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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

HYSON G., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and SHAMUS J., Appellees.	2 CA-JV 2010-0031 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J189662

Honorable Gus Aragon, Judge

AFFIRMED

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Tucson
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E S P I N O S A, Judge.

¶1 Appellant Hyson G. challenges the juvenile court's order terminating her parental rights to her son, Shamus J., on grounds of (1) chronic and persistent substance abuse, *see* A.R.S. § 8-533(B)(3), and (2) substantial neglect or willful refusal to remedy the circumstances that caused Shamus to remain in court-ordered, out-of-home care for more than nine months, *see* § 8-533(B)(8)(a). She contends the evidence was insufficient to support the court's ruling on either ground for termination. For the following reasons, we affirm.

¶2 We view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining a juvenile court's termination order, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002), and accept the court's findings of fact as long as there is reasonable evidence to support them, *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264 (App. 2009). Because the juvenile court, "as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings," we do not reweigh the evidence. *Jesus M.*, 203 Ariz. 278, ¶¶ 4, 12, 53 P.3d at 205, 207. Accordingly, we will not reverse the court's order for insufficient evidence "'unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.'" *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266, *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*) (internal citations omitted).

¶3 After a contested termination hearing, the juvenile court severed Hyson's parental rights in an order that set forth detailed facts relevant to its ruling, and Hyson does not challenge those findings on appeal. Instead, she maintains the court's findings were insufficient to support the grounds for termination cited. We need not repeat the court's thorough and correct statement of the history of this proceeding, *see Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, and we refer to the evidence only to the extent required to address Hyson's argument that it was insufficient to support termination under § 8-533(B)(3). *Jesus M.* 203 Ariz. 278, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

¶4 In terminating Hyson's parental rights pursuant to § 8-533(B)(3), the juvenile court necessarily found she was "unable to discharge [her] parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances, or alcohol, and there [were] reasonable grounds to believe that the condition [would] continue for a prolonged indeterminate period." As evidence of this ground, the court noted Hyson's long history of methamphetamine and alcohol use, including her relapse into substance abuse despite having completed more than two years of in-patient treatment. The court further observed that, since the inception of the dependency proceeding in February 2009, Hyson had participated only sporadically in the random drug testing, child and family team meetings, parenting classes, and individual counseling

offered by Child Protective Services (CPS) to help her reunify with Shamus.[1] She also failed to participate in a required psychological evaluation.

¶5 On appeal, Hyson argues "there was no solid evidence or testimony that the mother had a 'history of chronic abuse' of drugs" or that such condition would continue for a prolonged period, and she suggests that both of these findings must be based on expert testimony. According to Hyson, no expert had testified to these conclusions.

¶6 But Hyson herself had admitted, as alleged in an amended dependency petition, that she had "a significant history of drug abuse," and she testified she had begun using methamphetamine in 2000; had completed a two-year, in-patient rehabilitation program in 2004, while on probation for a conviction of "[u]nlawful use of methamphetamine"; and had started using methamphetamine again in 2007. She told the court that, after this relapse, she had not sought further treatment and had continued to

[1]CPS took custody of Shamus on January 31, 2009, after learning Hyson had left him, then thirty-three-months old, with an acquaintance who had originally agreed to provide evening childcare. At Hyson's request, the woman had then agreed to keep Shamus in her care for three days. Over the next three weeks, Hyson asked her to continue keeping Shamus for various reasons, including a backlog of work at Hyson's job, dental surgery that would impair her ability to care for Shamus, and her inability to support Shamus as a result of her unemployment. Toward the end of this three-week period, Hyson sustained a broken neck in an accident in an all-terrain vehicle, and the caretaker reported she could no longer provide for Shamus. Shamus was adjudicated dependent after both his parents admitted the allegations in an amended dependency petition.

use the drug through October 2008.[2] Hyson also admitted at the termination hearing that she had been using alcohol during the dependency as "something to fall back on" or to help her "cope," had avoided compliance with required substance abuse testing to avoid detection of her alcohol use, had used alcohol on the morning of a scheduled visitation with Shamus, and had consumed alcohol as recently as the week before the hearing.

