

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ANGELA H.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, G.-J.G., B.G., D.G., AND E.H.,
Appellees.

No. 2 CA-JV 2020-0137
Filed August 4, 2021

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NOT FOR PUBLICATION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. S1100JD201500180
The Honorable Daniel A. Washburn, Judge

AFFIRMED

COUNSEL

Janelle A. Mc Eachern, Chandler
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Judge Eckerstrom and Judge Eppich concurred.

S T A R I N G, Vice Chief Judge:

¶1 Angela H. challenges the juvenile court's order of November 2, 2020, terminating her parental rights to her children, G.-J.G. (born in July 2013), B.G. (born in August 2014), D.G. (born in January 2016), and E.H. (born in January 2017), on mental illness, chronic substance abuse, and time-in-care grounds.¹ See A.R.S. § 8-533(B)(3), (8)(c). Angela asserts the court erred when it found she had failed to remedy the circumstances that caused the children to be in an out-of-home placement. We affirm.

¶2 We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016). In 2015, G.-J.G. and B.G. were adjudicated dependent due to neglect related to Angela's substance abuse and domestic violence between the parents; that dependency was dismissed a year later. In 2018, the children were taken into the custody of the Department of Child Safety (DCS) based on safety concerns due to neglect, domestic violence, and Angela's mental-health and substance-abuse issues.² DCS filed a dependency petition, alleging as to Angela neglect, substance abuse, and mental illness. Angela did not contest the allegations in the petition, and the children were adjudicated dependent in August 2018. DCS offered Angela a variety of services, including supervised visits; a parent aide;³ substance abuse assessment, treatment, and testing; a psychological evaluation; counseling; family therapy; and, assistance with transportation.

¹The children are the youngest of Angela's nine children. All references to the children in this decision refer only to the four children who are the subject of this appeal. In May 2020, the juvenile court terminated the rights of the children's father, who is not a party to this appeal.

²The children were ultimately placed in kinship placements who are willing to adopt them.

³The parent aide referral was closed as unsuccessful.

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¶3 In December 2019, DCS moved to terminate Angela's parental rights based on mental illness, chronic substance abuse, and fifteen-month time-in-care grounds. *See* § 8-533(B)(3), (8)(c). In November 2020, following a three-day contested severance hearing, the juvenile court terminated Angela's parental rights to the children in a thorough, thirteen-page ruling. The court reviewed the history of the case, described the services DCS had provided, and summarized the evidence presented at the severance hearing. It then entered factual findings related to the statutory grounds and the children's best interests, concluding DCS had sustained its burden on all of the grounds alleged. This appeal followed.

¶4 To sever a parent's rights, the juvenile court must find that clear and convincing evidence supports at least one of the statutory grounds for termination and that a preponderance of the evidence establishes severing the parent's rights is in the child's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); § 8-533(B). We do not reweigh the evidence on appeal; rather, we defer to the court's factual findings because, as the trier of fact, that 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 (App. 2004). Consequently, we will affirm the order if reasonable evidence supports the factual findings upon which it is based. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002).

¶5 Alex Levitan, the psychologist who evaluated Angela in April 2019, diagnosed her as "having a high probability of having a substance use disorder," and expressed a "guarded prognosis" for her, specifically noting there is a "risk factor and concern given the similarities between prescription stimulants [like Adderall] and illicit stimulants." Dr. Levitan also diagnosed Angela with "unspecified trauma- and stressor-related disorder," unspecified stimulant-related disorder, premenstrual dysphoric disorder, and unspecified attention-deficit/hyperactivity disorder. He reported that, if untreated, Angela's mental health symptoms could make it difficult to control her emotions, leading to "poor decision making, unfocused attention, or the use of maladaptive coping strategies (e.g., aggressive outbursts, substance use) which lead to further negative consequences." He also reported her "prognosis to be able to demonstrate minimally adequate parenting skills in the foreseeable future is guarded due to the presence of several risk factors," noting she has "a high probability of having a substance-specific disorder."

