IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MIRANDA B.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND M.B.,
Appellees.

No. 2 CA-JV 2014-0130
Filed January 29, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20130088
The Honorable Catherine M. Woods, Judge

AFFIRMED

COUNSEL

Suzanne Laursen, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 Miranda B. appeals from the juvenile court's October 2014 order terminating her parental rights to M.B., born in May 2010, on the grounds of abandonment, neglect, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(1), (B)(2), and (B)(8)(a). She challenges the sufficiency of the evidence to support the court's findings that (1) the Department of Children's Services[1] (DCS) had made active efforts to provide her with services designed to prevent the breakup of the Indian family as required under the Indian Child Welfare Act (ICWA),[2] 25 U.S.C. § 1912(d), and (2) DCS had made a diligent effort to provide her with appropriate reunification services. We affirm for the reasons stated below.

¶2 This court will affirm a juvenile court's order terminating a parent's right unless we conclude, as a matter of law, that no reasonable person could find the evidence sufficient to prove the elements of the statute. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 6, 9–10, 210 P.3d 1263, 1265-66 (App. 2009). In reviewing the order, we view the evidence in the light most

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[1]The Department of Child Safety is substituted for the Arizona Department of Economic Security (ADES) in this decision. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

[2]25 U.S.C. §§ 1901 through 1963. ICWA applies to this case because M.B. is an enrolled member of the Navajo Nation. *Id.* § 1903(4).

favorable to sustaining the order. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005). We will not disturb the ruling unless it is clearly erroneous, that is, there is no reasonable evidence to support the factual findings upon which it is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 DCS took temporary custody of M.B. in July 2013 after an individual reported that Miranda had left M.B. with her the same day she met Miranda, and that Miranda, appearing to be intoxicated, had returned for the child two or three weeks later. This was the second report DCS had received regarding M.B.; about a month earlier it had learned that Miranda and M.B. were living at a homeless shelter and that Miranda was not feeding or bathing the child.

¶4 DCS filed a dependency petition in which it alleged M.B. was a dependent child because, inter alia, Miranda had left M.B. with an inappropriate caregiver, she was homeless and unemployed, and she could not meet the child's basic needs. DCS also alleged Miranda was cognitively delayed, pregnant, and had appeared to be intoxicated at the time M.B. was taken into custody. It further alleged Miranda had not contacted DCS since M.B. was taken into protective custody and her whereabouts were unknown.

¶5 M.B. was adjudicated dependent as to Miranda in December 2013 after Miranda failed to appear at a status hearing/adjudication hearing and the juvenile court deemed the allegations in the petition admitted. The court found, inter alia, "[a]ctive efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and those efforts were unsuccessful." From July 2013, when DCS took M.B. into protective custody, to October 2013, the case manager was unable to locate Miranda and Miranda did not contact the case manager. Visits between Miranda and M.B. were suspended.

¶6 Miranda contacted the case manager in October, informing her she had moved to Bullhead City. The case manager

tried to arrange a variety of services through DCS's office in Bullhead City, but Miranda disappeared again, leaving only one telephone message in November. She reappeared in April 2014, when she called the case manager and told her she had moved to New Mexico. A week later, DCS filed a motion for termination of Miranda's parental rights. Following a contested severance hearing, the juvenile court terminated Miranda's parental rights on all three grounds DCS had alleged in the motion.

¶7 In its seven-page ruling, the juvenile court made thorough factual findings, summarizing the evidence before it that was the basis for those findings, and entered conclusions of law. It acknowledged ICWA applied, noted the correct standards under ICWA, and evaluated the evidence in light of these standards as well as each of the statutory grounds for termination DCS had alleged in its motion. Relevant to this appeal, the court found, as required under ICWA, *see* 25 U.S.C. § 1912, and Arizona's statutory and case-based authority, DCS had "made a diligent effort, and, in fact, active efforts, to provide appropriate reunification services to the mother." The court specified the services DCS had offered and the efforts it had made to find Miranda so that she could avail herself of those services. The court added, DCS "has proven by clear and convincing evidence, and, in fact, beyond a reasonable doubt, that [it] made 'active efforts' to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and the efforts were unsuccessful."

¶8 Relying in part on her own testimony and, primarily, the testimony of Lynette Mose, the Indian Child Welfare case manager for the Navajo Nation, Miranda first contends there was insufficient evidence to support the court's "active efforts" finding. Miranda is essentially asking this court to reweigh the evidence, which we will not do. It is for the juvenile court, as the trier of fact, to weigh the evidence, determine the credibility of witnesses, and resolve any conflicts in the evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207 (resolution of "conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact"). The record shows the court resolved such conflicts here. The record and the court's ruling also show it was aware of and considered the

evidence of Miranda's cognitive limitations and measured DCS's efforts with those disabilities in mind.

¶9 The juvenile court was only required to find by clear and convincing evidence that DCS had made active efforts to prevent the breakup of the Indian family before it could terminate Miranda's parental rights, *Yvonne L. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 415, ¶ 26, 258 P.3d 233, 239 (App. 2011), but it found DCS had sustained that burden beyond a reasonable doubt. The record contains reasonable evidence to support that finding, material portions of which the court specified in its under-advisement ruling. Although we have noted portions of the ruling, no purpose would be served by restating the ruling in its entirety; instead, we adopt the court's ruling. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08; *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶10 Miranda also argues the juvenile court's finding that DCS had made a diligent effort to provide appropriate reunification services is not supported by reasonable evidence. Miranda correctly notes this finding must be made when termination is based on the length of time a child is in court-ordered care, pursuant to § 8-533(B)(8). *See also* § 8-533(D). The court made the requisite findings here in connection with its termination of Miranda's rights based on M.B. having been in court-ordered care for nine months or longer under § 8-533(B)(8)(a). But Miranda does not challenge the court's finding that DCS established the separate ground that she had abandoned M.B. And neither the statute nor constitutional principles requires DCS to make a diligent effort to provide appropriate reunification services when a parent has abandoned his or her child. *See Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶¶ 12, 15, 993 P.2d 462, 466-67 (App. 1999).

¶11 Because we may sustain the juvenile court's ruling if there is sufficient evidence of at least one statutory ground for termination, we need not address this issue further. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000). Nevertheless, the record contains reasonable evidence to support that finding. Indeed, the evidence in the record that supports the court's finding that DCS had made active efforts to prevent the

breakup of the Indian family also supports the finding that DCS had made a diligent effort to provide Miranda appropriate reunification services.[3]

¶12 The juvenile court's order terminating Miranda's parental rights to M.B. is affirmed.

[3]At the end of her argument, Miranda points to the testimony of the Indian Child Welfare expert that "active efforts" require more than reasonable efforts. Apparently equating "diligent" efforts with "active efforts," she asserts that because there was insufficient evidence of active efforts there was, therefore, insufficient evidence of a diligent effort. But assuming the two are the same, we have found sufficient evidence exists in the record to support the juvenile court's "active efforts" finding beyond a reasonable doubt; we, therefore, necessarily reject Miranda's argument that there was insufficient evidence to support the court's "diligent effort" finding under a clear and convincing burden of proof.