IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ANGEL F.,
Appellant,

v.

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

No. 2 CA-JV 2019-0121
Filed April 21, 2020

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NOT FOR PUBLICATION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. S20190063
The Honorable Ken Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Angel F. appeals from the juvenile court's ruling terminating her parental rights to her daughter, H.F., born in February 2019, based on the ground of prior severance.[1] *See* A.R.S. § 8-533(B)(10). She challenges the sufficiency of the evidence to support the court's determination that she is currently unable to discharge her parental responsibilities as a result of the same cause that led to termination of her parental rights in the prior severance. She also argues she was not provided reasonable reunification efforts. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to affirming the juvenile court's ruling. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). Angel's first three children—born in March 2013, July 2014, and September 2015—were adjudicated dependent in October 2015. Angel complied with the case plan, and the dependency was terminated in June 2017. However, the children were again adjudicated dependent in February 2018. In the months that followed, Angel consistently failed to participate in random drug testing, providing samples a total of five times with some positive results for methamphetamine, amphetamine, and marijuana. In November 2018, the juvenile court terminated Angel's parental rights based on the grounds of chronic substance abuse; length of time in care; prior removal; and neglect, which included her failure to protect the children from domestic violence. *See* § 8-533(B)(2), (3), (8)(a), (b), (11).

[1] The juvenile court also terminated the parental rights of H.F.'s father, who is not a party to this appeal.

¶3 When H.F. was born in February 2019, her meconium tested positive for marijuana, and the Department of Child Safety (DCS) took custody of her. The following month, DCS filed a motion to terminate Angel's parental rights to H.F. based on the grounds of neglect and prior severance. DCS offered Angel reunification services, including random drug testing, substance-abuse and relapse-prevention education, individual therapy, parenting classes, supervised visitation, psychological evaluation, and domestic-violence classes. Angel did not consistently participate in those services.

¶4 After a contested severance hearing, the juvenile court granted DCS's motion to terminate the parent-child relationship. The court found that DCS had failed to establish the ground of neglect. However, noting there was no dispute that Angel's parental rights to her first three children had been terminated within the previous two years and that one of the grounds for that termination was substance abuse, the court concluded that DCS had proven the ground of prior severance. The court explained that Angel had at least two methamphetamine relapses during the most-recent proceeding and had continued to use marijuana, which interfered with her ability to parent. The court also determined that termination of Angel's parental rights was in H.F.'s best interests because H.F. was placed with a family that was prepared to adopt her, which would give H.F. permanency, whereas not terminating Angel's rights "would force [H.F.] to remain in the foster care system, and as such, would deprive her of stability and permanency." This appeal followed.[2]

Prior Severance

¶5 Angel challenges the sufficiency of the evidence to support the termination of her parental rights to H.F. based on the ground of prior severance. "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18. Put another way, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

[2] Angel's notice of appeal was filed after the juvenile court announced its decision from the bench but before the filing of its written, signed ruling. We treat the notice as timely filed. *See* Ariz. R. P. Juv. Ct. 103(C), 104(A); *see also* Ariz. R. Civ. App. P. 9(c).

¶6 The juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the evidence that 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 (2005). In considering whether this standard has been met, we defer to the juvenile court, as the factfinder, to determine witness credibility and to resolve conflicts in the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶7 Section 8-533(B)(10) provides, as a ground for termination, "That the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause." The "same cause" language in § 8-533(B)(10) refers "to the factual 'cause' that led to the termination" of the parent's rights to another child, "not the statutory ground or grounds that supported that preceding severance." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 11 (App. 2004). And the phrase "parental responsibilities" gives the juvenile court "flexibility in considering the unique circumstances of each termination case before determining the parent's ability to discharge his or her parental responsibilities." *In re Maricopa Cty. Juv. Action No. JS-5894*, 145 Ariz. 405, 409 (App. 1985); *see also In re Maricopa Cty. Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 185 (App. 1984) ("parental responsibilities" refers to "duties or obligations which a parent has with regard to his child").

¶8 Angel argues "there is insufficient evidence in the record on appeal to sustain a finding that she is currently unable to discharge her parental responsibilities as a result of the same cause that led to the termination of her parental rights in a preceding case."[3] She seems to suggest that the juvenile court found domestic violence to be the "same cause" and maintains there was no evidence that "domestic violence remained an issue at the time of [H.F.]'s severance." She is mistaken, however, because the court found Angel's substance abuse to be the "same cause" warranting termination. Although the court mentioned domestic violence in its ruling, it did so in the context of H.F.'s best interests.

[3]Angel admits that her parental rights to her first three children were severed in the preceding two years.

¶9 Reasonable evidence supports the juvenile court's finding that Angel's "continued and habitual use of marijuana in the absence of a medical marijuana card constitutes substance abuse and that is the very cause or one of the causes upon which her rights were previously terminated." In the prior severance, the court found Angel's "chronic substance abuse" as one of four grounds for termination, explaining that Angel had a "long and chronic history of substance abuse" that interferes with her ability to parent and "is likely to continue for an indeterminate amount of time." In this proceeding, H.F.'s meconium tested positive for marijuana at birth. Angel failed to participate consistently in random drug testing. At the severance hearing, Angel admitted she was currently smoking marijuana but did not have a medical marijuana card. In addition, as the court noted, Angel testified that she had methamphetamine relapses in March 2019, one month after H.F. was born, and in July 2019, one month before the severance hearing. *Cf. Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, ¶ 18 (App. 2016) (mother's relapses supported finding of chronic substance abuse).

