

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ANA F.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND A.C.,
Appellees.

No. 2 CA-JV 2021-0104
Filed February 3, 2022

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NOT FOR PUBLICATION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 Santa Cruz County
No. JD19007
The Honorable Denneen L. Peterson, Judge

AFFIRMED

COUNSEL

Ana F., Tucson
In Propria Persona

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

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

V Á S Q U E Z, Chief Judge:

¶1 Ana F. appeals from the juvenile court's August 2021 order granting the Department of Child Safety's (DCS) December 2020 Motion for Termination of Parent-Child Relationship to A.C., born in August 2014, based on chronic substance abuse and mental illness, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(3) and § 8-533(B)(8)(a) and (c). Appointed counsel filed an affidavit pursuant to Rule 106(G)(1), Ariz. R. P. Juv. Ct., avowing he reviewed the record and found no non-frivolous issues to raise, requesting either that new counsel be appointed to represent Ana or that we permit her to file a brief in propria persona. We denied the request for new counsel but granted Ana time to file an opening brief. Ana sent this court a letter, which we have regarded as her opening brief. We affirm the court's order.

¶2 In her opening brief, Ana asserts she has "been discriminated against and was not given a fair trial," characterizing the allegations against her as "unfounded and unproven." She claims favorable evidence by her "treatment team at Easterseals Blake Foundation [(ESBF)] was not allowed to support [her]," and that she complied with the requirements of her case plan and progressed. She contends her attorney "did not advocate for" her, and did not keep her informed on the status of the case or the option of a guardianship until "it was already too late."

¶3 As DCS asserts in its answering brief, Ana's letter does not comply with the applicable rules of procedure. She has not supported her contentions "with supporting reasons for each," nor has she provided legal authority for her assertions or references to the record on appeal. *See* Ariz. R. Civ. App. P. 13(a)(7)(A); *see also* Ariz. R. P. Juv. Ct. 106(A) (applying Rule 13, Ariz. R. Civ. App. P., to appeals in juvenile cases). Pro se litigants are held to the same standards as attorneys. *See Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017). Ana has thereby waived her arguments. *See Melissa W. v. Dep't of Child Safety*, 238 Ariz. 115, ¶ 9 (App. 2015) (argument unsupported by authority is waived); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, n.6 (App. 2011) (failure to develop argument on appeal results in

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abandonment and waiver of issue); *see also Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 11 (App. 2013) (appellate court may reject argument based on lack of proper and meaningful argument alone).

¶4 Waiver and abandonment notwithstanding, Ana appears to be challenging the sufficiency of the evidence to support the juvenile court's order, and claims the proceedings were unfair and her counsel's performance was deficient. This court reviews an order terminating a parent's rights for an abuse of discretion and will not disturb the ruling if the factual findings upon which it is based are supported by reasonable evidence. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8 (App. 2004). We view the evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007). We do not reweigh the evidence, rather we defer to the juvenile court in this regard because it "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).

¶5 The juvenile court entered a detailed, eighteen-page ruling after a hearing that was held over six days between March and July 2021. The court reviewed the history of the dependency proceeding, which commenced in April 2019 when A.C. was removed from Ana's custody and placed with her maternal aunt after a report that Ana had "passed out on the street," leaving A.C. unsupervised, and after Ana was subsequently found unconscious in an emergency room bathroom in possession of synthetic cannabis, or "spice." The court specified the services DCS had provided to Ana to address her substance abuse and mental health issues, which included a learning disability that affected her behavior and compliance with the case plan, and a diagnosis that she is severely mentally ill and suffers from Post-Traumatic Stress Disorder (PTSD). The court summarized with specificity the evidence that related to this history and to its factual findings, including testimony and reports. Applying the statutory grounds for termination, again reviewing the supportive evidence, the court concluded DCS had sustained its burden of establishing the grounds alleged in its motion to terminate the parents' rights. The court then found DCS had made reasonable efforts to preserve the family, and concluded termination was in A.C.'s best interests, specifying the basis for this conclusion.

¶6 The juvenile court acknowledged the progress Ana had made during the dependency. For example, the court stated that after about a year, Ana "started to participate and she made progress in her social skills, started to learn coping techniques to control anger, and accepted

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medications and therapy for depression, anxiety, sleep problems and PTSD.” Belying Ana’s claim that her attorney did not advocate on her behalf, the court acknowledged counsel had argued at the termination hearing that Ana had participated in services provided by DCS and those she obtained on her own, and had progressed sufficiently to be able to parent A.C.¹ But the court pointed to evidence that refuted these contentions. The court observed that although Ana’s peer support technician from ESBF testified she accepts responsibility for her behavior, her own evidence showed she “blamed the parent aides, DCS staff, and the many different case managers she had at ESBF in the last year for her slow progress.” As we stated, it was for the juvenile court to weigh the evidence and resolve any conflicts in the evidence. The ruling shows it exercised that discretion and considered the evidence before it.

¶7 Although we have no obligation to conduct an independent review of the record for fundamental error as in criminal cases under *Anders v. California*, 386 U.S. 738 (1967), *Denise H. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 257, ¶ 1 (App. 1998), we have determined the record contains ample evidence to support the juvenile court’s ruling. Additionally, the ruling and the record, including the transcripts of the severance hearing, do not show the proceedings were unfair in the manner Ana alleges. Similarly, although Ana maintains her counsel’s performance was deficient, she neither alleges nor does she establish that “counsel’s conduct was such that it undermined the fundamental fairness of the proceeding and cast doubt on the proceeding’s ‘protection of the individual against arbitrary action of government.’” *Royce C. v. Dep’t of Child Safety*, ___ Ariz. ___, ¶ 20, 498 P.3d 1094, 1101 (App. 2021) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998)).

¶8 The juvenile court’s order terminating Ana’s parental rights to A.C. is affirmed.

¹We note, moreover, that throughout the severance hearing counsel demonstrated she did, indeed, advocate on behalf of her client, filing a pretrial statement that contested DCS’s allegations and pretrial statement, refuting DCS’s opening statement and closing argument, cross-examining DCS’s witnesses, and presenting evidence on Ana’s behalf, including the testimony of the ESBF behavioral health peer support specialist and numerous other witnesses.