

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHELLE B.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND E.B.,
Appellees.

No. 2 CA-JV 2016-0092
Filed September 8, 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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201300083
The Honorable Brenda E. Oldham, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellant

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

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Michelle B. appeals from the juvenile court's May 2016 order terminating her parental rights to E., born in July 2008, on the grounds of chronic substance abuse, mental illness, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(3) and (B)(8)(c). She challenges the sufficiency of the evidence to support the ruling, arguing as to all grounds that the Department of Child Safety (DCS) failed to make reasonable efforts to reunify her with E. by not providing appropriate services and giving her time to engage in those services. We affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find there is clear and convincing evidence of at least one statutory ground for severance and that the evidence shows by a preponderance terminating the parent's rights is in the child's best interest. 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 a severance order unless we find as a matter of law no reasonable fact-finder could have found that burden was sustained. See *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We recognize the juvenile court is in the best position to assess the credibility of witnesses, weigh the evidence, and resolve disputed facts, and will not disturb its order if reasonable evidence supports it. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). We therefore view the evidence in the light most favorable to sustaining the court's ruling. *Adrian E. v. Dep't of Child Safety*, 239 Ariz. 240, ¶ 2, 369 P.3d 264, 265 (App. 2016).

¶3 The evidence established Michelle had a severe substance-abuse problem that spanned over two decades. She also

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has significant mental health issues, including suicide attempts, which she was never able to address because she was unable to attain sobriety for a sufficient period of time. In November 2012, her therapist referred her to psychologist Carlos Vega for an evaluation to determine if she was seriously mentally ill (SMI) and unable to work, and therefore eligible for social security disability benefits. Vega concluded Michelle had a serious substance-abuse disorder and diagnosed her as suffering from a personality disorder with borderline antisocial and histrionic features. Vega concluded Michelle required long-term residential substance-abuse treatment and that she had to achieve sobriety for a sustained period of time before she could even begin the “intensive psychotherapy” necessary to treat her mental illness. He did not believe Michelle met the criteria for SMI disability because her lack of employability was due primarily to her serious abuse of psychoactive drugs and addiction to alcohol.

¶4 DCS received a report about two months later, in June 2013, that Michelle was severely intoxicated and, as a consequence, had been neglecting four-year-old E. DCS offered Michelle substance-abuse services and individual therapy. Although the substance-abuse treatment provider tried to engage Michelle in treatment, she refused and the provider closed out services. Michelle’s substance abuse persisted and, in June, DCS removed E. from the home. At the time of E.’s removal, Michelle appeared to be intoxicated. She was about to be evicted from her home, and she admitted she could not care for E. E. was adjudicated dependent as to Michelle in July after she submitted to the dependency.¹

¶5 In an effort to attain the case-plan goal of reunification, DCS offered Michele a panoply of services over the next two years, including substance-abuse and mental-health assessments to determine what services were required, drug testing, individual counseling, parenting classes, and transportation. Michelle was told

¹E. was found dependent as to her father, Nigel B., in November 2013. His parental rights were severed as well. He is not a party to this appeal.

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repeatedly she needed to address her substance-abuse issues before she could address her mental health problems and that she needed residential drug treatment. She refused residential treatment. She did not submit to drug testing as required, missing some tests and continuing to test positive for illegal drugs, including a positive test for cocaine just weeks before the severance hearing in March 2016.

¶6 After a placement review hearing in December 2013, which Michelle failed to attend, the juvenile court noted her lack of contact with DCS and found DCS had made reasonable efforts to prevent or eliminate the need for E.'s continued removal and to reunify her with Michelle. DCS continued to offer Michelle services, enrolling her with the service provider Corazon in March 2014. Michelle received individual therapy and substance-abuse treatment from Chanda Cooper and parenting classes. She continued to be non-compliant, repeatedly failing to submit to urinalysis, testing positive for drugs, displaying disruptive behavior in group therapy sessions, and repeatedly refusing residential substance-abuse treatment.

¶7 By July 2014, the Corazon case manager described Michelle as in a state of "near crisis with agitation," in denial about her substance abuse, and lacking insight to what she needed to do to regain custody of E. At the permanency planning hearing in October, the DCS case manager informed the juvenile court that although a new psychological evaluation was needed, until Michelle attained sobriety for a sustained period of time, the results of any such evaluation would be meaningless. Although Michelle's lack of compliance with drug testing was brought to the court's attention, the court nevertheless continued the case-plan goal of reunification and found DCS had made reasonable efforts to prevent E. from remaining out of the home. In September 2014, visitation was suspended based on the recommendations of the DCS case manager and Cooper after Michelle had unsupervised contact with E.

