IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

AMANDA G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, D.F., AND F.F,
Appellees.

No. 2 CA-JV 2016-0040
Filed June 10, 2016

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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201400280
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Amanda G. appeals from the juvenile court's March 1, 2016, order terminating her parental rights to D.F. and F.F., born in March 2010 and December 2012, on the ground of nine-month out-of-home placement.[1] *See* A.R.S. § 8-533(B)(8)(a). In the sole issue she raises on appeal, Amanda contends her attorney rendered ineffective assistance.[2] We affirm for the reasons stated below.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and by a preponderance of the evidence that severance 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). "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

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[1]The children's father, whose rights were also terminated, is not a party to this appeal.

[2]Amanda does not challenge the sufficiency of the evidence for the termination ground or contend that severance was not in the children's best interests.

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In October 2014, the children were removed from the family home, and the court adjudicated them dependent as to Amanda in January 2015. The Department of Child Safety (DCS) offered Amanda a variety of reunification services, including daycare, drug testing, and parenting education classes, and it required her to maintain safe and stable housing and find a source of legal income. The court changed the case plan to severance and adoption in August 2015, and DCS filed a motion to terminate Amanda's rights based on grounds of nine-month out-of-home placement. *See* § 8-533(B)(8)(a).

¶4 For the first fourteen months of the dependency proceeding, Amanda failed to participate in any services other than supervised visits with the children, which the court suspended in April 2015 for several reasons, including Amanda's drug use, her aggressive conduct with the children's father and DCS personnel, and the children's safety; Amanda also failed to obtain safe and stable housing and continued to abuse methamphetamine. Approximately three weeks before the January 2016 termination hearing, Amanda began participating in outpatient treatment and drug testing.

¶5 On appeal, Amanda contends that, based on counsel's failure to communicate adequately with her, "counsel did not learn of [her] sincere efforts to remedy the drug abuse . . . and she did not learn of two witnesses [her therapist at Impact and her case manager] who could have substantiated [her] progress [since her release from incarceration in December 2015]."[3] She also maintains

[3] At the beginning of the severance hearing, Amanda's attorney identified for the first time two witnesses who were present in the courtroom, asserting she had learned about them that day. Counsel told the juvenile court the witnesses "represent[ed] two programs that [Amanda had been] involved in since she left the detention center [in December 2015]." The court granted DCS's objection to the untimely disclosure of the witnesses and did not permit them to testify. *See* Ariz. R. P. Juv. Ct. 44(D)(2), (F).

counsel was unaware that DCS had said things that "were not true," and that the juvenile court terminated her parental rights "without knowing how much progress she had made [since December 2015]." She contends she was prejudiced by counsel's deficient performance, and asks us to remand for an evidentiary hearing to permit her to develop a factual record to support her claim of ineffective assistance, or to remand "for another termination hearing with competent counsel."

¶6 The law governing ineffective assistance claims in proceedings to terminate parental rights is not fully developed in Arizona. We previously have suggested a parent has a due process right to the effective assistance of counsel to the extent necessary to ensure severance proceedings are fundamentally fair and the results of those proceedings are reliable. *See John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, ¶¶ 14, 19, 173 P.3d 1021, 1025-26 (App. 2007). As we did in *John M.*, we assume here, by analogy to the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), for ineffective assistance in criminal cases, that a parent claiming ineffective assistance in a severance proceeding must similarly establish both incompetence by counsel and resulting prejudice. *John M.*, 217 Ariz. 320, ¶ 17, 173 P.3d at 1026.

¶7 But again, as in *John M.*, "we need not consider here what might be required for a showing of incompetence," *id.*, because Amanda has failed to allege any specific prejudice attributable to her counsel's performance, *see id.* ¶ 18.

> [N]o reversal of a termination order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel's alleged errors were sufficient to "undermine confidence in the outcome" of the severance proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different.

Id., *quoting Strickland*, 466 U.S. at 694.

¶8 Amanda has not demonstrated how having the two witnesses testify about her recent efforts could have changed the outcome of the trial in light of her chronic substance abuse and failure to meaningfully comply with the case plan. She had not participated substantially in reunification services for approximately fourteen months, and only began to engage in services during the three weeks before the severance hearing, a fact she acknowledges on appeal. Notably, Amanda herself testified about her recent progress, a fact the juvenile court acknowledged: "I do believe that it's admirable that [Amanda has] been sober as long as she has and, quite frankly, most of it has been because she's incarcerated, but that doesn't mean that she doesn't have good intentions."

¶9 However, the juvenile court went on to express its concern about the possibility of a relapse or the consequences to the children if Amanda were to violate her probation, concluding that "this is a case where it's too little too late." Accordingly, even if counsel had been able to call the two witnesses, and even if they had testified as to Amanda's recent progress, it is unlikely this would have changed the court's ruling. *See In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (finding parent's successful efforts at rehabilitation during eight months prior to trial "'too little, too late'" in light of substantial neglect to remedy addiction for more than a year while child in out-of-home care).

¶10 Additionally, Amanda generally asserts that "[c]ounsel's failure to communicate with [her] resulted in no objection to DCS's testimony about matters that [Amanda] claims were untrue." By failing to identify those matters, Amanda has not made any showing of prejudice attributable to counsel's alleged ineffectiveness. Absent any showing of resulting harm, and in light of the overwhelming evidence supporting the juvenile court's ruling, which notably included its acknowledgement of Amanda's recent progress, she has failed to present a credible claim of ineffective assistance that would entitle her to relief. *See John M.*, 217 Ariz. 320, ¶ 18, 173 P.3d at 1026.

¶11 Accordingly, we affirm the juvenile court's order terminating Amanda's parental rights to F.F. and D.F.