

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

LIBERTY C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND T.C.,
Appellees.

No. 2 CA-JV 2017-0051
Filed September 11, 2017

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NOT FOR PUBLICATION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. JD20140465
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Joel B. Feinman, Pima County Public Defender
By Nicholas Knauer, Assistant Public Defender, Tucson
Counsel for Appellant

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

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Eppich and Judge Howard¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Liberty C., the mother of T.C., born in December 2012, appeals from the juvenile court's March 15, 2017 order terminating her parental rights on the grounds of neglect, mental illness or deficiency, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(2), (3) and (8)(c). She contends the court erred in applying § 8-533(B)(2) and terminating her rights based on neglect. She also argues the court failed to enter sufficient statutory findings as to § 8-533(B)(3) and (8)(c), and there was insufficient evidence to terminate her rights under these two grounds. We affirm for the reasons stated below.

¶2 A juvenile court may terminate a parent's rights if the court finds clear and convincing evidence establishes at least one of the statutory grounds for termination and a preponderance of evidence shows termination of the parent's rights 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). We will affirm a termination order unless we can say as a matter of law that no reasonable person could find the evidence established the statutory elements by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). In reviewing the order, we view the evidence in the light most favorable to sustaining the juvenile court's decision. *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶ 2, 380 P.3d 111, 112 (App. 2016).

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶3 Liberty and Tomas C. are the parents of T.C., D.C., born in February 2003, and S.C., an adult. Liberty is also the mother of Y.C., born in January 2017. The family has a significant history of domestic violence. The child welfare department in California appears to have been involved with the family since 1992, with an in-home dependency proceeding as to one of the children between 2008 and 2010. The family moved to Arizona and in January 2012, the Department of Child Safety (DCS)² received a report of domestic violence and that the children were being neglected. Tomas was arrested after another incident in November 2013, charged with assault and contributing to the delinquency of a minor, and pled guilty to the latter charge.

¶4 The incident that resulted in the children's removal from the home occurred in July 2014, at around 2:00 in the morning. Liberty and D.C. left the home because Liberty and Tomas were arguing. Liberty left T.C. and S.C., who is autistic and nonverbal, with Tomas, who was intoxicated. When Liberty and D.C. returned at around 5:00 a.m., T.C. had bruises and scratches on his back. Tomas shoved D.C. as she tried to call the police for help.

¶5 Police officers arrived and observed bruising on about seventy percent of T.C.'s back and scratches that appeared to be fingernail marks. S.C. had blood under her nose and around her mouth. Tomas was extremely intoxicated and combative. He claimed S.C. had injured T.C. The officers took D.C., S.C. and T.C. to a hospital for observation.

¶6 Liberty told a DCS investigator Tomas had been drinking for several hours, and that she saw T.C.'s injuries when she returned. The investigator stated in her report that the home was unsanitary, there was a strong odor of urine in the house, there were dirty dishes

²At the time the reports were made, Child Protective Services was a division of the Arizona Department of Economic Security, DCS has since undertaken its responsibilities. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, § 20. For ease of reference, we refer to DCS throughout this decision.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

in some of the rooms, and roaches in the rooms and the refrigerator. D.C. stated during an interview that Tomas would become violent when he drank alcohol. She insisted T.C.'s back was "clear" before she and her mother had left the home, her parents both spanked her with a belt, and Tomas would "smack[] her," pull T.C.'s hair, and kick S.C. Tomas admitted to police officers and the DCS investigator that he had choked and hit Liberty in the past. He also admitted he drank beer sometimes until he passed out on the floor.

¶7 Tomas was arrested and DCS took temporary custody of the children, filing a dependency petition.³ The juvenile court adjudicated D.C. and T.C. dependent as to Liberty in October 2014, and Tomas in November. DCS provided the family with a panoply of services aimed at reunification of the family. In June 2015, after a dependency review and permanency hearing, the court found DCS had made reasonable efforts to reunify the family by offering a variety of services and although the parents were substantially compliant with the case plan, the children's dependent status persisted. The court confirmed the case-plan goal of reunification. But in April 2016, the case manager recommended that the court change the case-plan goal to severance and adoption. She stated in her report that neither parent had benefitted from the services sufficiently to parent the children safely and appropriately.

