IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SHANTHY R.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, J.R., AND E.R.,
Appellees.

No. 2 CA-JV 2020-0058
Filed November 17, 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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201800047
The Honorable DeLana J. Fuller, Judge Pro Tempore

AFFIRMED

COUNSEL

Shanthy R., Florence
In Propria Persona

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

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Shanthy R. appeals the juvenile court's May 2020 order terminating her parental rights to her son, J.R., and daughter, E.R., based on the grounds of mental illness, chronic substance abuse, and time in court-ordered care.[1] *See* A.R.S. § 8-533(B)(3), (8)(c). 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 order. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 13 (App. 2011). In March 2018, the Department of Child Safety (DCS) took temporary custody of Shanthy's then five children—R.R. (born in March 2001), Q.R. (born in June 2002), A.R. (born in June 2003), K.R. (born in December 2006), and J.R. (born in June 2012)—and also filed a dependency petition, alleging that Shanthy had neglected the children by failing to maintain a safe home, to avoid using substances, and to provide them with a proper education. The four oldest children were placed with their father, and the dependency was later dismissed as to them, based upon their father being awarded custody during divorce proceedings. The dependency continued as to J.R., who had a different father. J.R., however, was placed with his four half-siblings and their father. After Shanthy failed to appear, the court adjudicated J.R. dependent. Over the next several months, Shanthy failed to participate in random drug testing, substance abuse assessment and treatment, and a psychological evaluation.

¶3 In August 2018, Shanthy gave birth to E.R. at home, apparently in an attempt to hide E.R. from DCS. During a welfare check, police found E.R. and rushed her to the hospital, where she was treated for jaundice and dehydration. E.R. also tested positive for amphetamines and

[1]The juvenile court also terminated the parental rights of J.R.'s father and E.R.'s father. They are not parties to this appeal.

was exhibiting withdrawal symptoms, including quick breathing, shaking, irritability, frantic sucking, and diarrhea.[2] The home was in the same condition as it had been in March, when it was condemned based on trash, broken furniture, exposed electrical wiring, loose livestock, and animal feces found inside. DCS took custody of E.R. and filed a dependency petition, again alleging neglect by Shanthy. Shanthy did not contest the allegations in the dependency petition, and E.R. was adjudicated dependent. E.R. was placed with her maternal grandmother and step-grandfather.

¶4 Over the next several months, Shanthy "minimally" participated in services. In addition to missing several random drug tests, she tested positive for methamphetamine in January 2019 and March 2019. Shanthy admitted herself to an inpatient treatment facility in May 2019, but she left a month later, despite a recommended ninety-day stay. She also refused to let DCS caseworkers see the condition of her home. In September 2019, Shanthy began staying at the Salvation Army; however, she was discharged two months later for a rules violation. After missing several appointments, Shanthy finally attended a psychological evaluation in November 2019. The psychologist concluded that Shanthy had a personality disorder, a substance abuse disorder, and a hoarding disorder.

¶5 In December 2019, the juvenile court changed the case plan from family reunification to severance and adoption. Shortly thereafter, DCS filed a petition to terminate Shanthy's parental rights to J.R. and E.R. based on mental illness, chronic substance abuse, and time in court-ordered care. *See* § 8-533(B)(3), (8)(c).

¶6 A bonding and best-interests assessment for E.R. was completed in February 2020. The psychologist concluded that it was in E.R.'s best interests to remain with her maternal grandmother and step-grandfather, noting that Shanthy "was not an accurate reporter of information" and "tended to minimize some of the issues of her past and her personality difficulties." That same month, Shanthy tested positive for methamphetamine and amphetamine. In March 2020, Shanthy was arrested after methamphetamine and drug paraphernalia were found in her car. She later admitted to relapsing.

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[2]Shanthy was indicted for two counts of child abuse and spent approximately two months in jail. She later pled guilty to one count of child abuse, and the trial court suspended the imposition of sentence and placed her on six years' probation.

¶7 After a contested severance trial in April 2020, the juvenile court granted DCS's petition to terminate. It found DCS had established all three grounds for severance identified in the petition and that termination of Shanthy's parental rights was in the children's best interests. This appeal followed. Shanthy's counsel filed an affidavit, pursuant to Rule 106(G), Ariz. R. P. Juv. Ct., stating that she could find no meritorious issues to raise on appeal. Shanthy subsequently filed a pro se opening brief.

