IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

TAYLOR N.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, A.N.-D., AND M.M.,
Appellees.

No. 2 CA-JV 2020-0078
Filed December 8, 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NOT FOR PUBLICATION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. JD20160460
The Honorable Lisa Bibbens, Judge Pro Tempore

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
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 William L. Jenney V
Counsel for Minors

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 Taylor N. appeals from the juvenile court's order terminating her parental rights to her children, A.N.-D. and M.M., born in July 2016 and October 2018, on the ground of court-ordered care for fifteen months or more.[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). A.N.-D. was adjudicated dependent in August 2016, but she was returned to the parents in July 2017 and the dependency was later dismissed; she was again adjudicated dependent in February 2018.[2] DCS also filed a petition for termination in February 2018, which the juvenile court vacated pursuant to DCS's request. In October 2018, DCS filed a supplemental dependency petition as to A.N.-D.'s brother, M.M., who was removed from the parents shortly after birth. M.M. was adjudicated dependent in January 2019. The court changed the case plan goal to severance and adoption in November 2019, and DCS filed a motion to terminate Taylor's rights to the children based on the ground of out-of-home placement for fifteen months or longer. *See* § 8-533(B)(8)(c).

¶3 DCS offered a variety of services to Taylor during the dependencies, including case management, child and family team meetings, domestic violence education, healthy relationship classes, substance abuse treatment, individual therapy, TERROS/Arizona Families First, parenting education, parent child relationship assessment, supervised parenting time, and parent aide services. At seven review hearings held between April 2018 and November 2019, the juvenile court found that Taylor was either in partial, full, substantial, or non-compliance with her

[1]The children's father is deceased.

[2]A.N.-D. has been in an out-of-home placement since December 2017.

case plan. In July 2020, following a seven-day contested severance trial held over several months, the court issued a detailed under-advisement ruling terminating Taylor's parental rights to the children and determined that severance was in the children's best interests. This appeal followed.

¶4 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. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). 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).

¶5 In its severance ruling, the juvenile court noted it had considered the "totality of the circumstances throughout the dependency" to determine whether DCS had made a "diligent effort" to provide Taylor with appropriate reunification services. The court further noted it had also considered her participation in the services, pointing out "she ha[d] not elected to take advantage of the time and services offered to support reunification." After summarizing the numerous reunification services DCS had provided, the court noted that even Taylor had acknowledged there were no additional services she had needed that DCS had failed to provide. The court specifically concluded the evidence showed that DCS had consistently made good-faith efforts to communicate with Taylor and had encouraged her to participate in case plan services. The court also pointed out that Taylor had failed to object to the numerous reasonable efforts findings it had made "at each and every review hearing." Ultimately, the court concluded that DCS had "made a diligent effort to provide [Taylor] and the family with appropriate reunification services, and that [Taylor] was afforded the time and opportunity to benefit from those services."

¶6 On appeal, Taylor asserts the juvenile court erred in finding DCS had made diligent efforts to provide appropriate reunification services, as required by § 8-533(B)(8). To terminate Taylor's rights pursuant to § 8-533(B)(8)(c), DCS was required to show that the children had been in court-ordered, out-of-home placement for a cumulative total of fifteen months or longer and that Taylor 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 Taylor with appropriate services designed to reunify her with the children. *See* § 8-533(B)(8).

¶7 Taylor relies on the plain meaning of the word "diligent" to argue the legislature did not intend diligent and reasonable efforts to mean the same thing. She asserts the juvenile court incorrectly relied on DCS having given her the time and opportunity to benefit from the services provided, pointing out that such a standard requires no "proactive or painstaking efforts by DCS," which she contends are essential to show that it made diligent efforts to provide services. Instead, she argues, the court should have determined whether there was evidence that DCS had taken "active steps" to diligently provide services, a finding she maintains the record does not support. In a related argument, Taylor argues the court was required to make a separate diligent efforts finding at "every review hearing," maintaining that without such findings, she was unable to timely challenge whether DCS had acted diligently in providing services. She similarly concludes, in the absence of such findings, the court erred by relying on the "totality of the circumstances" to determine that DCS had diligently provided services throughout the case.