¶6 Psychologist Heather de Soler testified that, after more than a year of therapy, Angela was just beginning to address her mental-health

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issues, specifically regarding her trauma history. She described Angela's progress as "excruciatingly slow," generally noting that lack of sobriety impacts progress in therapy. Dr. de Soler also testified that Angela had not admitted accountability or accepted responsibility for DCS's involvement, and left her office at one point because she was so angry, and that another time she had "shut down . . . [and] was just sort of glaring and in an angry state and . . . wasn't able to engage in a conversation." Dr. de Soler estimated Angela would need six additional months to work through her trauma issues noting, however, that it was difficult to estimate a timeframe without an understanding of Angela's trauma history, which she still did not have. Dr. de Soler further explained DCS was concerned Angela was taking Suboxone and Adderall (a stimulant), noting such a combination created a concern for a person like Angela, who had "a history of addiction to stimulants." She further noted Angela was at risk for inevitable "slip ups" in light of her substance-abuse issues, explaining that in the absence of the necessary social support, a slip up could become a "destructive, full blown relapse."

¶7 Rajiv Parikh, the physician who was treating Angela for her addiction by prescribing Suboxone (for opioid addiction) and Adderall, testified that Angela is "on [a] higher end of the dose" of Adderall, a dosage he would not feel comfortable increasing, and that if she were to stop seeking medical help with her addiction, she would "probably end up either having significant withdrawals . . . or [she would] try to get other sources of getting [her] medication, like crystal [methamphetamine]." Additionally, Angela acknowledged that drug use "diminishe[s]" all of an individual's "skills," including effective parenting. She also testified that when she had previously tried to stop using her pain medication, "it made [her] not feel so well," which is why she sought help from Dr. Parikh. She acknowledged that Adderall can be addictive, but testified she is not addicted to it.

¶8 DCS child safety specialist Gail Twigg testified that Angela had resisted substance-abuse treatment for approximately 1.5 years, and only began to meaningfully engage in such services, including drug testing, after the case plan had been changed to severance and adoption in November 2019. Twigg also testified that DCS had expressly told Angela that, based on her history of methamphetamine use, an illegal stimulant, it was concerned about her ongoing use of the prescription drug Adderall, which is also a stimulant. And, although Twigg acknowledged that Angela was sober at the time of the severance hearing, she also opined that, based on Angela's "repeated pattern," she will relapse and her substance abuse will continue. Notably, she explained that Angela's inconsistent test results

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since her positive tests for methamphetamine and cocaine in June 2018 suggested she was not taking her Adderall consistently and as prescribed, a conclusion Angela disputed.

¶9 On appeal, Angela argues the juvenile court erred when it found she had failed to remedy the circumstances that brought the children into care.⁴ See § 8-533(B)(8)(c) (requiring department to prove parent unable to remedy circumstances causing child to be in out-of-home placement and “substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future”). She contends she had already “addressed DCS’[s] concerns regarding her substance abuse, mental health issues and transient lifestyle” at the time of the termination proceeding. Cf. *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, ¶ 22 (App. 2007) (court must construe circumstances that cause the child to be in out-of-home placement as those existing at time of severance rather than initial dependency petition). Acknowledging that her “investment in services was slow at the beginning of her case,” Angela asserts she was “actively working her case plan” when the severance hearings occurred, pointing out that she was testing regularly, had an apartment and a job, and had referred herself for counseling and substance abuse services. She maintains the “only thing left to do was to begin the reunification process.”

¶10 To the extent Angela is essentially pointing to evidence that was in her favor and asking this court to reweigh it, we will not do so. See *Oscar O.*, 209 Ariz. 332, ¶ 4. Rather, as we previously stated, we review the record to determine whether it contains reasonable evidence supporting the findings of fact upon which the severance order is based. See *Jesus M.*, 203 Ariz. 278, ¶ 4.

¶11 In its severance ruling, the juvenile court noted it had considered “the evidence, including the testimony provided, the pleadings

⁴Angela apparently does not dispute that the children have been in out-of-home care for more than fifteen months or that she has a history of chronic substance abuse and mental illness that has rendered her unable to discharge her parental responsibilities. Nor does she appear to directly challenge the evidence upon which the juvenile court based its findings, but instead appears to challenge the court’s reliance upon and interpretation of that evidence. Additionally, although Angela asserts the court erred by finding her “performance fell below the threshold required by Section 8-533(B)(8)(a),” it appears she was instead referring to § 8-533(B)(8)(c).