¶10 Reasonable evidence also supports the juvenile court's finding that Angel is unable to discharge her parental responsibilities due to her substance abuse. The DCS case manager assigned to Angel's family since January 2018 testified that Angel was "[un]able to parent" because she "continue[d] to provide positive drug screens for marijuana" and "ha[d] not provided a medical marijuana card." She expressed concerns that if H.F. were returned to Angel, Angel would expose H.F. to substances, and she recently reported that Angel's substance abuse might render her unable to meet H.F.'s basic needs. As mentioned above, H.F. was exposed to marijuana in utero. *See Maricopa Cty. No. JS-5209 & No. JS-4963*, 143 Ariz. at 185-86 (suggesting that "parental responsibilities" include child's "good physical care and emotional security"). Moreover, as the court noted, Angel failed to complete the services offered, including frequently canceling, not showing up for, or coming late to visits with H.F. *See id.* Angel also failed to participate in H.F.'s medical appointments. *See id.*

¶11 Angel nevertheless argues that "[t]here was no evidence from any qualified individual supporting a conclusion [she] was incapable of parenting due to marijuana use." And she further contends that "DCS did not provide any evidence to controvert [her] assertion she had appropriate housing and employment that would enable her to take care of [H.F.]" But, as mentioned above, the juvenile court has flexibility in considering the circumstances of each case when evaluating a parent's ability to discharge his or her parental responsibilities. *See Maricopa Cty. No. JS-5894*, 145 Ariz.

at 409. That determination is not limited to housing and employment, and it may include any effects of a parent's substance abuse. *See Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶¶ 20-22 (App. 2010). To the extent Angel challenges the credibility of the case manager's testimony, we will not second-guess the juvenile court's determination on appeal. *See Jesus M.*, 203 Ariz. 278, ¶ 12.

¶12 Angel also asserts the juvenile court improperly shifted the burden of proof to her to establish that she benefited from services. As part of its ruling, the court stated that Angel's ongoing marijuana use "demonstrates a lack of benefit by [Angel] from the services that she has participated in relating to substance abuse and relapse prevention." It then found, "as previously stated, [Angel] has failed to demonstrate benefit from participating in services." Thus, although inartful, the court was not shifting the burden of proof but was, instead, pointing out that Angel had not benefited from the services she participated in because she was still using marijuana. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 32 (App. 2004) (we presume trial court knows and applies law).

Reunification Efforts

¶13 Angel also argues that DCS failed to provide reasonable efforts for her reunification with H.F. She maintains, "From [H.F.]'s birth to severance, [she] was provided just six months, immediately post-partum, to work with DCS."

¶14 "Section 8-533(B)(10) does not explicitly require DCS to provide services." *Tanya K. v. Dep't of Child Safety*, 240 Ariz. 154, ¶ 11 (App. 2016). However, this court has determined that DCS must nonetheless "make 'reasonable effort[s]' to provide services or prove that efforts 'would be futile.'" *Id.* (alteration in original) (quoting *Mary Lou C.*, 207 Ariz. 43, ¶ 15). "DCS 'is not required to provide every conceivable service or to ensure that a parent participates in each service it offers,' but it must provide the parent 'with the time and opportunity to participate in programs designed to help [him or] her become an effective parent.'" *Id.* (alteration in original) (quoting *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)).

¶15 As a preliminary matter, Angel failed to object to the adequacy of her services below. As such, we could deem any such challenge waived on appeal. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶¶ 13-16 (App. 2014).

¶16 Even assuming the argument were not waived, however, the record belies Angel's assertion that DCS failed to make reasonable efforts in providing reunification services.[4] Regarding Angel's suggestion that she was only afforded six months to address DCS's concerns, she seems to overlook the fact that she was involved in two prior dependencies, during which she was afforded more than two years to address the surrounding circumstances, including her substance abuse. Services offered at that time included, among others, parenting education, random drug testing, healthy-relationship classes, therapeutic services, and psychological evaluation. The juvenile court took judicial notice of the file from those proceedings at the severance hearing regarding H.F.

¶17 Perhaps more importantly, during this proceeding, Angel was again provided services to remedy the circumstances, including—as specifically related to her substance abuse—random drug testing and substance-abuse and relapse-prevention education. Yet, like in the last dependency, Angel did not consistently participate in those services. And Angel does not identify any other services that DCS should have offered.

Disposition

¶18 For the foregoing reasons, we affirm the juvenile court's ruling terminating Angel's parental rights to H.F.

[4]Although the juvenile court did not make an express finding that DCS had made reasonable efforts to provide reunification services, that finding is implicit in its ruling. *See Mary Lou C.*, 207 Ariz. 43, ¶ 17 (we presume juvenile court made every finding necessary to support severance order if reasonable evidence supports order).