

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JUSTINE K.,
Appellant,

v.

ARIZONA DEPARTMENT OF CHILD SAFETY AND J.S.,
Appellees.

No. 2 CA-JV 2014-0150
Filed March 4, 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NOT FOR PUBLICATION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. JD20130037
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Peter G. Schmerl, P.C., Tucson
By Peter G. Schmerl
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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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 Justine K. appeals from the juvenile court's order terminating her parental rights to her son, J.S., born November 2008, on neglect and time-in-care grounds pursuant to A.R.S. § 8-533(B)(2) and (B)(8)(a). We affirm.

¶2 In July 2013, the Department of Child Safety (DCS)¹ removed J.S. from the care of Justine and her husband, J.S.'s stepfather. The removal followed an incident of domestic violence during which Justine acknowledged several other incidents of domestic violence, a report of ongoing fighting between Justine and her husband, an attempted suicide by Justine, as well as her and her husband's refusal to submit to drug testing. According to a report by DCS, emergency responders to Justine's suicide attempt reported her apartment was "filthy," with "pills and drug paraphernalia lying around on the floor, counters, tables, etc., along with broken windows."

¶3 J.S. was found dependent as to Justine in August 2013. In September, she tested positive for methamphetamine and opiates. And, shortly after J.S. was found dependent, Justine arrived at a visitation with J.S. exhibiting signs of intoxication. Justine failed to

¹DCS is substituted for the Arizona Department of Economic Security (ADES) in this decision. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. See 2014 Ariz. Sess. Laws 2nd Spec. Sess., ch. 1, §§ 6, 20, 54.

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participate meaningfully in treatment programs and other services – including visitation. Justine was incarcerated from January to April 2014 for violating the terms of her federal probation.

¶4 The state, pursuant to the juvenile court’s order, filed a motion to terminate her parental rights on April 8, 2014. The state alleged termination was warranted on the grounds of time-in-care, chronic substance abuse, abandonment, and neglect. After her release from incarceration and during the termination proceeding, Justine was compliant with the case plan and participated in services, although she denied there had been repeated incidents of domestic violence between her and her husband. In October 2014, the court found termination was warranted on the grounds of time-in-care and neglect, and that termination was in J.S.’s best interests.²

¶5 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 finds by a preponderance of the evidence that termination 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). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. See *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

²Although the juvenile court referred to the substance-abuse ground, its order is not entirely clear as to whether it found termination was warranted on that ground. Accordingly, we will assume without deciding that neglect and time-in-care formed the basis for its order terminating Justine’s parental rights to J.S. The court also terminated the parental rights of J.S.’s unknown father.

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¶6 On appeal, Justine asserts the juvenile court erred in finding termination warranted on neglect grounds. She argues the court improperly relied on a police report admitted into evidence over her objection. However, as DCS points out, Justine did not specifically object to the police report. Although, in her pretrial statement, Justine objected to “[a]ll exhibits . . . on the basis of relevancy, foundation, prejudicial contents, hearsay and second tiered hearsay,” that general objection is insufficient to preserve the issue for review. *See State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 683 (App. 2008).

¶7 Moreover, even had Justine properly preserved the issue, she develops no argument on appeal that the juvenile court erred by admitting the report into evidence or by relying on it in reaching its decision. *See Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (undeveloped and unsupported argument waived on appeal). Accordingly, we not address this argument further. And, for the same reason, we do not address her entirely undeveloped argument that there was “insufficient evidence of ‘substantial risk’ as required by statute.”³

¶8 Justine next argues the juvenile court erred in finding DCS had made diligent efforts to reunify her with J.S. But, unlike terminations based on time-in-care grounds or repeated out-of-home placements, § 8-533(B)(8), (11), there is no statutory requirement that such services be provided in terminations based on neglect pursuant to subsection (B)(2). Although we have applied that requirement to terminations based on mental illness under § 8-533(B)(3), *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶¶ 30, 33, 971 P.2d 1046, 1052 (App. 1999), we find no authority applying it to a termination based on abuse or neglect, and Justine cites none. Because Justine has not argued, much less established, that finding was required, we

³Because Justine has not established the juvenile court erred in terminating her parental rights on the grounds of neglect, we need not address her claim the court erred in terminating her parental rights based on time-in-care grounds. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000).

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need not address her argument the evidence was insufficient to support it.

¶9 Last, Justine asserts the juvenile court erred in finding termination was in J.S.'s best interests. Although she acknowledges J.S. was in an adoptive placement, she claims that "is not evidence that severance is in the best interest of a child." Arizona law clearly provides otherwise; the availability of an adoptive placement, considered in light of J.S.'s need for permanence, is sufficient to show he would benefit from termination of Justine's parental rights. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004); *see also In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) ("Leaving the window of opportunity for remediation open indefinitely is not necessary, nor do we think that it is in the child's or the parent's best interests.").

¶10 And, although Justine is correct that termination will separate J.S. from his newborn sister, that fact alone does not require the juvenile court to conclude termination is not in his best interests. Indeed, J.S. apparently has not been told he has a sibling. *Cf. Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008) (close bond between siblings factor in best interests determination).

¶11 We affirm the juvenile court's order terminating Justine's parental rights to J.S.