¶8 In April 2015, Michelle moved from Casa Grande to Mesa. For a few months thereafter, Cooper continued to have contact with Michelle both by telephone and in person, when Michelle was able to obtain transportation. There appears to have

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been a delay in arranging services for Michelle in Mesa. Nevertheless, DCS arranged for Vega to evaluate Michelle for the second time in June 2015, two and a half years after his first evaluation. He confirmed his initial conclusion that Michelle had a very serious substance abuse issue and a personality disorder. Vega also reiterated that Michelle needed to maintain sobriety before she could even begin to address her mental illness, describing her in his report as "highly damaged psychologically." Vega concluded her prognosis was very poor, she was "unable to minimally or adequately parent a child," and she would not be able to do so in the reasonably foreseeable future. As illustrative of Michelle's inability to change and the long-term, chronic nature of her issues, Vega noted her rights to another child had been severed in California.

¶9 By April 2015, Cooper concluded Michelle had not shown progress after a year of therapy and had been unable to attain sobriety. She did not believe Michelle had progressed enough to have contact with E. She recommended services be discontinued.

¶10 After a permanency hearing at the end of September 2015, which Michelle did not attend, the juvenile court noted Michelle's lack of compliance with the case plan, positive test results for illegal drugs, and the fact that E.'s placement was interested in adopting her. The court changed the case plan to severance and adoption, again finding DCS had made reasonable efforts to eliminate the reasons for E.'s continued placement out of the home and reunify her with Michelle.

¶11 DCS filed a motion to terminate Michelle's parental rights on the grounds of chronic substance abuse, mental illness and length of time in court-ordered care, pursuant to § 8-533(B)(3) and (B)(8)(c). The court granted the motion at the end of the March 31, 2016 hearing, making detailed factual findings on the record and entering a final order in May that contained a majority of those findings. This appeal followed.

¶12 Michelle first contends the juvenile court erred in terminating her parental rights to E. based on the length of time E. was in court-ordered care. A court may terminate a parent's rights

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pursuant to § 8-533(B)(8)(c) if it finds clear and convincing evidence DCS “has made a diligent effort to provide appropriate reunification services,” and “[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to” remain out of the home, and “there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.” To justify terminating the parent-child relationship on this ground, as well as the interrelated ground of substance abuse, DCS was required show it had made a diligent effort to provide Michelle with appropriate services that were designed to reunify her with E. See *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 12 & n.3, 123 P.3d 186, 189 & n.3 (App. 2005); see also *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 26, 971 P.2d 1046, 1051-52 (App. 1999).

¶13 Michelle argues DCS did not provide her with the specific kinds of services that she needed or sufficient time to benefit from them. She asserts DCS delayed providing her services for about eight months after she relocated from Casa Grande to Mesa in April of 2015 because of confusion caused by the SMI determination and a delay in transmitting her mental health records to Maricopa County providers. She argues DCS never provided her psychotherapy, which Vega recommended to address her mental health issues. And although she concedes she was directed to participate in residential substance-abuse treatment and refused, she argues as she did below, that she did so because “she would be unable to reside amongst a large amount of individuals.”

¶14 DCS’s duty to make reasonable efforts to reunify the family, however, does not require it to “provide ‘every conceivable service’” or “undertake rehabilitative measures that are futile.” *Mary Ellen C.*, 193 Ariz. 185, ¶¶ 34, 37, 971 P.2d at 1053, quoting *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994); see *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 15, 83 P.3d 43, 49 (App. 2004). DCS is only required to “provide [the] parent with the time and opportunity to participate in programs designed to improve the parent’s ability to care for [her]

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child.” *Mary Ellen C.*, 193 Ariz. 185, ¶ 37, 971 P.2d at 1053. Throughout the dependency, the court found DCS had made diligent and reasonable efforts to reunify Michelle with E. and provided appropriate reunification services. Michelle apparently did not challenge those findings. Additionally, although services apparently were disrupted when Michelle moved to Mesa in April 2015, by that time she had been offered but had not benefitted from extensive services. The record, including testimony by Cooper, Vega, and the DCS case manager, established additional services would have been futile. E. remained out of the home in court-ordered care during this period and could not be returned to Michelle’s custody.

