IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

YVONNE E.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, L.E., P.E., A.E., M.E., R.E.,
M.E., A.E., A.E., AND S.E.,
Appellees.

No. 2 CA-JV 2015-0113
Filed October 13, 2015

Appeal from the Superior Court in Pinal County
No. S1100JD201000141
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Appellant Yvonne E. challenges the juvenile court's order of June 10, 2015, terminating her parental rights to her nine children on grounds they had been in court-ordered, out-of-home placement for more than six or nine months and Yvonne "is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3), (8)(a)-(b). On appeal, Yvonne argues the Department of Child Safety (DCS) [1] did not make reasonable efforts toward reunification. We affirm.

¶2 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.

[1]DCS 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 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

See Denise R. v. Ariz. Dep't of Econ. Sec., 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

Background

¶3 DCS took custody of Yvonne's older children in August 2010 after two of them were born exposed to methamphetamine in 2009 and 2010. Yvonne and Leonardo, father to the children, had a history of reports to DCS going back to 2008, some of which were unsubstantiated, but services were discussed with and recommended to them as a result of the reports. These reports included use of methamphetamines by both parents and failure to supervise the small children.

¶4 The children were adjudicated dependent in September 2010, and a case plan of family reunification was adopted. The juvenile court further determined DCS had made reasonable efforts toward reunification. DCS provided Yvonne with various services, including substance abuse classes, urinalysis, parenting classes, and visitation. Yvonne complied with required services and tested negative for drugs, and physical custody of the children was ordered returned to Yvonne and Leonardo in July 2011. The dependency was dismissed that same month.

¶5 In August 2012, however, DCS received a report of abuse of the children, including screaming, yelling, and swearing at them and hitting them. Then in February 2014, Yvonne reported seeing "a man with a gun and a knife outside her home" and police officers investigated. When they arrived, the officers found Yvonne "acting very paranoid" and having not slept in three days; she admitted she had been using methamphetamine. DCS again took custody of the children and filed a new dependency petition, alleging abuse and neglect. The children were adjudicated dependent in February 2014.

¶6 In the case plan filed in February, DCS offered, and Yvonne agreed to, various services including urinalysis, substance

abuse assessment, individual and family counsel, parenting classes, parenting aide, transportation, and visitation.[2] In reports filed in August 2014, the DCS caseworker assigned to the family stated that Yvonne was receiving counseling and substance abuse services, as well as "random drug testing," but she had not been compliant with the testing or attending counseling services. She failed to appear for a psychological evaluation, and she tested positive for alcohol and methamphetamine in May and June respectively. The caseworker stated Yvonne had been "non-compliant with services" from February until April, at which time she began to comply with urinalysis and "stated she was willing to comply with services." But the reports indicated Yvonne did not follow through with "opportunities to obtain employment" and was "not bonded with her children."

¶7 In her August report, the caseworker recommended that the case plan be changed to severance and adoption. At a permanency planning and review hearing that month Yvonne objected to the proposed change in case plan and the state requested "a continuance in order to staff th[e] matter." The juvenile court again found that DCS had made reasonable efforts to reunify the family.

¶8 By the time the juvenile court held the continued hearing in November 2014, Yvonne still had not "participate[d fully] in services" or made "necessary behavioral changes." She began to call in for urinalysis in November, but tested positive for amphetamine and methamphetamine in November and December. DCS filed a motion to terminate Yvonne's parental rights in December 2014, on the grounds that she was unable to discharge parental responsibilities due to her chronic substance abuse and that the children had been in court-ordered, out-of-home care for six or nine months or more. *See* § 8-533(B)(3), (8)(a)-(b). After a contested severance hearing in April 2015, the juvenile court found both grounds proven and ordered Yvonne's parental rights severed.

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[2]DCS offered one visit per week, but the parents "want[ed] more frequent visits."

Discussion

¶9 On appeal, Yvonne argues that waiting times with service providers prevented her "starting the required rehabilitative services" and she did not have sufficient time to engage in services before DCS sought termination. As a result, she contends the juvenile court abused its discretion in finding DCS had made reasonable efforts to provide her with services as required for termination.[3]

¶10 Yvonne testified at the severance hearing that she had originally sought services with Corazon, but moved to Pinal Hispanic in May 2014 because she was still on the waiting list with Corazon. She was on the waiting list with Pinal Hispanic for a month and a half before beginning services. When she did begin, the agency indicated she should receive inpatient services. She did, however, complete an outpatient substance abuse program while waiting.

¶11 Nevertheless, as discussed above, the caseworker's report to the court filed in August 2014 indicates that at that time Yvonne was receiving counseling services through Corazon, substance abuse services through another agency, "and random drug testing in which [she] ha[d] been non-compliant." Yvonne was not attending counseling, did not appear for her psychological

[3]DCS argues that because Yvonne did not object earlier to the services provided or to the court's findings that DCS was providing reasonable services, she has waived the argument for appeal. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 14, 319 P.3d 236, 240 (App. 2014); *Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 19, 312 P.3d 861, 865-66 (App. 2013). The minute entries for the permanency planning hearings, however, indicate that Yvonne objected, at least to the change in case plan. The transcripts of those proceedings are not before us, therefore we cannot say whether the lack of reasonable services was the basis for Yvonne's objections, and we thus decline to deem her arguments waived.

evaluation, and tested positive for alcohol in May 2014 and methamphetamine in June 2014. She was not in contact with the case manager. She continued to have positive tests for amphetamine and methamphetamine, and in a December 2014 addendum report to the court, her caseworker indicated Yvonne "still has not been participating in services as required." Likewise, she did not participate in counseling with the children, despite their counselor having contacted her to do so in the months before the severance hearing. She did not undergo a psychological exam until March 2015. And the case supervisor testified at the severance hearing that "there has not been any consistent attendance into any program" to which DCS had referred her to or that she sought out.

¶12 In challenging the juvenile court's conclusion that DCS had made reasonable efforts and established the statutory grounds for severance, Yvonne relies on favorable testimony but does not address the contrary evidence of her own non-compliance, which was relied on by the court. We do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court's resolution of conflicting inferences if supported by the record, *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶13 As detailed above, Yvonne's caseworker and case supervisor made clear in reports and testimony that she had been non-compliant with the case plan and services throughout the time the children were in out-of-home care. In light of that non-compliance, and viewing the evidence in the light most favorable to upholding the juvenile court's order, *see Manuel M.*, 218 Ariz. 205, ¶ 2, 181 P.3d at 1128, we cannot say, as a matter of law, that no reasonable person could have reached the court's conclusion here—that DCS had made reasonable efforts and proved the grounds for severance, *see Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266.

Disposition

¶14 The juvenile court's ruling severing Yvonne's parental rights is affirmed.