¶8 We initially note, as DCS and the children assert and as the juvenile court found, the record shows that Taylor did not object to the adequacy of the services or to DCS's diligence in providing those services. Notably, she had the opportunity to do so at seven review hearings, including several of which she was found to be less than fully compliant. Rather, at the conclusion of the severance hearing, Taylor suggested for the first time that there may have been a problem with the services DCS had provided.[3]

¶9 DCS and the children argue, therefore, that Taylor has waived her arguments on appeal. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234

[3]By way of example, in closing argument, counsel for Taylor stated: "But guess what? The Department never even sought a psychological evaluation to see whether or not or what kind of therapy would be appropriate for this mother . . . ."; "[I]sn't that a reasonable expectation [that a DCS representative attend the children's appointments] that we should expect if diligent services were really going to be made[?]"; and, "I'm thinking that we didn't offer her proper services."

Ariz. 174, ¶¶ 13-14, 16, 18 (App. 2014) (parent who fails to object to adequacy of services, including services of diligent efforts under time-in-care ground, waives review of the issue). We find considerable merit in the waiver argument, but we also agree the record fully supports the juvenile court's ruling. In our discretion, we decline to find Taylor's arguments waived. *See Aleise H. v. Dep't of Child Safety,* 245 Ariz. 569, ¶ 13 (App. 2018) (decision to find waiver discretionary).

¶10 DCS and the children do not dispute that DCS was required to make diligent efforts to provide Taylor with appropriate reunification services. DCS asserts, however, that Taylor erroneously argues that there is a meaningful difference between diligent and reasonable efforts. As we noted in *Donald W. v. Dep't of Child Safety*, 247 Ariz. 9, ¶ 47 (App. 2019), DCS must show that its efforts under the time-in-care ground were "not only reasonable but also *diligent*." We need not decide, however, whether the state is correct. Based on the juvenile court's findings here, which the record fully supports, there is ample basis to conclude that DCS's efforts in this case were not only reasonable, but also diligent.

¶11 As the juvenile court concluded, and the record shows, DCS made diligent efforts to reunify the family by persistently and consistently "ma[king] a good faith and ongoing effort" to engage Taylor in appropriate services "throughout the life of the case." *See Donald W.*, 247 Ariz. 9, ¶ 50 (diligent effort requires, "at the least," DCS identify conditions causing out-of-home placement, provide services with reasonable prospect of success to remedy circumstances, maintain consistent contact with parent, and make reasonable efforts to assist parent). Indeed, at the severance hearing, Taylor testified that she could not think of any services DCS should have offered her, but did not.

¶12 In addition, DCS case manager Joanna Luquin testified that although DCS scheduled services to accommodate Taylor's work schedule, she had not completed or participated regularly in those services, and opined that Taylor would not benefit from ongoing services in the near future. DCS must provide appropriate reunification services to a parent with "the time and opportunity to participate in programs designed to help . . . become an effective parent." *In re Maricopa Cty. Juv. Action No. JS-501904,* 180 Ariz. 348, 353 (App. 1994). However, DCS is not required "to provide every conceivable service or to ensure that a parent participates in each service it offers." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 15 (App. 2011) (quoting *Maricopa Cty. No. JS-501904,* 180 Ariz. at 353); *see also Donald W.*, 247 Ariz. 9, ¶ 50 (requiring DCS to "provide services that

have a reasonable prospect of success to remedy the circumstances as they arise throughout the time-in-care period" (emphasis omitted)).

¶13 Additionally, based on the record before us, we find unavailing Taylor's argument that she could not have challenged DCS's diligent efforts in the absence of a specific finding by the juvenile court at each review hearing. Instead, her failure to object in a timely manner below "needlessly inject[ed] uncertainty and potential delay into the proceedings." *Shawanee S.*, 234 Ariz. 174, ¶ 16. Finally, to the extent Taylor asks this court to reweigh the evidence on review, we will not do so. 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).

¶14 Accordingly, we affirm the juvenile court's order terminating Taylor's parental rights to A.N.-D. and M.M.