¶15 At the end of the severance hearing, the juvenile court addressed Michelle directly, pointing out to her the services DCS had provided and offered. The court reminded Michelle that Cooper repeatedly had told her that if she did not maintain sobriety for a period of time she would not be able to address her psychological disorders. The court reminded Michelle that Cooper had testified Michelle’s mental disorders were “not likely to go away” without intense psychotherapy and inpatient drug treatment. The court added, “I tell you all that because then came a lot of other things after you moved to Mesa, but that is what happened before you moved to Mesa.” Finding Michelle had been unable to remain sober, testing positive for cocaine just a few weeks earlier, the court emphasized Michelle had refused inpatient drug treatment. The court concluded that although DCS had provided services designed to address Michelle’s substance abuse and mental health issues, she had “either been unable or unwilling to remedy the circumstances that brought the child into care,” adding “she has not made the necessary changes behaviorally to be able to parent her child[, a]nd there is a substantial likelihood that she will be unable to do this.”

¶16 The record amply supports these and other findings the juvenile court made. In addition to the evidence summarized above, Cooper testified at the severance hearing that the initial goal of therapy was to help Michelle “achieve sobriety” so that she could address her personality disorder and engage in psychotherapy. Moreover, “all of the goals related to her DCS case plan” and to help

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her “regain custody of her daughter.” But Michelle did not attain a period of sobriety long enough to allow for effective treatment through psychotherapy. Cooper further testified she had offered Michelle inpatient residential treatment on at least three occasions but Michelle refused. The program Cooper selected was consistent with what Vega had recommended. She agreed there had been a “snafu” in the transfer of Michelle’s records after she moved to Mesa, through no fault of Michelle’s or DCS’s, but by that time Cooper already had concluded therapy should be discontinued because Michelle had not benefitted from it.

¶17 DCS case manager Gina Green also testified at the severance hearing. She stated that, based on her experience as a case manager, her contact with Michelle, and drug-testing reports, which included a positive test for cocaine just two weeks earlier in March 2016, she did not believe Michelle was able to discharge her parental responsibility because of a history of chronic abuse of dangerous drugs and there were reasonable grounds to believe that condition would continue for a prolonged and indeterminate period. She testified further that referrals that had been made for Michelle to obtain substance abuse assessment and treatment were closed out either because of her failure to follow up and contact the provider or because she had declined services. Green believed Michelle could not discharge her parental duties because she had “failed to maintain her sobriety, she ha[d] failed to maintain a stable income to provide for her child,” and she had not addressed mental health issues, all of which is what had caused E. to be taken out of the home and into court-ordered care.

¶18 Green agreed that services had been disrupted when Michelle moved to Mesa in April 2015. But, she said, DCS tried to get those services arranged and had given Michelle information about placement through other agencies. At one point Michelle told Green she had found a place to go, therefore DCS stopped trying to coordinate services there. But Michelle never provided information about where she was getting counseling. Green testified that, in any event, E. had been out of the home for a cumulative period of fifteen months or longer pursuant to court order and Michelle had been unable to remedy circumstances that had caused E. to be out of the

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home, continuing to use drugs. E. could not be returned to Michelle because she continued to use drugs and had not addressed her mental health issues. Green believed further services would be futile, stating, "She hasn't benefit[t]ed from the services yet. I don't believe she would benefit at this point."

¶19 The record contains ample evidence supporting these and other findings related to the juvenile court's termination of her parental rights based on the length of time E. was in court-ordered care. Although we only need to find one ground for severance to affirm the court's order, *see Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000), the three grounds were factually intertwined, particularly E.'s out-of-home placement and Michelle's chronic substance abuse. Michelle's failure to benefit from and fully participate in services designed to address her substance abuse problem, which was necessary before she could even begin working on her mental health issues, was the reason E. could not be returned to her care. Because the record contains reasonable evidence to support the court's factual findings and conclusions related to Michelle's substance abuse and mental illness, we reject her challenge of the court's termination of her parental rights pursuant to § 8-533(B)(3) as well as § 8-533(B)(8)(c).

¶20 For the reasons stated herein, we affirm the juvenile court's order terminating Michelle's parental rights to E.