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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RENEATTA A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, ISAIAH A., MARY A., SHANNA N., MATEO A., AND MARCIANO A., Appellees.	2 CA-JV 2010-0101 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J189815

Honorable Gus Aragón, Judge

AFFIRMED

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K E L L Y, Judge.

¶1 Reneatta A. appeals from the juvenile court's August 24, 2010, order terminating her parental rights to five of her seven children, Isaiah A., Mary A., Shanna N., and twins, Mateo A. and Marciano A., born in 2000, 2002, 2005, and 2009, respectively, based on the grounds of mental illness or history of chronic substance abuse and length of time in care.[1] *See* A.R.S. § 8-533(B)(3), (8)(a). Because the children are "Indian child[ren]," these proceedings are subject to the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 through 1963. *See* 25 U.S.C. § 1903(4) (defining "Indian child"). Reneatta contends there was insufficient evidence to support the court's finding that the Arizona Department of Economic Security (ADES) made diligent efforts to provide appropriate reunification services, specifically, individual counseling, to address her "unsafe relationship" with Mateo's and Marciano's father, Edward. She also maintains ADES did not provide her sufficient time to prove she could maintain a sober lifestyle before recommending that the children's case plan goal be changed to severance and adoption.

¶2 In general, a juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that a statutory ground for severance exists and finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will not disturb a court's severance order unless the factual findings upon

[1]The father of Isaiah, Mary and Shanna is deceased. Mateo's and Marciano's father, Edward, whose parental rights also were terminated, is not a party to this appeal.

which it is based "are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We view the facts in the light most favorable to sustaining the court's order. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005). Where, as here, ICWA is implicated, it imposes two substantive requirements: that ADES has made active but unsuccessful efforts to provide services to prevent the breakup of the family; and that there must be proof beyond a reasonable doubt that continued custody will likely result in serious damage to the child. *See* 25 U.S.C. § 1912(d), (f). However, ICWA does not require the higher standard of proof—proof beyond a reasonable doubt—for state-law findings. *Valerie M. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 331, ¶ 20, 198 P.3d 1203, 1207 (2009).

¶3 In January 2009, Mateo and Marciano were born exposed to cocaine. The following month, ADES filed a dependency petition as to the five children who are the subject of this appeal, and the juvenile court adjudicated all five children dependent as to Reneatta in April 2009. Reneatta, who did not contest the allegations in the dependency petition, acknowledged to Child Protective Services (CPS) that she had used cocaine throughout her pregnancy with Mateo and Marciano and that she had been using illicit drugs since she was nine years old. Psychologist Michael German evaluated Reneatta in July 2009 and diagnosed her with cannabis dependence, cocaine and opioid abuse, and a dependent personality disorder. Dr. German found it "difficult" to be optimistic about Reneatta's future prognosis. Reneatta was provided various services, including some to

help her transition to a sober and safe lifestyle and to address her volatile and violent relationship with Edward. The domestic violence between Reneatta and Edward continued during Reneatta's pregnancy with her seventh child, a daughter born the year after Mateo and Marciano were born.[2] Just three days after a reported incident during that pregnancy, Reneatta and Edward were married. In March 2010, after finding the parents only minimally compliant with their case plan, the court changed the case plan goal to severance and adoption and ordered ADES to file a motion to terminate the parents' rights to the children. As grounds for terminating Reneatta's rights, ADES alleged mental illness or history of chronic substance abuse and length of time in out-of-home care.[3] ADES also asserted that terminating the parents' rights was in the children's best interests.

¶4 After a contested severance hearing held in May and August 2010, the juvenile court terminated the parents' rights to the children based on the grounds asserted in the original motion[4] and found that severance was in the children's best interests. The court also found beyond a reasonable doubt that ADES had "made active efforts to

[2]ADES filed a separate dependency petition regarding Reneatta's and Edward's daughter, born in March 2010.

[3]Specifically, ADES alleged Reneatta had substantially neglected or willfully refused to remedy the circumstances that caused the children to be in court-ordered, out-of-home care for nine months or longer. *See* § 8-533(B)(8)(a).

[4]Although the juvenile court granted ADES's amended motion to add out-of-home placement for fifteen months to the already-alleged grounds, it does not appear the court relied on this additional ground in its written ruling. *See* § 8-533(B)(8)(c).

provide remedial services to prevent the breakup of the Indian family and those efforts were unsuccessful [and] . . . custody with Mother and Father would cause all five children serious mental, emotional, or physical damage."