¶8 After a dependency review hearing in May 2016, the juvenile court changed the case plan to a concurrent plan of reunification and severance and adoption. DCS filed a motion to terminate the parents' rights on the grounds of neglect, mental illness or deficiency, and length of time in court-ordered care, alleging abuse as an additional ground as to Tomas. The severance hearing took place over ten days between August 2016 and February 2017. By the

³Tomas pled guilty to and was convicted of child abuse in November 2015.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

time the hearing concluded, T.C. was in his third foster home and Liberty had given birth to Y.C.⁴

¶9 In a thorough, twenty-five-page under-advisement ruling, the juvenile court terminated the parents' rights as to T.C. on all grounds DCS had alleged in its motion.⁵ The court reviewed the history of the case, described the services DCS had provided, and summarized the evidence presented at the severance hearing. It then entered factual findings that related to each of the statutory grounds as well as T.C.'s best interests, concluding DCS had sustained its burden as to all grounds. This appeal followed.

¶10 We first address Liberty's argument that the juvenile court failed to "make the necessary statutory findings" to terminate her rights under § 8-533(B)(3) and (8)(c). She asserts the court did not "mention" her "capability to discharge parental responsibilities in its conclusions of law," or her "failure to remedy circumstances that cause [T.C.] to remain in out-of-home care."

¶11 DCS contends Liberty waived this claim by failing to raise it below, because she never requested additional findings. We agree and Liberty does not argue otherwise. "[A] party may not 'sit back and not call the trial court's attention to the lack of a specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as a ground[] for reversal.'" *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) quoting *Bayless Inv. & Trading Co. v. Bekins Moving & Storage Co.*, 26 Ariz. App. 265, 271, 547 P.2d 1065, 1071 (1976).

¶12 Liberty also contends there was insufficient evidence to support the termination of her rights on these two grounds. She

⁴DCS filed a dependency petition as to Y.C. when she was born in January 2017. She is not a party to the termination order that gave rise to this appeal.

⁵Because D.C. was twelve-years old and less vulnerable than T.C., DCS withdrew her from the severance motion during the severance trial.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

asserts DCS “narrowed the applicable context with which to ascertain parental responsibility,” arguing the basis for the case manager’s conclusion that she could not “render parental responsibilities arose solely from [Liberty’s] performance in supervised visitation.” She contends DCS limited the juvenile court’s ability to determine whether she could parent independently in the near future. Essentially challenging the credibility of the case manager and the weight the court gave her opinions and conclusions, she argues they were not based on first-hand observations of Liberty with T.C. She makes similar arguments with respect to the testimony of and reports by the psychologist who had evaluated her, arguing the court gave too much weight to that evidence.

¶13 A court may terminate a parent’s rights pursuant to § 8-533(B)(3) if it finds “the parent is unable to discharge parental responsibilities because of mental illness[or] mental deficiency . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” A court may terminate a parent’s rights under § 8-533(B)(8)(c) if the court finds the child has been in court-ordered care for “fifteen months or longer . . . , the parent has been unable to remedy the circumstances that cause the child to” remain out of the home and “there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.”

¶14 The juvenile court found, *inter alia*, both Tomas and Liberty “suffer from mental deficiencies which leave them in a pre-teen cognitive state. The conditions are static under the current state of mental health care and science.” The court added that the parents’ conditions “will continue for a prolonged and indeterminate period of time,” and concluded DCS had sustained its burden of proving the elements of § 8-533(B)(3), which it had identified. Articulating the elements of § 8-533(B)(8)(c), the court then found T.C. had been out of the home for two-and-a-half years and was in his sixth placement, and DCS had provided the parents “with adequate reunification services.” The court further found the parents were not capable of effectively parenting T.C. “for the reasons previously stated.”

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶15 There is ample evidence supporting these findings and conclusions. Psychologist Lorraine Rollins, Ph.D., evaluated Liberty in November 2014, and diagnosed her as suffering from a mild-range intellectual disability. She opined that Liberty's "weak level of intellectual functioning" would "likely limit her ability to appropriately benefit from intervention services to develop minimally adequate, independent parenting skills in the foreseeable future," and that a child in Liberty's care would be at risk for abuse or neglect. She recommended that Liberty receive services individually or in small groups, and suggested "fairly simple language" be used to make sure she understood and retained what had been explained to her. Rollins testified at the severance hearing that Liberty's ability to reason and her judgment are like that of an eight to ten-year-old child.

¶16 Rollins evaluated Liberty a second time in October 2015. Her diagnosis did not change. She stated in her report and testified that notwithstanding the one-on-one services Liberty had received since the first evaluation, her ability to parent remained compromised and even with these services, she was not likely to be able to "parent appropriately on a consistent basis."

¶17 The ongoing case manager testified that Liberty had benefitted from healthy relationships and domestic-violence services but had not benefitted from parenting education, and continued to struggle during visitation. She testified that Liberty had not made sufficient progress or acquired the skills necessary to independently parent and care for T.C.

