

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

PEARLA C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, N.C., N.M., AND E.M.,
Appellees.

No. 2 CA-JV 2018-0199
Filed February 26, 2019

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NOT FOR PUBLICATION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. JD20130359
The Honorable Dean C. Christoffel, Judge Pro Tempore

AFFIRMED

COUNSEL

Alewelt Law and Consulting PLLC, Phoenix
By Jennifer Alewelt
Counsel for Appellant

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

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

Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Minors

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Pearlá C. appeals from the juvenile court's September 2018 order terminating her parental rights to her children N.C., born in April 2008, N.M., born in April 2015, and E.M., born in December 2016, on the ground of neglect, A.R.S. § 8-533(B)(2), and, with respect to N.C. and N.M., also based on length of time in care, § 8-533(B)(8)(c). She argues the court erred in concluding the Department of Child Safety ("DCS") made reasonable efforts to reunify the family before seeking termination of her rights. We affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding a juvenile court's termination order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶10 (App. 2009). As stated in that order, Pearlá and Hector M., the father of N.M. and E.M., have "a long history" of engaging in domestic violence in the presence of Pearlá's children.¹ In November 2013, DCS alleged Pearlá's two older children were dependent after Hector had strangled her, dragged her by her hair, and punched her while she was holding one-year-old S.R., in the presence of five-year-old N.C.

¹In the same order, the juvenile court terminated Hector's parental rights to N.M. and E.M., and Juan Q.'s parental rights to his child, N.C. Another of Pearlá's children, S.R., was initially named in the underlying dependency proceeding, but the dependency was dismissed as to her in December 2016, after she was reunited with her father. None of these other parties are subject to this appeal. N.C., N.M., and E.M. have joined in the answering brief filed by Appellee DCS.

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

¶3 In February 2014, the juvenile court adjudicated N.C. and S.R. dependent, and Pearla participated in a psychological evaluation with Dr. Jill Plevell, who diagnosed her with a personality disorder, not otherwise specified, with dependent features. Plevell recommended that DCS monitor Pearla for substance-use issues; provide her with individual therapy, parenting classes, parent-aide services, and healthy relationships/codependency groups; and refer her for public assistance. Plevell further recommended that Pearla obtain her GED, job skills, and at least part-time work to reduce her financial dependence. During that dependency proceeding, Pearla participated in domestic-violence classes, healthy-relationships classes, parenting classes, and supervised visits, but she failed to participate in individual therapy or anger-management classes DCS had offered. By March 2015, six weeks before N.M. was born, the juvenile court had dismissed the dependency as to N.C. and S.R. Pearla then resumed her relationship with Hector and married him in May 2015.

¶4 In July 2016, DCS received a report that Pearla was incarcerated on charges of felony child abuse, criminal damage, domestic violence, and fleeing law enforcement. According to the report, Pearla, with at least one of her children in the car, had crashed into a light post while trying to chase Hector, and had then fled from police at a high speed in another car with all of her children unsecured. The report further alleged that Hector had “thrown” two of Pearla’s children at her during two separate altercations in the past. Pearla subsequently admitted that she had done nothing when N.C. and S.R. had each told her of being sexually abused by one of Hector’s relatives. DCS filed a new dependency petition as to N.C., S.R., and N.M.

¶5 In September 2016, Pearla pleaded guilty to perjury by false sworn statement; attempted child abuse with a likelihood of death or serious physical injury; and domestic violence. She was placed on probation and prohibited from having any contact with Hector. In October, a little more than two months before E.M. was born, Pearla did not contest the allegations in an amended dependency petition. In November, Pearla had begun engaging in some of the services offered by DCS, including healthy-relationships and parenting classes and supervised visits with the children, and so DCS initially allowed her to retain custody of E.M. after she was born.

¶6 In February 2017, DCS reported that Pearla was continuing to participate in services, but the service provider for her non-offending parenting class recommended her participation in individual therapy as

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

well, based on her denying “all responsibility for putting her children in danger.” Dr. Plevell conducted a second psychological evaluation the same month and joined in that recommendation—later testifying that she considered individual therapy the most critical service for DCS to provide, “because it could encompass all the other issues” Pearla needed to address, including her financial- and emotional-dependence issues.

¶7 As of April 2017, however, Pearla had failed to engage in individual therapy, and “present[ed] as disengaged” during her non-offending parenting class group sessions, “often minimiz[ing] the abuse her children experienced.” In July, Pearla admitted to violating conditions of her probation by accepting collect telephone calls from Hector, and her probation was continued.

¶8 In August 2017, DCS received a report that Hector’s mother, who lived next door to the relative who had allegedly abused N.C. and S.R., had obtained legal guardianship of E.M., but had permitted Pearla to retain physical custody of the child and had allowed both Pearla and Hector to have unsupervised access to her. In addition, the grandmother reportedly had hidden the older children from DCS during the earlier dependency investigation, and so had been denied consideration as a placement option for them. After considering the continued contact between Pearla and Hector, the parents’ “lack of engagement in or benefit from services,” and the grandmother’s history of “hiding children from law enforcement and DCS,” DCS took E.M. into temporary custody and filed a dependency petition as to her late that month.