¶5 On appeal, Reneatta contends ADES did not make diligent efforts to provide appropriate reunification services, specifically individual counseling to address her volatile relationship with Edward. Reneatta does not assert ADES failed to make active efforts to provide reunification efforts, as ICWA requires.[5] Rather, she challenges only whether ADES made diligent efforts as required by Arizona statute. *See* § 8-533(8). Given her argument, we need not address whether diligent reunification efforts required by Arizona statute will always meet the active efforts required by ICWA.

¶6 Although the juvenile court was not required to find ADES made active efforts beyond a reasonable doubt, there is abundant evidence to support the court's determination that ADES had proven beyond a reasonable doubt that it made both active efforts to prevent the break-up of the family and reasonable efforts to reunify the family. *See Valerie M.*, 219 Ariz. 331, ¶ 20, 198 P.3d at 1207. Notably, that evidence documents Reneatta's continued resistance to the full range of services ADES provided to her, which included daycare, drug testing and monitoring, parenting instruction, Family Drug Court, substance abuse classes, "Women in Recovery," "12 step meetings," a safety monitor in

[5]"Any party seeking to effect a . . . termination of parental rights to[] an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 U.S.C. § 1912(d).

the home, and a psychological evaluation. CPS specialist Christy Charles testified that, although Reneatta needed individual counseling to address her unsafe relationship with Edward, something ADES had not provided, as Reneatta points out on appeal, such counseling was available through the MCAS program, in which Reneatta had participated.[6] Charles also noted that Reneatta had been provided with "relationship" and domestic violence classes at MCAS. MCAS coordinator Myrna Garcia testified that Reneatta's motivation to participate in treatment had dwindled once she had completed in-patient treatment. And CPS case manager Ruby Shelby testified that Reneatta never completed any of the many services she had started, and that ADES had provided all of the necessary services to allow her to reunify with the children.

¶7 In addition, ICWA expert Cathleen Carmen testified that CPS had offered services to the parents throughout the dependency proceeding and opined that it had made active efforts to reunify the Indian family. She also testified that all of the children were thriving in their ICWA-compliant placements,[7] with relatives who are willing to care for them permanently. Finally, Carmen opined that reunification with Reneatta would place the children at immediate risk of serious emotional and physical harm and that severance would be in their best interests.

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[6]At the termination hearing, MCAS was described as "an intensive out-patient treatment facility for women that are pre- and postpartum, and have dependent children, and are dependent on substances, or are involved in the Criminal Justice System or CPS."

[7]*See* 25 U.S.C. § 1915(a), (b) (stating ICWA's preference for priority placement of Indian children with extended family).

¶8 As Reneatta has acknowledged on appeal, "ADES is not obligated to provide every possible service, or one that would be futile." *See Mary Ellen C.*, 193 Ariz. 185, ¶¶ 34, 37, 971 P.2d at 1053. Here, as the juvenile court noted, Reneatta continued to struggle with her sobriety and resumed her "unhealthy" relationship with Edward, despite the numerous services ADES had provided her over an extended period of time. Reneatta has failed to persuade us that the services ADES provided were in any way inadequate, that she was unable to obtain the individual counseling she claims she needed, or that she would have availed herself of additional individual counseling services even if they had been offered.

¶9 To the extent Reneatta argues she should have been given more time to complete her case plan and achieve the six months of sobriety Charles had recommended, we reject this claim. Although ADES offered Reneatta services since early 2009, she did not engage in those services until 2010. In her October 2009 progress report, Shelby referred to Reneatta's pregnancy with her seventh child and her relapse from sobriety, noting Reneatta had "continued to make poor decisions which had led to a more complex case." The juvenile court noted Reneatta's relapse in its written severance ruling and further cited Reneatta's admissions that she had used methamphetamine, marijuana, alcohol and cocaine during her recent pregnancy with her daughter, who was born while this proceeding was pending. Accordingly, to the extent Reneatta claims she should have been given more time to demonstrate her sobriety, we can infer the court concluded that her recent efforts to "restart[]" her case plan were simply too little too late. Finally,

because Reneatta does not challenge any other elements of § 8-533(B)(3) or 8-533(B)(8)(a), we need not address them.

¶10 Therefore, we affirm the juvenile court's order terminating Reneatta's parental rights to Isaiah, Mary, Shanna, Mateo and Marciano.

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

CONCURRING:

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

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