

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE TERMINATION OF PARENTAL RIGHTS AS TO L.S.,

No. 2 CA-JV 2022-0022
Filed September 23, 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NOT FOR PUBLICATION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. 602(i)(17).

Appeal from the Superior Court in Pima County
No. JD20180414
The Honorable Lisa Bibbens, Judge Pro Tempore

AFFIRMED

COUNSEL

Jessica S., Phoenix
In Propria Persona

Mark Brnovich, Arizona Attorney General
By Dawn R. Williams, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By David Miller
Counsel for Minor

IN RE TERMINATION OF PARENTAL RTS. AS TO L.S.
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Appellant Jessica S. challenges the juvenile court’s March 4, 2022 order terminating her parental rights to her daughter, L.S., born in November 2013, based on length of time in court-ordered care.¹ See A.R.S. § 8-533(B)(8)(c).² We affirm.

¶2 Before terminating a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. See A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). On appeal, we defer to the juvenile court with respect to factual findings because 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, 14 (App. 2004). We view the evidence in the light most favorable to upholding the ruling. *Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 Here, the evidence established L.S. was removed from the parents’ care in August 2018 due to unstable housing, the parents’ lack of employment, mental health issues, and substance abuse. She was

¹The juvenile court also terminated the parental rights of the father, who is not a party to this appeal.

²Pursuant to § 8-533(B)(8)(c), the juvenile 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 pursuant to court order,” (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.” In addition, § 8-533(B)(8) requires that “the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services.”

IN RE TERMINATION OF PARENTAL RTS. AS TO L.S.
Decision of the Court

adjudicated dependent as to Jessica in September 2018.³ The juvenile court made multiple findings during the dependency that the Department of Child Safety (DCS) had made reasonable reunification efforts by offering services, generally without objection by Jessica. Those services included ongoing case management, visitation, drug testing, psychological evaluation, individual therapy, verification of housing and employment, Arizona Families First/Teros, substance abuse treatment, parenting classes, child visits, Parent-Child Relationship Assessment and Therapy, Child and Family Team Meetings, and transportation services.

¶4 In October 2020, apparently for the first time in the two years since L.S. had been removed from her care, Jessica objected to a finding that DCS had made reasonable efforts to provide reunification services. In March 2021, she requested a hearing, which the juvenile court granted. However, Jessica failed to appear at the requested hearing. Based on “her near complete failure to engage in case plan services or to submit for required substance testing,” the court denied her motion for services and again found DCS had made reasonable reunification efforts.

¶5 In July 2021, the juvenile court found Jessica had only minimally complied with the case plan, and the court changed the case plan goal to severance and adoption, again finding DCS had made reasonable reunification efforts. DCS filed a motion to terminate the parents’ rights in August 2021, alleging that termination was warranted under § 8-533(B)(8)(c), and that termination was in L.S.’s best interests. The court conducted a contested severance trial over five days between October 2021 and January 2022. DCS presented evidence regarding the services that had been offered to Jessica, and the agency’s efforts to engage her in those services. There was also testimony that Jessica repeatedly refused to participate in services, and that, although she had been offered transportation to visit L.S., she did not take advantage of the offer.

¶6 In March 2022, the juvenile court issued a twenty-page ruling granting DCS’s termination motion. Therein, it detailed the history of the proceeding and provided a thorough factual basis for its findings and conclusions. This included an extensive summary of the numerous services DCS had made available to Jessica with specific citations to the record. Notably, the court stated that in the first fifteen months of the dependency,

³Although L.S. was returned to the father for approximately four months in January 2020, she has been in an out-of-home placement since August 2018.

IN RE TERMINATION OF PARENTAL RTS. AS TO L.S.
Decision of the Court

Jessica had “failed to attend every review hearing with no good cause provided” and she was “found to be noncompliant with the case plan at every review hearing.” Although the court noted that Jessica was “partially” and “minimally” compliant at later hearings, the court expressly found that DCS had provided clear and convincing evidence that it had “made diligent and reasonable efforts to provide [Jessica] and the family with appropriate reunification services, and that [Jessica] was afforded the time and opportunity to benefit from those services.” The court concluded that DCS had proven the ground for severance under § 8-533(B)(8)(c) and that severance was in L.S.’s best interests.

¶7 On appeal, Jessica’s appointed counsel filed an affidavit pursuant to Rule 607(e)(1)(B), Ariz. R. P. Juv. Ct.,⁴ stating she had reviewed the record and had found no non-frivolous issue to raise on appeal. We granted counsel’s request for Jessica to proceed in propria persona, providing her additional time to file a pro se brief, which she has done. In her single-paragraph argument on appeal, Jessica contends that DCS did not make reasonable efforts to provide her with appropriate reunification services. She asserts that she “frequently” requested services from her case manager. She claims the case manager either did not respond, or told her a referral would be sent, the requested classes were full, or a service was no longer offered. She also contends she was not provided with transportation services to visit L.S.

¶8 As DCS correctly asserts, Jessica has failed to support her argument with any legal authority or citations to the record. We could thus deem her argument waived. *See* Ariz. R. Civ. App. P. 13(a) (requirements for opening briefs); *see also* Ariz. R. P. Juv. Ct. 607(b) (“ARCAP 13” applies to appeals from the juvenile court). Arguments that are unsupported by legal authority and adequate citation to the record are waived. *See Melissa W. v. Dep’t of Child Safety*, 238 Ariz. 115, ¶ 9 (App. 2015). However, the decision to apply waiver is discretionary, and in the exercise of that discretion we decline to find waiver in this case. *See Varco Inc. v. UNS Electric, Inc.*, 242 Ariz. 166, n.5 (App. 2017) (waiver for failure to comply with Rule 13 is discretionary); *see also Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984) (courts prefer to decide cases on their merits).

⁴Rule 607(e)(1)(B), formerly Rule 106(G)(1), Ariz. R. P. Juv. Ct., was renumbered in 2022. *See* Ariz. Sup. Ct. Order R-20-0044 (Dec. 8, 2021). For ease of reference, we hereinafter refer to the current version of the rules because “no revision material to this case has occurred.” *Bobrow v. Bobrow*, 241 Ariz. 592, n.2 (App. 2017).

IN RE TERMINATION OF PARENTAL RTS. AS TO L.S.
Decision of the Court

Nevertheless, the record amply demonstrates that Jessica was provided appropriate reunification services. The juvenile court did not abuse its discretion in so finding.

¶9 We affirm the juvenile court's order terminating Jessica's parental rights to L.S.