IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SAMANTHA D.,
Appellant,

v.

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

No. 2 CA-JV 2019-0129
Filed February 19, 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NOT FOR PUBLICATION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. JD20170307
The Honorable Kellie Johnson, Judge

AFFIRMED

COUNSEL

The Huff Law Firm PLLC, Tucson
By Laura J. Huff
Counsel for Appellant

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

Pima County Office of Children's Counsel, Tucson
By Jillian F. Aja
Counsel for Minor

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Samantha D. appeals from the juvenile court's order terminating her parental rights to her daughter, S.D., born in September 2013, based on the ground of length of time in court-ordered care (fifteen months).[1] *See* A.R.S. § 8-533(B)(8)(c). We affirm.

¶2 We view the facts in the light most favorable to sustaining the juvenile court's findings. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016). In May 2017, the Department of Child Safety (DCS) removed S.D. and her two siblings, born in 2014 and 2016, from the parents' care, and filed a dependency petition. The court adjudicated the children dependent as to the parents in June 2017. In February 2018, DCS filed a motion to terminate the parents' rights to the children based on neglect and time-in-care grounds (nine months as to the middle child and S.D., and six months as to the youngest child). *See* § 8-533(B)(2), (8)(a), (8)(b). After a contested termination hearing, the court terminated the parents' rights to the two younger children in October 2018 based on the ground of neglect, but denied DCS's motion as to S.D.

¶3 In November and December 2018, the parents challenged the sufficiency of DCS's efforts to reunify them with S.D., but the juvenile court found that the agency's efforts continued to be reasonable. The parents again objected at the April 2019 dependency review hearing, and the court again found DCS had made reasonable efforts to reunify the family. In April 2019, DCS filed a motion to terminate the parents' rights to S.D. based on the grounds of neglect, out-of-home care (fifteen months), and the prior

[1] S.D.'s father, whose parental rights were also terminated, is not a party to this appeal.

severance. *See* § 8-533(B)(2), (8)(c), (10). After a contested termination hearing held over three days in June and July 2019, the court severed the parents' rights to S.D. on the out-of-home placement ground and determined that severance was in S.D.'s best interests.

¶4 On appeal, Samantha asserts that the juvenile court erred in finding DCS had made reasonable or diligent efforts to provide her with appropriate reunification services, maintaining DCS "utterly failed" to meet its statutory obligation to do so. *See* § 8-533(B)(8); *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 19 (App. 2009) (department has statutory obligation to make reasonable efforts to reunify family). Samantha argues she was not provided with services to address her cognitive deficits and her serious mental illness (SMI). More specifically, she contends that if she "had a better, more experienced caseworker from the onset of the dependency, she may have been able to receive services that would have allowed her to obtain full time employment, housing, [and] financial assistance," and she would have received appropriate therapy to address her cognitive and SMI needs.

¶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 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18. 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 (App. 2009).

¶6 To terminate Samantha's rights pursuant to § 8-533(B)(8)(c), DCS was required to show that S.D. had been in court-ordered, out-of-home placement for fifteen months or longer and that Samantha had been "unable to remedy the circumstances" requiring that placement and there was "a substantial likelihood that [she] w[ould] not be capable of exercising proper and effective parental care and control in the near future." DCS was also required to show it had made a diligent effort to provide Samantha with appropriate services designed to reunify her with S.D. *See* § 8-533(B)(8).

¶7 DCS offered services to Samantha beginning in 2017, which the juvenile court accurately summarized in its termination order as

including a psychological evaluation, healthy relationship and parenting classes, parent-child relationship assessment and therapy, visits with the children, and individual therapy. In a report prepared by Dr. Marion Selz following her June 2017 psychological evaluation of Samantha, Selz opined Samantha "has a chronic depressive state" and a "fair" prognosis to parent the children; she "could benefit from therapy that uses a procedural approach, with homework assignments, timelines, plus positive reinforcement for task completion"; and advised that "[s]he should complete the classes in her case plan and be able to demonstrate what she has learned."

¶8 At the termination hearing, licensed therapist Merielle Robinson, who conducted a parent-child relationship assessment of Samantha and S.D. in 2018, testified that "[t]here were times" she "questioned" whether Samantha had "cognitive deficits of some sort." She stated that "at some point in 2018" she had recommended to Samantha's then-DCS case manager, Keith Hartsuck, that appropriate testing be conducted. She testified that an individual who has cognitive deficits is entitled to receive a certain type of therapeutic services, but acknowledged that a psychologist must determine whether that individual suffers from such a deficit, a determination she was not trained to make. Moreover, she did not remember whether she had ever received Dr. Selz's psychological evaluation of Samantha.