¶18 The juvenile court was well aware of the evidence that was favorable to Liberty, including her compliance with the case plan and some of the positive signs of improvement. The court was also aware of the evidence Liberty points to that showed she had, at times, demonstrated some positive parenting skills during supervised visitation, and that T.C. was often difficult. The court was also aware of what the case manager had observed first-hand and knew what formed the basis for her conclusions that Liberty would not be able to parent T.C.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶19 Similarly, the court knew the limited context in which Rollins had evaluated Liberty and the basis for Rollins's conclusion that Liberty had not benefitted sufficiently to be able to parent T.C. These and other witnesses DCS presented were subject to cross-examination by Liberty's counsel. Liberty is essentially asking this court to reweigh the evidence, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). It was for the juvenile court, not this court, "to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We have no basis for interfering. And, to the extent Liberty is suggesting DCS evaluated her ability to parent according to an incorrect standard and that the juvenile court, in turn, wrongly applied that standard, the record belies that contention.

¶20 Liberty also contends that, with respect to both § 8-533(B)(3) and § 8-533(B)(8)(c), DCS did not make a diligent effort to reunify her with T.C. or provide her with "pivotal" services. She argues DCS's failure to institute unsupervised visits "materially affected" her prospects of reunifying, and that DCS did not timely refer her to a parenting coach.

¶21 The case manager explained that she never arranged for unsupervised visits because Liberty had not satisfied certain conditions set forth in a May 2016 letter. Liberty argues that, given her diagnosis of mild intellectual disability, and the fact that the letter contained requirements as well as suggestions, "it is reasonable to assume" she did not truly understand what the letter required of her. But the case manager testified she had reviewed the letter with Liberty carefully and Liberty had said she understood its requirements. Additionally, as DCS points out, there was evidence that Liberty had been working on the same goals with the parent aid. Moreover, Liberty had resisted one-on-one parenting assistance. The record shows that Liberty was simply unable to reach the goals necessary for the case manager to feel she could safely have unsupervised visitation with T.C.

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶22 That Liberty was unable to have unsupervised visitation does not mean DCS's assessment of her parenting abilities was somehow incomplete. Nor does it mean that the court, consequently, could not have had sufficient information to fully evaluate her parenting capabilities for purposes of deciding whether DCS had sustained its burden of proving the grounds for terminating her rights. *Cf. In re Pinal Cty. Juv. Action No. S-389*, 151 Ariz. 564, 566-67, 729 P.2d 918, 920-21 (App. 1986) (finding sufficient evidence to support termination based on mental illness where evidence included testimony and report that unsupervised visitation would place child at risk of harm).

¶23 With respect to the propriety of the services Liberty received and DCS's efforts to reunify her with T.C., there was abundant evidence supporting the juvenile court's ruling. The evidence included the reports and testimony of the case manager assigned to the case in September 2015. She testified Liberty had been provided a variety of services, including individual therapy and guidance for parenting and healthy relationships guidance, as well as services from a different provider addressing domestic violence. When she got the case, the case manager immediately arranged a second psychological evaluation for October 2015. She made Liberty's third referral for a parent aid, which also began in October. The case manager explained that because Liberty had not consistently attended visitation or one-on-one sessions, the first parent aid services, which typically last about nine months, was "closed out" shortly after it was opened. Liberty engaged with the second parent aide for about three months, but that service ended because she had not been consistent in attending.

¶24 Beginning in October 2015, Liberty was provided with a parent coach. A parent coach offers one-on-one help to a parent with budgeting issues, housing, and parenting generally, and guides the parent through the dependency process. Even assuming *arguendo* Liberty is correct that there was a delay in providing her with a parent coach, that delay was not significant and would not have affected the outcome here, given her inability to sufficiently benefit from the panoply of services she had been provided, including three referrals for a one-on-one parent aid and individual therapy. Liberty resisted

LIBERTY C. v. DEP'T OF CHILD SAFETY
Decision of the Court

the assistance of a parent coach and the service was closed out because Liberty did not believe it would be helpful and she no longer wanted it.

¶25 The record clearly shows Liberty received services tailored to her needs. The caseworker explained that, unlike the standard case plan, in which the services are often in a group setting, Liberty received individual, one-on-one assistance because that was recommended in 2015 after her first evaluation. The record shows Liberty received adequate services and that additional services would have been futile. *See In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶26 We find sufficient evidence in the record before us to sustain the juvenile court's ruling on the grounds of mental illness or deficiency and length of time in court-ordered care pursuant to § 8-533(B)(3) and (8)(c). We therefore need not address Liberty's arguments relating to termination of her rights on the ground of neglect, pursuant to § 8-533(B)(1). *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205. The court's order terminating Liberty's parental rights to T.C. is affirmed.