Discussion

¶8 As a preliminary matter, Shanthy's pro se opening brief does not meaningfully comply with our rules. *See* Ariz. R. P. Juv. Ct. 106(A) (applying certain rules of appellate procedure to juvenile appeals); Ariz. R. Civ. App. P. 13(a) (opening brief shall include, among other things, statement of facts with "appropriate references to the record," statement of issues presented for review, and argument with "citations of legal authorities and appropriate references to the portions of the record on which the appellant relies"). Failure to develop arguments that are supported by legal authority and adequate citation usually constitutes abandonment and waiver. *See Christina G.*, 227 Ariz. 231, n.6. However, because we prefer to resolve cases on their merits, we will attempt to address Shanthy's arguments. *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984).

¶9 Shanthy appears to challenge the sufficiency of the evidence to support the statutory grounds for severance. "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). 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).

¶10 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 factfinder, to determine witness credibility and resolve conflicts in

the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶11 As relevant here, § 8-533(B)(3) provides that the juvenile court may sever a parent's rights if (1) "the parent is unable to discharge parental responsibilities because of mental illness . . . or a history of chronic abuse of dangerous drugs" and (2) "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." And pursuant to § 8-533(B)(8)(c), the court may sever a parent's rights if (1) the "child has been in an out-of-home placement for a cumulative total period of fifteen months or longer," (2) "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement," and (3) "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." Before termination is ordered, DCS must make "a diligent effort to provide appropriate reunification services." § 8-533(B)(8) (discussing time in court-ordered care); *see also Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 16 (App. 2005) (extending requirement to severance based on substance abuse); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33 (App. 1999) (extending requirement to severance based on mental illness).

¶12 Sufficient evidence supports all three statutory grounds found by the juvenile court. *See* § 8-533(B)(3), (8)(c). The children were in an out-of-home placement for a cumulative total of more than fifteen months. For J.R., it was twenty-five months, and for E.R., it was twenty months—her entire life. Shanthy admitted to having a "very serious methamphetamine use disorder." She also suffered from mental illness, specifically a personality disorder and a hoarding disorder. At the time of trial, Shanthy had not successfully addressed any of these disorders; instead, during the dependency, she inconsistently participated in services and repeatedly returned to using substances. Shanthy's longest documented period of sobriety throughout the twenty-five-month dependency was approximately five months from September 2019 to February 2020.

¶13 Although Shanthy avowed that she was ready to change and described success in her current treatment program, the evidence established that treatment for her substance abuse disorder would take at least a year, followed by another year for treatment of her personality and hoarding disorders. The psychologist opined that it was "highly unlikely," based on her past participation, that Shanthy would be able to resolve her issues "because of the pernicious nature of her substance use disorder,

which exacerbates personality disorder." The psychologist also concluded that, "[a]s a result of these disorders, [Shanthy] has not been able to provide adequate parental care to her children" and "will not be able to do so in the foreseeable future." Notably, when engaging with the children, Shanthy repeatedly displayed "far-out, distorted thinking," as the case manager described it, including one incident when she had used black electric tape to bind J.R. during a game of cops and robbers.

¶14 Shanthy also appears to argue that DCS failed to provide appropriate reunification services. However, as DCS points out, she did not object to the adequacy of the services below.[3] Accordingly, we deem the argument waived. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 16 (App. 2014). Even assuming the argument were not waived, however, the record shows that DCS made diligent efforts to provide Shanthy with appropriate services, as the juvenile court repeatedly found. Those services included substance abuse assessment and treatment, supervised visitation, random drug testing, transportation, parent aide services, psychological evaluation and consultation, team decision-making meetings, and ongoing case management.

¶15 Shanthy has not addressed the juvenile court's additional conclusion that severance was in the children's best interests. But the record supports that conclusion and the related findings. The termination order is therefore supported by reasonable evidence. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

Disposition

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Shanthy's parental rights to J.R. and E.R.

[3]At the initial dependency hearing, Shanthy "present[ed] concerns" with not being informed about the children's medical appointments, which is one of the arguments raised in her opening brief. However, the transcript from that hearing is not part of our record. *See Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 21 (App. 2007) ("We generally presume items that are necessary for our consideration of the issues but not included in the record support the court's findings and conclusions."). And based on the record before us, she did not object to the services, several of which had already been offered at that point.