¶9 Samantha's individual therapist, Lynn Roberts, similarly testified that although she had questioned whether Samantha suffered from a cognitive delay, a psychological examination would be required to make that determination. And, like Robinson, Roberts did not recall ever receiving a copy Dr. Selz's 2017 psychological evaluation of Samantha.

¶10 DCS case manager Patrick Amos, who was assigned to Samantha's case in April 2019, testified that although Samantha had actively engaged in multiple services, she had failed to benefit from them. He further stated that at meetings held in May, June, and July 2019, he had discussed having Samantha undergo SMI and updated psychiatric evaluations.[2] He added that if Samantha's case were going forward now, he would need to "further evaluate if cognitive testing was necessary," but agreed that if she did, in fact, suffer from a cognitive delay or an SMI, she

[2]There seemed to be some confusion at various times during the termination hearing whether the parties were referring to psychiatric or psychological examinations.

would be entitled to receive additional services. Amos also testified that although he believed the parents needed additional services to address their mental health and relationship issues, he did not believe that such services would resolve their "issues in the near future." He opined that even with additional services, Samantha could not safely parent S.D. now or in the near future, and ultimately testified, "Does she need those services or need that qualification [cognitive disorder or SMI], I don't know."

¶11 The juvenile court questioned Amos extensively regarding the services and treatment an individual with an SMI diagnosis would receive. And, when the court asked whether Samantha could parent in the near future even if she were receiving the additional services associated with an SMI diagnosis, Amos again responded, "No." Moreover, he added that at a "recent" meeting some of Samantha's service providers had stated they wanted to "hold off" on an SMI evaluation until an updated psychiatric evaluation was received. Finally, when the court asked Amos whether DCS should have explored an SMI evaluation earlier in the case, he was essentially unable to answer the court's question.

¶12 Samantha's previous DCS case manager, Hartsuck, testified that he had shared Robinson's comment about possible cognitive issues with Dr. Selz in October 2018; in response, Selz had said "based upon [Samantha's] testing and her psychological evaluation . . . there [are] no cognitive concerns." Selz nonetheless suggested that if Hartsuck "still had any concerns" he should consider consulting psychologist Ralph Wetmore, which he did. Hartsuck shared Robinson's comments about Samantha with Dr. Wetmore, who reviewed Selz's evaluation. Like Selz, Wetmore concluded Samantha did not have a cognitive problem and opined there was no need for further testing. Samantha's probation officer likewise reported she had not noticed any cognitive delays with Samantha.

¶13 In the relevant portion of its severance ruling, the juvenile court concluded:

> Despite the delay in exploring an SMI diagnosis, the Court finds DCS made diligent efforts to provide appropriate reunification services. The Court finds DCS made ongoing diligent efforts to provide appropriate reunification services. The admitted exhibits and testimony demonstrate clearly and convincingly that DCS offered Mother several

> services designed to help her reunite with her children. While there may be additional services available to Mother, DCS is not required to provide every conceivable service to meet its diligent effort requirement. That there are other services potentially available does not negate their efforts. Furthermore, it is questionable whether the additional services would have assisted Mother given that her providers never recommended the additional evaluations.

¶14 Samantha has not established she has a cognitive deficit which rendered the services provided by DCS inadequate or that SMI testing and related services were necessary. And, to the extent Samantha is asking us to reweigh the evidence by considering the testimony presented at the termination hearing, it is not within our purview to do so. The juvenile court, as the trier of fact, "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 (App. 2004). The record shows the court not only considered the evidence presented, as reflected in its written ruling, but that it actively asked questions on this very topic.

¶15 Moreover, Samantha does not argue on appeal that the services she received failed to comply with the recommendations of Drs. Selz and Wetmore, the most qualified individuals to determine if Samantha suffered from a cognitive deficit requiring further testing. *Cf. Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 37 (App. 1999) (state fails to meet requirement for reunification efforts when it "neglects to offer the very services that its consulting expert recommends"). DCS's duty to make reasonable efforts to reunify the family does not require it to "provide 'every conceivable service'" or to "undertake rehabilitative measures that are futile." *Id.* ¶¶ 34, 37 (quoting *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)); *see also Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 15 (App. 2004). We thus conclude there was adequate evidence supporting the juvenile court's finding that DCS made diligent efforts to provide Samantha with appropriate reunification services.

¶16 Accordingly, the juvenile court's order terminating Samantha's parental rights to S.D. is affirmed.