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filed, applicable law and the case history.” The court’s thorough findings are well-supported, and we therefore adopt them.⁵ *See id.* ¶ 16 (citing *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993)). Although no purpose would be served by restating the court’s ruling in its entirety, we quote that portion of the ruling that summarizes the court’s reasoning regarding the issue Angela raises on appeal, specifically, the court’s finding that she failed to remedy the circumstances that brought the children into DCS’s care:

The children were placed in an out-of-home placement due to Mother’s neglect of the children caused by her substance abuse. Mother has had over two years to acquire sobriety, employment and stable housing such that the children could be safely returned to her care. Unfortunately, Mother has not acquired sobriety from all substances as she continues to rely on Adderall and Methadone[⁶] to supplement her need for medication. The evidence shows Mother’s inability and, at times, unwillingness to complete inpatient treatments, sober living facility programs, and abstinence from alcohol and THC. . . . Mother testified that she acquired stable housing only weeks before the trial despite having years to obtain and maintain a residence. Furthermore, Mother’s own testimony revealed that during the dependency Mother was constantly relocating her residence. Mother has been unable to

⁵We note, however, that we decline to adopt one portion of the juvenile court’s ruling. As part of its best-interests findings, the court stated Angela had “presented no testimony that would show that she has met her counseling goals or provided a timeline for an estimated completion of her therapeutic counseling plan.” Although its wording was inartful, we note that the court was not shifting the burden of proof but was, instead, pointing out that Angela had not yet completed or benefited from the services she had participated in. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 32 (App. 2004) (we presume trial court knows and applies law).

⁶It appears the juvenile court intended to say Suboxone rather than Methadone.

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remedy the circumstances that brought the children in care.

....

As stated above in the Mental Illness ground, Mother continues to struggle to address her mental health diagnoses. Although she is making progress in therapy, such progress is extremely slow and based on Dr. [d]e Sol[e]r's testimony, Mother would need at least another six months of therapy to address her mental health concerns. Additionally, as stated above in the Substance Abuse ground, Mother has supplemented her methamphetamine use with Adderall (an amphetamine). Although mother is being prescribed Adderall, Dr. Parikh testified that over the past year he has increased Mother's Adderall prescription, instead of decreasing it.

¶12 Here, the juvenile court correctly found that although DCS had provided Angela with appropriate reunification services, she had not consistently participated in or completed them.⁷ Moreover, it is clear the court was aware of the efforts Angela made after DCS filed the motion to terminate her parental rights. We infer from the court's comments and findings that it found these efforts, including the fact that Angela had rented an apartment shortly after the severance proceeding began, her recent employment three months before the hearings, and that she was

⁷The juvenile court also pointed out that, during the dependency proceedings, Angela had failed to challenge the adequacy of the services DCS provided. Although Angela seemed to challenge the adequacy of the services in her written closing argument in the severance proceeding, she does not direct us to any place in the record showing she raised such a challenge during the dependency proceeding. As such, we could deem any such challenge waived on appeal. See *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶¶ 13-16 (App. 2014). In any event, because Angela does not seem to challenge on appeal the adequacy of the services provided, we do not address this issue further.

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currently compliant with many of her services, had been too little, too late.⁸ *See In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994) (mother's successful rehabilitation in eight months before hearing "too little, too late" in light of failure to remedy addiction within first year child out of home). Notably, the court ultimately concluded that although Angela was no longer testing positive for methamphetamine or opiates, based on her use of other drugs to overcome her addiction, "it is likely she will return to abusing illegal substances when she is no longer required to perform drug tests."

¶13 Finally, because Angela has not mentioned, much less challenged, the juvenile court's best-interests finding, she has abandoned and waived any claim related to that ground, and we thus do not address it. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, ¶ 5 (App. 2017).

¶14 We affirm the juvenile court's order terminating Angela's parental rights to the children.

⁸Angela's testimony included a confusing and disjointed history of where she had recently lived. In addition, Twigg testified DCS would want to see four to six months of consistent housing and employment to conclude Angela was stable in those areas.