¶9 In September, Pearla began individual therapy and was reportedly “fully engaged and receptive to the process,” and she was attending twice-weekly visitation with the children. Her ongoing DCS case manager told her it was important that she have no contact with Hector, and Pearla claimed she was not in contact with him. But in January 2018, DCS was informed that a Tucson Police Department SWAT team had found Pearla and Hector hiding in the attic of Pearla’s home when they arrived there to arrest Hector on multiple charges of armed robbery. Both Pearla and Hector were incarcerated.

¶10 The juvenile court changed the case plan to severance and adoption in April 2018. Pearla remained in jail, ultimately pleading guilty to the offense of first-degree hindering prosecution, resulting in violation

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

of her probation.² During that time, her DCS case manager remained in contact with her and provided her with supervised video phone calls with the children once a week.

¶11 After a two-day hearing in August 2018, the juvenile court granted DCS's motion to terminate Pearla's parental rights in an under-advisement ruling. With respect to the ground of neglect, applicable to all three children, the court found, "by clear and convincing evidence":

Pearla has neglected her children by failing to protect them from neglect, has been unable or unwilling to provide them with parental supervision, food, shelter and medical care which resulted in an unreasonable risk of harm to the children's health by exposing the children to criminal activity, and on-going domestic violence with Hector. In spite of the danger of the violence between Pearl[a] and Hector, she repeatedly maintained a relationship with him, even when prohibited by the terms of her probation.

The court noted Pearla's "lengthy history" with DCS as further evidence of "her unwillingness to protect her children," and it identified the services DCS offered "to Hector and Pearla which were designed to help address, directly or indirectly, the issues that led to out-of-home placement or were designed to preserve the family relationship." The court found these services sufficient evidence of DCS's "diligent efforts to provide appropriate services" to reunify the family. The court further found termination was in the children's best interests. This appeal followed.

Discussion

¶12 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for termination and a preponderance of evidence that termination of the parent's rights is in the children's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order in a termination proceeding unless we can say as a matter of law that no

²Pearla was awaiting sentencing when the termination adjudication hearing was held in August 2018.

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

reasonable person could have reached the same result, in light of the applicable evidentiary standard. *Cf. Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10 (App. 2009).

¶13 Pearlra contends the juvenile court erred in concluding DCS had made sufficient efforts to provide her with appropriate reunification services. Quoting *Mary Ellen C. v. Arizona Department of Economic Security*, she argues the proper inquiry is whether DCS “provide[d] a parent with the time and opportunity to participate in programs designed to improve the parent’s ability to care for the child.” 193 Ariz. 185, ¶ 37 (App. 1999). According to Pearlra, the services identified by the court were not “designed for her individual needs . . . as recommended by” Dr. Plevell. She initially challenges the court’s statement that, among other services, DCS had offered the parents “Substance Abuse Assessment and Relapse Prevention services . . . which were designed to assist Pearlra and Hector in addressing their substance abuse issues.” Pearlra argues there was no evidence that she had substance abuse issues or had been offered substance abuse services. Citing Plevell’s emphasis on Pearlra’s need for financial and emotional independence, she also contends that “DCS failed to provide the very services recommended by its appointed expert.” *See id.* (state fails to meet requirement for reunification efforts “when it neglects to offer the very services that its consulting expert recommends”). Finally, she argues DCS failed “to coordinate any services” with the jail during Pearlra’s most recent incarceration.

¶14 DCS responds that Pearlra’s argument is irrelevant. It notes that § 8-533(B)(2) requires only a determination of past neglect, rather than any prediction of future abilities, and maintains it is thus distinguishable from grounds for termination that explicitly or implicitly require a finding about the adequacy of DCS’s efforts. *See* § 8-533(B)(8) (requiring “diligent effort to provide appropriate reunification services” for termination on time-in-care grounds); *Mary Ellen C.*, 193 Ariz. 185, ¶ 31 (in requiring evidence of “reasonable grounds to believe that the condition will continue for a prolonged indeterminate period,” § 8-533(B)(3) “implicitly incorporates the obligation to make *reasonable* efforts to preserve the family before seeking a severance on mental illness grounds”). Relying on *Shawanee S. v. Arizona Department of Economic Security*, 234 Ariz. 174 (App. 2014), and *Bennigno R. v. Arizona Department of Economic Security*, 233 Ariz. 345 (App. 2013), DCS also argues Pearlra has waived a claim that DCS failed to make reasonable efforts to provide reunification services by failing to object to those efforts in the juvenile court.

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

¶15 We find considerable merit in DCS's arguments regarding irrelevance and waiver. But we also agree that the record fully supports the juvenile court's ruling. Pearla does not dispute that she was provided with a substance abuse assessment through drug testing, as noted in the court's under-advisement order and judgment. And, although Dr. Plevell recommended that Pearla obtain job skills, her GED, and "[a]t least part-time work," she did not suggest these were services to be provided by DCS—indeed, Pearla testified she was pursuing these goals personally. Essentially, Pearla asks this court to reweigh the evidence on review, something we will not do, as the juvenile court "is in the best position 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, 14 (App. 2004).

Disposition

¶16 For the foregoing reasons, the juvenile court's ruling terminating Pearla's parental rights is affirmed.