IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DESAREE J.,
Appellant,

v.

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

No. 2 CA-JV 2016-0081
Filed November 23, 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NOT FOR PUBLICATION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 Pima County
No. JD20150334
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 Daniel R. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

E S P I N O S A, Judge:

¶1 Desaree J. appeals from the juvenile court's order terminating her parental rights to her daughter S.J., born August 2014, on the grounds of neglect and mental illness pursuant to A.R.S. § 8-533(B)(2) and (3). Desaree argues on appeal that the juvenile court erred by ordering the Arizona Department of Child Safety (DCS) to file a motion to terminate her parental rights without making required statutory findings, that DCS waived termination on neglect grounds, and that insufficient evidence supported termination on either ground as well as the court's finding that termination was in S.J.'s best interests. Finding no error, we affirm.

¶2 "[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." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). After several months of supervision, in May 2015, DCS removed eight-month-old S.J. from Desaree's care. During the preceding months, Desaree had allowed transient adults to live in the home, allowed individuals unable to pass DCS or criminal background checks to supervise S.J., failed to maintain basic levels of cleanliness in the home, and failed to regularly bathe S.J. or change her clothing or diaper. Additionally, she failed to treat S.J.'s bleeding diaper rash, keep her immunizations current, or take her for treatment for an ear infection. Desaree, who has a long history of mental illness, had been receiving life-skills and mental-health services for the preceding three years, but had missed psychiatric appointments and resisted taking medication.

¶3 Desaree admitted the allegations in a dependency petition in July 2015 and began participating in services including mental-health treatment, parenting education, life-skills training, and supervised visitation. Although Desaree participated in services, she made negligible progress. She made no "significant behavioral changes," left S.J. unattended several times during visits, refused or was unable to implement new parenting skills, and did not believe her parenting skills were deficient or that services were needed.

¶4 At a permanency hearing in November 2015, DCS recommended the case plan be changed to severance and adoption. The juvenile court ordered DCS to file a motion to terminate Desaree's parental rights. In that motion, DCS alleged neglect and abuse grounds pursuant to § 8-533(B)(2) and mental-illness grounds under § 8-533(B)(3). After a five-day contested severance hearing,[1] the juvenile court ordered that Desaree's parental rights be terminated. Although the court determined DCS had not demonstrated abuse, it concluded Desaree had neglected S.J. The court additionally concluded that DCS had established termination was warranted on mental-illness grounds and was in S.J's best interests. This appeal followed.

¶5 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of a statutory ground 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 will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. 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).

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[1]At the initial severance hearing, the juvenile court terminated the parental rights of S.J.'s father. He is not a party to this appeal.

¶6 We first address Desaree's argument that the juvenile court failed to make required statutory findings before ordering DCS to file a motion to terminate her parental rights. Specifically, she asserts the court failed to find termination was in S.J.'s best interests as required by A.R.S. § 8-862(D) and that the court was required to find, pursuant to A.R.S. § 8-829(A)(6), that she "ha[d] substantially neglected or willfully refused to participate in reunification services." Desaree did not object on this basis below, however, and accordingly has forfeited this issue on appeal.[2] *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007). Even had she objected, however, any deficiency in the court's determination is rendered moot by the court's final order terminating Desaree's parental rights.[3] *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 10, 1 P.3d 155, 158 (App. 2000). We therefore do not address this issue further.

¶7 We next address Desaree's claim that insufficient evidence supports the juvenile court's finding that termination was warranted due to her mental illness. Pursuant to § 8-533(B)(3), a parent's rights may be terminated if "the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or 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

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[2]Desaree seems to suggest we should review her claim for fundamental error, but develops no argument suggesting any such error occurred. *See Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶¶ 22-23, 118 P.3d 37, 42 (App. 2005) (applying fundamental error doctrine to termination of parental rights). Thus, she has waived this argument. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, n.6, 256 P.3d 628, 631 n.6 (App. 2011) (failure to develop argument on appeal usually results in abandonment and waiver of issue).

[3]DCS is incorrect, however, that the order was separately appealable. *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 9, 1 P.3d 155, 158 (App. 2000).

indeterminate period." Desaree does not dispute that she is mentally ill or that her illness will continue for a prolonged and indeterminate period of time. She asserts only that there was insufficient evidence that she was unable to discharge her parental responsibilities because she was making progress and possible future unsupervised visitation had not been ruled out.

¶8 Desaree's argument essentially asks us to reweigh the evidence, something we do not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). The juvenile court is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Id.* And ample evidence supported the court's conclusion here.[4] Desaree's case manager stated she had not meaningfully benefitted from services, she generally refused or was unable to accept or apply advice about parenting S.J., and did not recognize the necessary lifestyle changes she would have to make to provide adequate parental supervision. A psychiatrist concluded Desaree's ongoing mental health issues "present[ed] a serious hazard" to a child in her care.

¶9 Desaree also asserts the juvenile court's best-interests finding was unsupported by sufficient evidence. She suggests that finding was improper because she and S.J. were "bonded." But the sole record citation Desaree provides in support of that claim does not support that conclusion. And her argument ignores the case manager's testimony that S.J. was adoptable and her current placement was willing to adopt her. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). It also ignores the case manager's opinion that Desaree's continued interaction with S.J. was harmful because Desaree could not "recognize the reasons for [S.J.'s] removal." "In most cases, the

[4] Because we determine the juvenile court did not err in terminating Desaree's parental rights pursuant to § 8-533(B)(3), we need not address her arguments related to § 8-533(B)(2). *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

presence of a statutory ground [for severance] will have a negative effect on the child[]," supporting a finding that termination is in the child's best interests. *Maricopa Cty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988). The court's best-interests finding was supported by the record here.[5]

¶10 The juvenile court's order terminating Desaree's parental rights to S.J. is affirmed.

[5]We do not address Desaree's additional argument that a best-interests finding is improper if she "still has the ability to reunify." She asserts we need only reach this argument if we were to find termination was not warranted under § 8-533(B)(3).