IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SILVIA F.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, A.F., M.F., AND A.-F.,
Appellees.

No. 2 CA-JV 2017-0150
Filed January 18, 2018

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NOT FOR PUBLICATION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 Cochise County
No. JD201600014
The Honorable Terry Bannon, Judge Pro Tempore

AFFIRMED

COUNSEL

Janelle A. Mc Eachern, Chandler
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Michelle R. Nimmo, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

S T A R I N G, Presiding Judge:

¶1 Silvia F. appeals from the juvenile court's order terminating her parental rights to her sons, A.F., M.F., and A.-F. on time-in-care grounds. *See* A.R.S. § 8-533(B)(8)(a), (c). For the reasons that follow, we affirm the termination order.

Factual and Procedural Background

¶2 On February 3, 2016, Silvia was with eleven-year-old A.F., two-year-old M.F., and one-year-old A.-F., when she was arrested for possession of marijuana and drug paraphernalia, conspiracy, and theft. The Department of Child Safety (DCS) took custody of the children, placed them with their maternal grandparents, and filed a dependency petition. The juvenile court adjudicated the children dependent as to Silvia in April 2016.

¶3 In May 2017, DCS filed a motion to terminate Silvia's parental rights, and, after a contested termination hearing, the juvenile court concluded DCS had met its burden of proving both time-in-care grounds alleged. The court concluded Silvia had substantially neglected or willfully refused to remedy circumstances that caused the children to be in court-ordered, out-of-home care for more than nine months, *see* § 8-533(B)(8)(a), and had also failed to remedy those circumstances, even after the children had remained in out-of-home care for fifteen months or more, and there was a substantial likelihood that she would be unable to parent effectively in the near future, *see* § 8-533(B)(8)(c).

¶4 With respect to § 8-533(B)(8)(a), the juvenile court found that, although Silvia had "[v]ery recently" enrolled with a new service provider, she previously had "argued with her therapist and parent aides" and had "engaged in denial, deflection and blame that resulted in a lack of participation in services necessary to reunification." As to Silvia's inability to remedy the circumstances that caused her sons' out-of-home placement

for more than fifteen months, *see* § 8-533(B)(8)(c), the court specifically noted "her unaddressed mental health issues." The court cited an evaluating psychologist who "diagnosed [Silvia] with a chronic personality disorder and substance abuse issues," and who reported those conditions could be expected to continue "for a prolonged and indeterminate period" absent "[Silvia's] wholehearted commitment to intensive participation in psychotherapy"—the kind of commitment that, according the court, she had not shown "during the eighteen months[']duration of this case." Based on this evidence, the court found "a substantial likelihood that [Silvia] will not be capable of exercising proper and effective parental control in the near future." *See id.* The court further found termination would be in the children's best interests. Accordingly, it terminated Silvia's parental rights. *See* A.R.S. § 8-538(B). This appeal followed.

Discussion

¶5 To terminate parental rights, a juvenile court must find, by clear and convincing evidence, at least one of the statutory grounds enumerated in § 8-533(B) and, by a preponderance of evidence, that termination will serve a child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We view the evidence in the light most favorable to upholding the court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We will reverse a termination order only for an abuse of discretion or clearly erroneous findings of fact, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8 (App. 2004), or upon a determination that, as a matter of law, no reasonable person could find the essential elements proven by the applicable evidentiary standard, *Denise R.*, 221 Ariz. 92, ¶¶ 9-10.

¶6 Silvia states on appeal that "[t]he [juvenile] court clearly erred by finding that [she] had not remedied the circumstances which brought her children into care." *See* § 8-533(B)(8)(c). But she develops no argument challenging this ground for termination. Notably, she does not dispute the court's summary of her evaluating psychologist's opinion. Nor does she suggest the court abused its discretion in relying on that opinion to conclude she is presently unable to parent her children, due to "unaddressed mental health issues," and will likely be unable to parent them effectively in the near future.[1] *See* § 8-533(B)(8)(c); *Marina P. v. Ariz.*

[1] The psychologist testified that, in light of Silvia's personality disorder, her history, and her failure to profit from treatment, "it is highly

Dep't of Econ. Sec., 214 Ariz. 326, ¶ 22 (App. 2007) ("circumstances," in § 8-533(B)(8) means "'those circumstances existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children"), *quoting In re Maricopa Cty. Juv. Action No. JS-8441*, 175 Ariz. 463, 468 (App. 1993). Instead, she focuses on the court's determination, pursuant to § 8-533(B)(8)(a), that she substantially neglected or willfully refused to remedy those circumstances, as she argues her engagement in services did not "f[a]ll below the threshold required" by that subsection.

¶7 As Silvia acknowledges, a DCS case specialist testified about her "minimal participation" in mental health and substance abuse services and stated that more than one provider had "closed out" service referrals due to Silvia's lack of engagement. Citing *In re Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994), Silvia nonetheless argues termination was not warranted under § 8-533(B)(8)(a) because her participation in services offered by DCS was more than "*de minimus*."

¶8 But, as we noted above, the juvenile court also found termination justified pursuant to § 8-533(B)(8)(c)—a determination Silvia does not meaningfully challenge.[2] Her argument—that her participation in services was sufficient to avoid termination—does not apply to this ground. *Cf. Maricopa Cty. No. JS-501568*, 177 Ariz. at 576 ("parents who make appreciable, good faith efforts to comply with remedial programs outlined by [DCS] will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement" pursuant to § 8-533(B)(8)(a), "even if they cannot completely overcome their difficulties"). Termination under § 8-533(B)(8)(c) instead focuses on a parent's success, or near success, in being able to effectively parent children who have remained in out-of-home care for fifteen months or more. Because we affirm the court's order terminating Silvia's parental rights on this ground, we need not consider whether termination is also warranted

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unlikely that she would be able" to parent her children in the near future, or "[i]n the foreseeable future, for that matter."

[2]Citing her own hearing testimony, Silvia asserts she is employed and had lived in the same home for several months before the termination adjudication, noting that she "was also required" by her case plan "to maintain employment and safe, stable housing." If Silvia means to suggest that her testimony on these matters should have been afforded greater weight, we note that this court does not reweigh evidence on review. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

under § 8-533(B)(8)(a). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27 (2000).[3]

Disposition

¶9 Sufficient evidence supports the juvenile court's termination order, and Silvia has failed to establish any reversible error or abuse of discretion. Accordingly, we affirm the termination of Silvia's parental rights.

[3]We also need not address the juvenile court's best-interests finding, which has not been challenged on appeal. *See Michael J.*, 196 Ariz. 246, ¶ 13.