¶7 According to Hyson's individual therapist, Elizabeth Rios, Hyson reported that when she had used methamphetamine, "she was using it fairly often," at least "a few times a week." Rios opined that "substance abuse definitely" was an issue Hyson needed to address in individual counseling, and that Hyson's previous admission into an in-patient rehabilitation program suggested "a pretty severe amount of addiction." Rios also expressed concern that Hyson had "justified her drinking again as a means of coping with the issues that were affecting her," especially when she knew her parental rights were at risk. Because Hyson repeatedly failed to appear for a psychological evaluation, she was apparently never specifically diagnosed with substance or alcohol abuse. But Rios's testimony, together with Hyson's admissions, provided sufficient evidence that Hyson had a "history of chronic abuse of dangerous drugs, controlled substances, or alcohol" justifying the termination of her parental rights under § 8-533(B)(3). *See Raymond F. v. Ariz. Dep't of Econ. Sec.*, No. 1 CA-JV 09-0025, 2010 WL 2006461, ¶¶ 16-17 (Ariz. Ct. App., May 20, 2010) (noting absence of statutory definition of "chronic substance

[2]Although Hyson testified she last used methamphetamine in October 2008, a hair test performed on February 19, 2009, established she had used the drug within the previous ninety days.

abuse"; court properly considered lingering and persistent nature of substance abuse in terminating parental rights under § 8-533(B)(3), notwithstanding parent's intermittent or recent sobriety).

¶8 We further agree with ADES that reasonable evidence supported the juvenile court's conclusion that issues related to Hyson's substance abuse would continue to impair her ability to parent for a prolonged, indeterminate period. Quoting *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, ¶ 31, 971 P.2d 1046, 1052 (1999), Hyson argues ADES was required to prove she was not amenable "'to rehabilitative services that could restore [her] ability to care for a child within a reasonable time.'" *Id.* ¶ 31 (mentally ill parent) (alteration added). But in *Mary Ellen C.*, ADES had failed to provide a mentally ill parent with the "intensive psychiatric services" recommended by its own consultant, and the court described ADES's other reunification efforts as "belated, fitful, and indifferent." *Id.* ¶¶ 35-38. The court in that case simply held that parental rights may not be terminated on the ground of persistent and disabling mental illness unless ADES has provided the parent "with the time and opportunity to participate in programs designed to improve [her] ability to care for the child." *Id.* ¶ 37; *see also Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, n.3, 123 P.3d 186, 189 n.3 (App. 2005) (same rule applies to termination based on history of chronic drug or alcohol abuse under § 8-533(B)(3)).

¶9 Here, in contrast, Hyson does not argue that ADES failed to provide her with appropriate services. Instead, she contends the evidence established she remained

amenable to rehabilitation because Rios had testified that "[h]er participation when she was actually there was pretty good." But Rios also testified that Hyson had failed to address her substance abuse and other issues through the services CPS had provided "because of her lack of continuous attendance" and her resistance to therapy. Rios further observed that, even though Hyson knew termination of her rights to Shamus was at stake, "she still chose to not commit to the program" of addressing her substance abuse. In addition, Rios testified she had never seen the types of behavioral, parenting, and substance abuse issues that afflicted Hyson simply resolve on their own, "without help."

¶10 "[A]DES is not required . . . to ensure that a parent participates in each service it offers," and a parent's "failure or refusal to participate in the programs and services [A]DES offered or recommended does not foreclose termination of her parental rights." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Reasonable evidence established that, by the time of the termination hearing, Hyson had not yet addressed her proclivity for substance abuse and had failed or refused even to commit to any course of treatment that might enable her to resolve her addictive behavior. Accordingly, the juvenile court did not err in finding there were reasonable grounds to believe Hyson's condition would continue for a prolonged indeterminate period, as required for termination under § 8-533(B)(3).

¶11 Hyson has failed to establish any error warranting reversal of the juvenile court's termination order. Accordingly, we adopt the court's findings of fact, approve its

conclusions of law, and affirm the order terminating Hyson's parental rights. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 208.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

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