NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
NOV -4 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ESTHER M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, SELENA M., WAYLAND S., and MICHAEL S., Appellees.	2 CA-JV 2010-0064 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200700135

Honorable Joseph R. Georgini, Judge

AFFIRMED

The Stavris Law Firm, PLLC
By Alison Stavris
Scottsdale
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt
Prescott
Attorneys for Appellee Arizona Department of Economic Security

Richard Scherb
Florence
Attorney for Appellees Selena M., Wayland S., and Matthew S.

H O W A R D, Chief Judge.

¶1 Esther M. appeals from the juvenile court's May 2010 order terminating her parental rights to eleven-year-old Selena, six-year-old Wayland S., and then four-year-old Michael S. on time-in-care grounds. *See* A.R.S. § 8-533(B)(8)(a),(c). Esther argues the evidence was insufficient to establish either statutory ground for termination and the court erred in finding termination was in the children's best interests. We affirm.

¶2 In its order, the juvenile court found the Arizona Department of Economic Security (ADES) had made a diligent effort to provide Esther with appropriate reunification services, but she had substantially neglected or willfully refused to remedy the circumstances which caused her children to be in an out-of-home placement for more than nine months. *See* § 8-533(B)(8)(a). As to this ground for termination, the court stated Esther had failed to address the issues her evaluating psychologists had identified as obstacles to effective parenting and, for the most part, had "failed to participate in good faith" in the services offered, which then had been exhausted. In addition, the court found that, despite the services ADES had provided, Esther had been unable to remedy the circumstances that caused the children to be in an out-of-home placement for more than fifteen months and that there was a substantial likelihood she would be unable to parent effectively in the near future. *See* § 8-533(B)(8)(c). As required, the court also found by a preponderance of the evidence that termination of Esther's parental rights was in the children's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005) (statutory ground for termination requires clear and convincing evidence; best interests proven by preponderance).

¶3 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of*

Econ. Sec., 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). "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." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

Reunification Services

¶4 On appeal, Esther argues ADES failed to provide her with appropriate reunification services because it did not provide a second psychological evaluation until September 2009, even though the children's therapist, David Hasal, had suggested in July 2008 that Esther receive an additional evaluation to gauge whether she was capable of parenting or had improved "her ability to be more independent and self[-]sufficient." According to Esther, the delay in providing the second evaluation rendered ADES's efforts less than diligent. She does not challenge the juvenile court's findings regarding other reunification services she was provided.

¶5 Before a parent's rights may be terminated pursuant to any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a "diligent effort" to provide appropriate reunification services to the parent. ADES fulfills this statutory duty by providing the parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide a parent with every conceivable service or to ensure that she

participates in every service offered. *Id.* And, as the children point out in their answering brief, Hasal had suggested a second evaluation less than a year after Vega's initial examination, at a time when Esther had not been following through with services required by her case plan; accordingly, there was no reason to believe Vega's evaluations or recommendations would have changed. Indeed, after his September 2009 evaluation, Vega opined that Esther "seem[ed] to be acutely aware that she was given an opportunity to obtain needed services and failed to do so," and at the severance trial one month later he stated that "she had not made any change" since the earlier evaluation. Reasonable evidence, as detailed in the juvenile court's order, supports the finding ADES made sufficient efforts to reunify Esther and her children.

Statutory Grounds

¶6 Relying on *Marina P. v. Arizona Department of Economic Security*, 214 Ariz. 326, 152 P.3d 1209 (App. 2007), Esther also maintains the juvenile court erred in terminating her parental rights on time-in-care grounds because she participated in some of her case plan services and so did not substantially neglect or willfully refuse to remedy the circumstances that caused the children's out-of-home placement. *See* § 8-533(B)(8)(a). In *Marina P.*, this court held the juvenile court erred in terminating a mother's parental rights pursuant to § 8-533(B)(8)(a), despite the mother's "'appreciable, good faith efforts to comply with remedial programs outlined by ADES.'" 214 Ariz. 326, ¶¶ 30, 32, 45, 152 P.3d at 1214-15, 1217, *quoting In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). We concluded § 8-533(B)(8)(a) requires consideration of "'those circumstances existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children," and noted the only such circumstance found by the juvenile court had been the

mother's limited contact with her children—a circumstance caused by the mother's repeated deportation rather than her neglect or refusal to pursue reunification. *Marina P.*, 214 Ariz. 326, ¶¶ 22, 24, 26-28, 152 P.3d at 1213-14, *quoting In re Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993), *abrogated on other grounds by Kent K. v. Bobby M.*, 210 Ariz. 279, 110 P.3d 1013 (2005).

¶7 Although Esther argues her "efforts . . . indicate that [she] did not substantially neglect or willfully refuse to remedy the circumstances" preventing reunification, she fails to address the court's alternative findings pursuant to § 8-533(B)(8)(c), or why the evidence supporting those findings was insufficient. As we previously have explained, § 8-533(B)(8) provides for termination of parental rights "based on [a parent] *either* substantially neglecting to remedy" the circumstances causing a child's out-of-home placement for nine months, *see* § 8-533(B)(8)(a), or "ultimately failing to remedy" those circumstances, and likely being unable to remedy them in the near future, after such placement has continued for fifteen months or longer, *see* § 8-533(B)(8)(c). *Maricopa County No. JS-501568*, 177 Ariz. at 577, 869 P.2d at 1230. Thus, in contrast to the "expedited termination" after nine months of out-of-home care authorized by § 8-533(B)(8)(a), which "focuses on the level of the parent's effort . . . rather than the parent's success," *Marina P.*, 214 Ariz. 326, ¶ 20, 152 P.3d at 1212, § 8-533(B)(8)(c) focuses on a parent's success, or near success, in becoming an effective parent during the fifteen or more months her child has remained in out-of-home care.

¶8 We agree with ADES that Esther has failed to develop any meaningful argument that the evidence was insufficient to support termination pursuant to § 8-533(B)(8)(c), and that she therefore has waived any challenge to termination of her

parental rights on that ground. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (with limited exceptions not relevant here, Rule 13, Ariz. R. Civ. App. P., "appl[ies] in appeals from final orders of the juvenile court"); *cf. State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("Failure to argue a claim usually constitutes abandonment and waiver of that claim."). And, because Esther has waived any challenge to the juvenile court's finding that termination was warranted under § 8-533(B)(8)(c), we need not address her arguments pertaining to § 8-533(B)(8)(a). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (if termination upheld on any one ground, other grounds need not be addressed).

Best Interests

¶9 Similarly, although Esther challenges the juvenile court's conclusion that termination of her parental rights is in the children's best interest, she fails to address the sufficiency of the evidence supporting the court's specific finding that "[t]ermination of [her] parental rights would give the children stability and the permanence of a safe, loving home that can meet the children's physical, emotional, educational and social needs." Instead, without reference to any evidence, she asserts that, "[d]espite the children's needs being met [by their current placement], the long term psychological effect of being taken from their Mother needed to be taken into consideration," and that "[t]ermination of [her] rights will not be a benefit to the children." But we do not reweigh the evidence on review and will accept the court's findings as long as they are supported by reasonable evidence, as they are here. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53

P.3d at 207; *see also Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004) ("current adoptive plan is one well-recognized example" of benefit derived from termination of parental rights).

Conclusion

¶10 For the reasons stated, we find no merit to the issues Esther raises on appeal, and therefore affirm the juvenile court's May 2010 order terminating her parental rights to Selena, Wayland, and Michael.

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

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

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