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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MIRAMONTE T.-S., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and IZABELLE T., Appellees.	2 CA-JV 2010-0053 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J17300900

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Ronald Zack
Tucson
Attorney for Appellant

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By Jane A. Butler
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E C K E R S T R O M, Judge.

¶1 Miramonte T.-S. challenges the juvenile court's order terminating her parental rights to Izabelle T., born in December 2007, on the ground that Izabelle had been in a court-ordered, out-of-home placement for six months or longer, pursuant to A.R.S. § 8-533(B)(8)(b). We affirm for the reasons stated below.

¶2 The record establishes Miramonte's parental rights to three other children were terminated, two in other states and one in Arizona in December 2006 on the grounds of mental illness and length-of-time in care, pursuant to § 8-533(B)(3) and (8)(b). Child Protective Services (CPS) took custody of Izabelle in April 2009 after a Tucson shelter evicted Miramonte and shelter staff reported she had treated Izabelle inappropriately. Miramonte, who had no means of caring for the sixteen-month-old child, placed her at a crisis nursery but tried to have her discharged and to leave with her the next day. The Arizona Department of Economic Security (ADES) filed a dependency petition and in May, Izabelle was adjudicated dependent after Miramonte admitted allegations in an amended petition. After a permanency hearing in October 2009, the court found ADES had "made reasonable efforts to achieve a plan of reunification by offering the family services." As the court directed, ADES subsequently filed a motion to terminate Miramonte's parental rights. It alleged Izabelle was under the age of three years and had been out of the home pursuant to a court order for a cumulative total of six months or longer, and that grounds existed to terminate Miramonte's parental rights pursuant to § 8-533(B)(8)(b).

¶3 After three days of hearings, the juvenile court granted ADES's motion and terminated Miramonte's parental rights in a thorough minute entry in which the court

entered detailed factual findings and related conclusions of law. Miramonte contends on appeal there was insufficient evidence to support the court's finding that she had willfully refused to participate in reunification services and that ADES had made diligent efforts in providing her with appropriate reunification services.[1]

¶4 A court may terminate a parent's rights to a child only if the court finds that clear and convincing evidence establishes at least one statutory ground for severance and that a preponderance of the evidence establishes severing the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). On appeal, we view the evidence and all reasonable inferences in the light most favorable to upholding the juvenile court's order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We do not reweigh the evidence that was presented; rather, because, the juvenile court is the trier of fact, we regard that court as being "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, 100 P.3d 943, 945 (App. 2004). Therefore, we will affirm the court's order so long as the record contains reasonable evidence supporting the factual findings upon which that order is based and the court has correctly applied the law to those findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

[1]After Miramonte filed a motion to supplement the record relating to whether the Indian Child Welfare Act (ICWA) applied, we stayed the appeal and directed the juvenile court to determine, after further proceedings as warranted, whether ICWA applied and to resolve the related issues raised. The juvenile court subsequently determined ICWA did not apply and we revested jurisdiction in this court, vacating the stay.

¶5 No purpose would be served by restating the juvenile court's thorough, well-reasoned ruling in its entirety here; instead, because there is an abundance of evidence to support the court's factual findings and legal conclusions, we adopt the order, specifying findings as they are relevant to our discussion of the issues raised. *See id.* ¶ 16, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Miramonte contends there was no evidence she had an "out-of-control" substance abuse problem as she had when her rights to her son, Sam, were terminated. And, she contends, the evidence did not establish she had willfully refused to remedy the circumstances that caused Izabelle to remain out of the home. But the court did not terminate her rights on the ground of substance abuse. It did so rather on the ground of length of time in care. The court made findings related to that ground and, as we stated above, the record supports those findings. The court observed Izabelle had been removed from Miramonte's custody and adjudicated dependent because of "risk factors" that existed if the child had remained in Miramonte's custody, including Miramonte's "history of instability in housing, income and relationships; inability to meet the basic needs of the child; her rough treatment of Izabelle; and [her] possible substance abuse." Additionally, the court observed, Miramonte "has a history of instability marked by homelessness and lack of employment. The history extends over a period of years."

¶7 The court summarized the services ADES had provided or offered and guidance Miramonte had received in obtaining other services from various sources. Ultimately, as the court found, Miramonte utilized some services but did not avail herself of others, was unable to provide suitable housing, and did not demonstrate the kind of

stability required to provide a safe environment to which Izabelle could be returned. The court noted that Miramonte did not avail herself of the opportunity given to her by the foster mother to visit with Izabelle more often. The court concluded that, although extensive services had been provided, some of the same circumstances that resulted in the dependency adjudication and severance of her rights as to her son, Sam, persisted. The record establishes Miramonte essentially remained homeless except for periods at shelters, was unemployed, had a history of substance abuse, and suffered from various mental health issues that were unresolved.

¶8 We also reject Miramonte's contention there was no evidence she had willfully refused services that had been offered. Essentially following the language of the statute, the juvenile court found Miramonte had substantially neglected or willfully refused to remedy the circumstances that caused Izabelle to remain out of the home and had "failed to avail herself of services designed to achieve reunification." These findings, as we have said, are amply supported by the record. And the record does not support her contention, raised for the first time on appeal, that she was unable to follow through with suggestions made by her caseworker and others because of her cognitive limitations. Indeed, the record establishes that the case manager was aware Miramonte had "difficulty comprehending and following and understanding verbal instruction" and therefore went out of her way to explain things to Miramonte and sent her numerous letters to remind her of appointments and to give her information.

¶9 Thus, we similarly reject Miramonte's related contention that ADES failed to provide appropriate reunification services and her reliance on *Mary Ellen C. v. Ariz.*

Dep't of Econ. Sec., 193 Ariz. 185, 971 P.2d 1046 (App. 1999), for that proposition. ADES satisfies its obligation to make a "diligent effort" to provide appropriate reunification services, *see* § 8-533(B)(8), when it provides the parent "with the time and opportunity to participate in programs designed to help [the person] become an effective parent." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). The evidence supports the court's finding that ADES satisfied its obligation here. And to the extent there are conflicts in the evidence regarding this or any other issue, we defer to the juvenile court's resolution of such conflicts. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Nor is there support for Miramonte's suggestion that ADES does not satisfy its obligation when agencies that are not part of ADES are utilized to provide the services, as they were to some extent here. As ADES explains and the record establishes, Miramonte was provided health care through the Arizona Health Care Cost Containment System (AHCCCS), which qualified her for a wide variety of services through regional behavioral health networks. Her ADES case manager met with her to provide information about the networks to help coordinate such services. She explained to Miramonte that services had to be arranged through AHCCCS, with referrals no longer coming from ADES, because of "budget constraints." The case manager testified she was certain the information about the services available had been "conveyed to [Miramonte] both verbally and in writing and assistance was also offered," and she did not believe there were other services that could have or should have been offered. And, she added, Izabelle had special needs that were being satisfied by her foster mother.

¶10 Miramonte has not sustained her burden of establishing the court abused its discretion when it terminated her parental rights to Izabelle. We therefore affirm the court's order.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge