficient evidence to find grounds for chronic substance abuse. Rather, she contends ADES did not establish she would be unable to discharge her parental responsibilities because of her chronic drug abuse and that her abuse would continue for a prolonged indeterminate period. She maintains the “mere fact that she has previously abused drugs” is the “only evidence” for believing her substance abuse will continue. Pointing out that she participated in substance abuse treatment programs while incarcerated and “had demonstrated a previous ability to abstain from drug abuse” from 2004 to 2011, and for

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<sup>2</sup>Nancy remained incarcerated at the time of the severance hearing.

<sup>3</sup>The juvenile court also terminated the parental rights of A.L.’s father, who is not a party to this appeal.

an additional six months during the dependency, Nancy avows she became “a new person” while incarcerated, and that she “would henceforth be able to maintain sobriety.”

¶7 Termination under A.R.S. § 8-533(B)(3) “does not require that the parent be found unable to discharge *any* parental responsibilities,” but rather “establish[es] a standard which permits a trial judge flexibility in considering the unique circumstances of each termination case before determining the parent’s ability to discharge his or her parental responsibilities.” *In re Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408-09, 701 P.2d 1213, 1216-17 (App. 1985). Here, Nancy’s testimony that she most recently used methamphetamine after A.L. told her she might “never com[e] home to [Nancy] again” is significant. Nancy was informed she had to remain free of drugs in order to be reunited with A.L. That she failed to do so strongly supports a conclusion that her drug dependency would prevent her from fulfilling her parental duties in the future. *See Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, ¶ 29, 231 P.3d 377, 383 (App. 2010) (father’s failure to remedy substance abuse “despite knowing the loss of his children was imminent” supports conclusion abuse will persist and “negatively affect his parenting abilities”). Nancy’s case manager testified, “[T]he evidence speaks for itself . . . This is a pattern that we’ve seen for a very long time.” She further opined:

Mother has not shown me any behavioral changes since this case has opened. She still has a lack of stable housing and employment. She is currently incarcerated. She has a really long history of substance abuse. She had four children previously removed from her care with severance and adoption. She . . . previously had the opportunity to do services. Rehab is self-referral . . . . [H]er history goes back to 1998. She doesn’t seem to understand how the use of meth and marijuana affects her ability to parent, as well as the

people that she is around, how that puts [A.L.] in dangerous positions. And she has not completed services.

¶8 And, as also observed in *Raymond F.*, a parent’s “drug abuse need not be constant to be considered chronic” for purposes of § 8-533(B)(3). *Id.* ¶ 16. In addition, the fact that Nancy testified she has participated in and benefitted from drug rehabilitation classes while incarcerated does not mean she will abstain once she is in a non-custodial setting. *See Id.* ¶ 29 (parent’s temporary abstinence from drugs does not outweigh significant history of abuse or inability to abstain during dependency). We find ample evidence in the record supporting the juvenile court’s determination that Nancy’s continuing inability to control her drug dependency was unlikely to abate, and interfered with her ability to effectively parent A.L.

¶9 Moreover, to the extent Nancy implicitly asks us to reweigh the evidence, we will not do so. The juvenile court, not this court, is “in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings.” *In re Pima Cnty. Juv. Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We thus will not reweigh the evidence or substitute our judgment for that of the juvenile court. *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶10 In addition, although Nancy does not clearly challenge the grounds for out-of-home placement, she does present the following single-sentence argument related to that ground: “ADES thus failed to demonstrate that Appellant-Mother had substantially neglected to remedy the circumstances of substance abuse that had caused her Child to be in out-of-home care.” Because Nancy has failed to develop this argument in any

meaningful way, we do not address it further. *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).

¶11 Nancy also argues that ADES failed to make a diligent effort to provide reunification services to accommodate her mental deficiency. 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* A.R.S. § 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.*

¶12 Throughout the dependency, the juvenile court repeatedly found ADES had made reasonable efforts toward reunification, a finding Nancy apparently did not

challenge, nor did she ask that additional or different services be provided.<sup>4</sup> Therefore, we agree with ADES that she has waived the right to challenge on appeal the adequacy of the services she received. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, n.8, 256 P.3d 628, 632 n.8 (App. 2011). We thus do not address this argument.

¶13 Finally, we reject Nancy's lengthy assertion that a "[f]inding of mental deficiency alone is not justification for termination of parental rights." ADES's motion to terminate Nancy's rights was based on chronic substance abuse and length of time in court-ordered care. Because the motion never included mental illness as a ground for terminating her rights, ADES was not required to establish this ground.<sup>5</sup>

¶14 Because the record amply supports the juvenile court's termination of Nancy's parental rights to A.L., we affirm.

*/s/ Virginia C. Kelly*

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VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

*/s/ Philip G. Espinosa*

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PHILIP G. ESPINOSA, Judge

*/s/ Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Judge

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<sup>4</sup>Although Nancy testified at the severance hearing that she had "needed" more parenting classes and visitation time with A.L., it does not appear she ever objected to the sufficiency of the services ADES had provided related to her mental deficiency, as she does on appeal.

<sup>5</sup>Section 8-533(B)(3), A.R.S., provides for termination based on "mental illness, mental deficiency or a history of chronic abuse of dangerous drugs . . . ." However, it is clear Nancy refers to the mental illness and mental deficiency portion of the statute, which again, ADES did not allege.