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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RUTH H.,	)	
	)	2 CA-JV 2007-0053
Appellant,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY and	)	Appellate Procedure
KRISTEN H.,	)	
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD-200500153

Honorable Joseph R. Georgini, Judge

AFFIRMED

Richard Scherb — Florence
Attorney for Appellant

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

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Ruth H. appeals from the juvenile court's July 2007 order terminating her parental rights to Kristen H., who was just under five years of age when the court entered its order. Ruth contends that the court erroneously admitted over her objections the written psychological evaluation and reports prepared by psychologist Carlos Vega and Vega's testimony relating to his evaluation of Ruth. We affirm.

¶2 Based on its investigation into reports that Ruth had been neglecting Kristen, the Arizona Department of Economic Security (ADES) took temporary custody of the child in August 2005. Kristen was developmentally delayed, appeared to be suffering from fetal alcohol syndrome, and had a heart condition. In the dependency petition it filed shortly after removing Kristen from the home, ADES alleged that Ruth was not meeting the child's special needs. Ruth subsequently admitted Kristen was dependent because Ruth was unable to care for her.

¶3 In the ensuing months, ADES provided Ruth with a variety of services designed to attain the case plan goal of reunification. About a year after Kristen was removed from Ruth's custody, however, it became apparent that Ruth was refusing to comply with the case plan. She refused to submit to random urinalysis, would not attend parenting classes, had not obtained employment, and, despite her own problems with alcohol abuse, continued to live with her father, knowing that he was an alcoholic and that she could not refrain from drinking while living in his home.

¶4 After a combined dependency review and permanency planning hearing in August 2006, the juvenile court adopted ADES's recommendation that the case plan be changed to severance and adoption. The court found that "the status of dependency continues to exist and that the Arizona Department of Economic Security has made reasonable efforts to reunify [Kristen] with the family; however the mother fails to understand the severity of the child's condition and her non-compliance with needed services."

¶5 ADES subsequently filed a motion for termination of Ruth's parental rights on three statutory grounds: she had neglected or willfully abused a child, A.R.S. § 8-533(B)(2); Kristen had been placed out-of-home for nine months or longer pursuant to court order, and Ruth had substantially neglected or willfully refused to remedy the circumstances that caused Kristen to remain out of the home, § 8-533(B)(8)(a); and Ruth had been unable to remedy the circumstances that caused the child to remain out of the home for fifteen months or longer, and there existed a substantial likelihood that Ruth would be unable to adequately parent Kristen in the near future, § 8-533(B)(8)(b). After a two-day severance hearing in April and May 2007, the juvenile court found ADES had established all three grounds for terminating Ruth's parental rights. However, as ADES candidly points out, in the formal findings of fact, conclusions of law, and order that ADES submitted to the court, it omitted neglect as one of the statutory grounds for severance. Thus, the written judgment

bases the termination of Ruth's rights only on nine-month and fifteen-month, out-of-home placement under § 8-533(B)(8)(a) and (b).

¶6 Testifying at the severance hearing, Dr. Vega identified the kinds of tests he administered in conducting his October 2005 psychological evaluation of Ruth. Among them was the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Although Ruth had answered less than fifty percent of the questions and thus had not fully completed the test, Vega maintained he could nonetheless draw conclusions and make statistical projections about her condition and behavior based on the portions of the test she had completed. Ruth contends the juvenile court erred by admitting the reports and related testimony over her objections, which included, she insists, an objection based on *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

¶7 We will affirm the juvenile court's order terminating Ruth's parental rights so long as we find sustainable at least one of the grounds that was the basis for that order. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000). Unless the factual findings upon which a termination order is based are clearly erroneous—that is, unless there is no reasonable evidence supporting them—we will not disturb the court's order. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶8 As we previously stated, nine-month, out-of-home placement was among the grounds on which the juvenile court terminated Ruth's parental rights to Kristen. That

portion of the final order essentially tracked the language of § 8-533(B)(8)(a) in providing that Kristen had "been in an out-of-home placement for a cumulative total period of nine months or longer, pursuant to court order. The mother . . . has substantially neglected or willfully refused to remedy the circumstances which cause the child to be in out-of-home placement." Additionally, the juvenile court found that ADES had "made a diligent effort to provide appropriate reunification services" and that a preponderance of the evidence established that "the best interests of the child would be served by a termination of the parent-child relationship." The court made additional factual findings related to Kristen's best interests. Although made by the lesser standard of a preponderance of the evidence, *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005), those findings also bear on the two separate grounds for terminating Ruth's parental rights under § 8-533(B)(8)(a) and (b). With respect to nine-month, out-of-home placement, the court found as follows:

> [Kristen] has been in care over nine months and the mother has substantially neglected the child by failing to remedy the issues of substance abuse and medical neglect that brought the child into care. The mother has willfully refused to remedy the circumstances that brought the child into care by failing to address her alcoholism in refusing to attend treatment or even to stop drinking. She has also failed to attend parenting classes that would assist her in understanding the developmental stages and delays of her daughter. Additionally, she has refused to follow up with her daughter's genetic condition and understand her delays.

¶9 At the close of the evidence in ADES's case-in-chief and again after Ruth testified, she conceded ADES had sustained its burden of proving "time in care as part of the allegations in the original severance petition." She argued primarily that ADES had failed to establish she had neglected Kristen and denied that terminating her parental rights was in Kristen's best interests, suggesting Kristen would remain in foster care rather than being adopted.[1] On appeal, Ruth does not contest the specific findings of fact pertaining to either of the two statutory grounds, focusing instead solely on the allegedly erroneous admission of Vega's reports and testimony. Nor does Ruth relate that evidence to the statutory grounds for terminating her rights or the required finding that severance was in Kristen's best interests. In our view, particularly with respect to the termination of Ruth's rights on the ground of nine-month, out-of-home placement, Vega's testimony and his report are inconsequential.

¶10 Unlike § 8-533(B)(8)(b), which requires the court to find that "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," subsection (a) does not require any finding about how well a parent might function in the future. Much of Vega's evaluation related

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[1]As ADES points out in its answering brief, Ruth objected to the proposed findings, conclusions, and order ADES had lodged with the court. Objecting, *inter alia*, to the finding that ADES had provided her with appropriate reunification services, Ruth inappropriately challenged the substance of the court's ruling, not the form of the order or whether it accurately reflected the court's ruling, which was all she could challenge at that juncture. *See* Ariz. R. Civ. P. 58(d).

to Ruth's prognosis for the future. Once ADES established Ruth had "substantially neglected or wilfully refused to remedy the circumstances which cause the child to be in an out-of-home placement," § 8-533(B)(8)(a), findings Ruth does not dispute and the record amply supports, evidence about her prognosis and whether she could likely overcome her substance abuse issues and parent Kristen was essentially irrelevant.

¶11 For the reasons stated herein, we affirm the juvenile court's order terminating Ruth's parental rights to Kristen.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

_____
GARYE L. VÁSQUEZ, Judge

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JOSEPH W. HOWARD, Judge