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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

EVA H., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and HAYDEN H., Appellees.	2 CA-JV 2009-0007 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17564900

Honorable Virginia C. Kelly, Judge

AFFIRMED

Sarah Michéle Martin
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Michelle R. Nimmo
Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Eva H. appeals from the juvenile court's termination of her parental rights to her son, Hayden, born in June 2007. The court found grounds for termination included Eva's disabling mental illness and chronic substance abuse, both of which were likely to continue indefinitely. *See* A.R.S. § 8-533(B)(3). The court further found that Eva had abandoned Hayden, *see* § 8-533(B)(1); had substantially neglected or willfully refused to remedy the circumstances causing him to remain in a court-ordered, out-of-home placement for more than nine months, *see* § 8-533(B)(8)(a); and, having failed to remedy those circumstances while he remained in foster care for more than fifteen months, was unlikely to be able to parent effectively in the near future, *see* § 8-533(B)(8)(c).

¶2 Eva contends there was insufficient evidence to support the juvenile court's conclusion that she suffered from a disabling personality disorder warranting termination under § 8-533(B)(3). In addition, she argues that, if she is mentally ill, the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) failed to provide appropriate reunification services to accommodate her disability, in violation of due process and federal and state law. Essentially, she argues her distrust of her assigned CPS case manager "seriously undermined her ability to make use of the services" CPS offered. According to Eva, by refusing her requests for reassignment to a different case manager and by failing to pay for services in Texas after Eva had voluntarily moved there, CPS had failed to make a diligent effort to provide appropriate reunification services, *see* § 8-533(D); had violated the Americans with Disabilities Act, *see* 42 U.S.C.A. § 12132; and had violated her

right to substantive due process, *see* U.S. Const. amend. V; Ariz. Const. art. II, § 4. Because we agree with ADES that Eva has waived any challenge to the court's finding of abandonment and because reasonable evidence supports that finding, we affirm.

¶3 We view the facts in the light most favorable to affirming the juvenile court's decision. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002). So viewed, the evidence established that, when Hayden was born, two of Eva's other children were the subjects of an ongoing dependency proceeding. In that dependency proceeding, the court had found Eva had failed to protect her two sons and had exposed them to an ongoing pattern of domestic violence between herself and Hayden's father, John H.[1] In a dependency petition filed shortly after Hayden's birth, ADES alleged that Eva and John would be unable to effectively and safely parent Hayden without supportive services provided by CPS. Less than two weeks later, CPS removed Hayden from Eva's mother's care and placed him in foster care, citing concerns for his health and safety.[2]

¶4 Eva participated in supervised visitation with Hayden during the next three months, but in November 2007, after she and John had reconciled, CPS declined the couple's request for joint visits with Hayden because of their history of domestic violence. For the most part, Eva then refused to visit Hayden at all. On one occasion, when she learned

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[1]The juvenile court also terminated John's parental rights to Hayden. His appeal from that order was dismissed.

[2]Although Eva had contested ADES's removal of Hayden, she later did not contest the allegations in the dependency petition.

Hayden had been brought to participate in a visit between Eva and her two other children in ADES custody, Eva told the case manager to "get that baby out of here." Eva saw Hayden on only five occasions during the next year, stopped participating in the case plan services CPS had offered, and moved to Texas, where those services were not available to her. While the dependency proceeding was pending, Eva provided no financial support for Hayden; sent no cards, letters, or gifts for him; and rarely communicated with the CPS case manager or inquired about Hayden's welfare. Although Hayden had developmental delays, Eva never participated—nor asked to participate—in his physical or occupational therapy appointments. In August 2008, the juvenile court changed Hayden's case plan goal to severance and adoption and directed ADES to file a motion to terminate Eva's and John's parental rights. At the termination adjudication hearing, Eva stated, "I could [parent Hayden]. It doesn't necessarily mean that I want to," and told the court she would prefer to see Hayden placed with his father, or even her own father, than with her.

¶5 As ADES points out, although Eva challenges the juvenile court's finding that she suffered from a disabling mental illness, she does not contest the court's finding that she "continues to abuse opiate drugs . . . that make her unavailable" to parent her children and that she had failed to address this problem during the dependency. Nor, as ADES notes, does Eva challenge the court's finding that she had abandoned Hayden for purposes of § 8-533(B)(1). In reply, Eva argues she was not required to challenge these alternative grounds on appeal because, she maintains, CPS's denial of her requests for a different case manager

violated her constitutional right to substantive due process and "render[ed] the entire proceedings unfair and tainted, and therefore requires the reversal of all findings made."

¶6 Rule 13, Ariz. R. Civ. App. P., provides that an appellant's statement of the issues presented for review "will be deemed to include every subsidiary issue fairly comprised therein." *See also* Ariz. R. P. Juv. Ct. 106(A) (incorporating rule). However, we cannot agree with Eva that her challenge to the services provided by CPS fairly encompasses the juvenile court's finding of abandonment.[3] And ADES is correct that failure to develop an argument on appeal results in waiver. *See*, *e.g.*, *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) ("Merely mentioning an argument is not enough . . . ."). Moreover, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. The evidence amply supported the court's finding of abandonment, and we conclude Eva has waived any challenge to the termination

[3]In her briefs on appeal, Eva relies on *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, ¶ 34, 971 P.2d 1046, 1053 (App. 1999), which held that ADES has an obligation "to undertake [rehabilitative] measures with a reasonable prospect of success" before terminating parental rights pursuant to § 8-533(B)(3). Had she intended to challenge the court's finding of abandonment on the same basis, we would have expected her to distinguish *Toni W. v. Arizona Department of Economic Security*, 196 Ariz. 61, ¶¶ 7-9, 993 P.2d 462, 465 (App. 1999) (ADES not required to make reasonable reunification efforts before parent's rights terminated for abandonment pursuant to § 8-533(B)(1)).

of her parental rights on that ground[4] as well as to the court's finding that termination was in Hayden's best interests.

¶7 For the foregoing reasons we affirm the juvenile court's termination order.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOSEPH W. HOWARD, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge

[4]As defined in A.R.S. § 8-531(1), "[a]bandonment" means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.