

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SALLY V.F.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND A.L.,
Appellees.

No. 2 CA-JV 2015-0214
Filed March 10, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20150038
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Scott Schlievert, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

SALLY V.F. v. DEP'T OF CHILD SAFETY
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Appellant Sally V.F. challenges the juvenile court's order of November 10, 2015, terminating her parental rights to her son A.L., born July 2013, on the ground that Sally had been unable to remedy the circumstances causing the child to remain in a court-ordered, out-of-home placement for longer than six months. *See* A.R.S. § 8-533(B)(8)(b). On appeal, Sally challenges the sufficiency of the evidence to sustain the statutory ground for severance.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 The Department of Child Safety (DCS) took A.L. into custody in January 2015, after receiving multiple reports relating to Sally, her boyfriend Jess, A.L., and Sally's older child, E. DCS received reports that Sally and Jess were using heroin in the children's presence and were engaging in domestic violence. The family's home was unkempt, a knife was found on the floor on one

SALLY V.F. v. DEP'T OF CHILD SAFETY
Decision of the Court

occasion, and at one point the family was found spending the night in a van in a restaurant parking lot.

¶4 The juvenile court adjudicated A.L. dependent as to Sally after she failed to appear at a hearing in February 2015. Sally again failed to appear at a dependency review hearing in April, and in July 2015 the court changed the case plan from family reunification to severance and adoption after Sally failed to engage in services.

¶5 Shortly thereafter, DCS filed a motion for termination of Sally's parental rights alleging A.L. had been in a court-ordered, out-of-home placement for more than six months and Sally had "failed to initiate any reunification services since the child's removal." After a contested severance hearing, the juvenile court found the ground for severance had been proven and severance was in A.L.'s best interest. It therefore ordered Sally's parental rights terminated, and this appeal followed.

¶6 On appeal, Sally argues DCS failed to establish the statutory ground for severance. To justify termination under § 8-533(B)(8)(b), DCS must show 1) the child has been in a court-ordered, out-of-home placement for six months or more; 2) the child is under three years old; and 3) "the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement."

¶7 Sally specifically contends DCS failed to show that A.L. had been in court-ordered, out-of-home care for six months or more or that she was "unable to remedy the circumstances" leading to that placement. She argues that much of the time the child was in out-of-home care was with her consent and that she was "unable to participate in all services because of a 60-day incarceration period." Sally has cited no authority to support a claim that the time-in-care ground cannot be met when a parent agrees to court-ordered, out-

SALLY V.F. v. DEP'T OF CHILD SAFETY
Decision of the Court

of-home placement.¹ See *Bob H. v. Ariz. Dep't of Econ. Sec.*, 225 Ariz. 279, ¶ 10, 237 P.3d 632, 635 (App. 2010) (argument waived when appellant “cite[d] no legal authority” in support of claim). Indeed, § 8-533(B)(8)(b) only requires that the child be in an out-of-home placement “pursuant to court order.” In this case, A.L. was removed from the home, placed into DCS’s custody, and moved into shelter care pursuant to court order on January 20, 2015. At the time of the severance hearing he had been in out-of-home care pursuant to court order for approximately nine months.

¶8 To the extent Sally argues DCS failed to establish she “substantially neglected or willfully refused to remedy the circumstances” leading to A.L.’s placement, we cannot agree. Sally relies on favorable testimony and dismisses the contrary evidence cited by the juvenile court, including that she had not participated in services provided by DCS, either before or after her incarceration. We do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court’s resolution of conflicting inferences when, as here, it is supported by the record, *In re Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶9 Further, although Sally was incarcerated for part of the statutory time period, she has cited no authority suggesting that DCS should be forced to delay seeking a permanent placement for a dependent child because his parent cannot avoid incarceration. Indeed, Sally committed the offense leading to her incarceration while A.L. was in out-of-home placement. In any event, the record is clear that she failed to participate in services even when not incarcerated. Thus, we cannot say the juvenile court abused its discretion in concluding the statutory ground for severance had been established.

¹To whatever extent Sally agreed to A.L.’s placement, she contested the dependency. But we accept *arguendo* her position that she consented to placement.

SALLY V.F. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶10 Therefore, we affirm the juvenile court's order terminating Sally's parental rights.