

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

See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/16/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DONALD S.,	)	No. 1 CA-JV 12-0071
	)	
Appellant,	)	DEPARTMENT A
	)	
v.	)	<b>MEMORANDUM DECISION</b>
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC	)	103(G) Ariz. R.P. Juv.
SECURITY, LAILAH S.,	)	Ct.; Rule 28 ARCAP)
	)	
Appellees.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD508342

The Honorable Shellie F. Smith, Judge *Pro Tem*

**AFFIRMED**

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Christina Phillis, Maricopa County Juvenile Public Advocate	Mesa
By Suzanne W. Sanchez, Deputy Juvenile Public Advocate	
Attorneys for Appellant	

Thomas C. Horne, Arizona Attorney General	Mesa
By Amanda Holguin, Assistant Attorney General	
Attorneys for Appellee Arizona Department of Economic Security	

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**D O W N I E**, Judge

¶1 Donald S. ("Father") challenges the juvenile court's order terminating his parental rights. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 In January 2011, the Arizona Department of Economic Security ("ADES") filed a petition to terminate Father's rights to his daughter, L.S., born in 2007. The petition alleged three grounds: (1) inability to discharge parental responsibilities due to chronic substance abuse; (2) L.S. had been in an out-of-home placement for nine months or longer and Father had substantially neglected or willfully refused to remedy the circumstances leading to her removal; and (3) L.S. had been in an out-of-home placement for 15 months or longer and Father was unable to remedy the circumstances causing that placement and would not be capable of exercising proper and effective parental care and control in the near future. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (B)(8)(a), (B)(8)(c).

¶3 At a contested severance trial held in February 2012, a Child Protective Services ("CPS") case manager testified that Father had "minimally" participated in case plan services after

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<sup>1</sup> We view the facts in the light most favorable to affirming the juvenile court's ruling. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994) (citation omitted).

L.S. was removed from his care.<sup>2</sup> Among other things, Father failed to complete outpatient or in-patient substance abuse treatment and submitted to only 10 of 78 required random drug tests. He also failed to participate in parent-aide services. The case manager further testified Father had not parented L.S. in over two and a half years, had no "face to face contact" with her since being released from jail in October 2011, and had pled guilty in December 2011 to felony child abuse of another child.

¶4 ADES orally moved to amend the severance petition to conform to the evidence by adding child abuse and abandonment as grounds for termination of Father's parental rights. See A.R.S. § 8-533(B)(1) and (B)(2). Father objected, asserting prejudice due to the lack of notice and arguing ADES had "ample time" before trial to file an amended petition alerting him to the additional grounds. ADES replied by noting the short timeframe between Father's October release from jail and his December guilty plea and the severance trial in February. The State further argued that Father could not be prejudiced by lack of notice on the amendment to include child abuse, because Father

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<sup>2</sup> Father was offered twice weekly parent-aide services, but attended once a week. He participated in twice-monthly supervised visitation with L.S. before being incarcerated in February 2011; he did not see his daughter thereafter. Father refused to talk with the ADES case worker while in jail and had no contact with ADES after his release. The case manager also testified that L.S. would be unsafe in Father's care unless he participated in services.

was aware of his conviction in a child abuse case. L.S.'s guardian ad litem supported ADES' motion, further arguing Father would not be prejudiced because he was aware of his own failure to contact CPS and L.S. since being released from jail. The court granted ADES' motion.

¶15 Father testified he did not contact CPS or L.S. after being released from jail because his case worker was "consistently against [him]" and "lie[d]." He refused to participate in services until he got a new caseworker.

¶16 The court found that ADES had proven by clear and convincing evidence that Father's parental rights should be severed based on chronic substance abuse, abandonment, and time in care (9 and 15 months). See A.R.S. § 8-533(B)(1), (B)(3), (B)(8)(a), (B)(8)(c). However, it ruled ADES had not presented sufficient evidence to terminate Father's rights on the basis of child abuse. See A.R.S. § 8-533(B)(2).

¶17 Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235.

#### **DISCUSSION**

¶18 Father contends the juvenile court "lacked the authority" to allow an oral amendment of the petition to allege abandonment or, in the alternative, that the court abused its discretion in permitting such an amendment.

¶9 To sever parental rights, the court "must find, by clear and convincing evidence, at least one of the statutory grounds" for termination.<sup>3</sup> *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court here found clear and convincing evidence of four statutory grounds justifying termination of Father's parental rights.

¶10 Father has challenged only one statutory basis on appeal: abandonment. He has implicitly conceded that the other grounds for severance were appropriate. See *MT Builders, L.L.C. v. Fisher Roofing Inc.*, 219 Ariz. 297, 305 n.7, ¶ 19, 197 P.3d 758, 766 n.7 (App. 2008) (arguments not developed on appeal are waived); *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (issues not argued in an appellate brief are waived).

¶11 Thus, even assuming *arguendo* that the juvenile court erred by allowing ADES to orally amend its petition at trial, we would affirm the termination order based on the other three statutory grounds alleged and found. See *Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687 (because appellate court affirmed one basis for termination, it need not determine whether severance was justified on other grounds found by juvenile

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<sup>3</sup> The court must also find that termination is in the child's best interests. See A.R.S. § 8-533(B). Father does not challenge the best-interests finding, and we therefore do not address it.

court); see also *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (appellate court need not consider challenge on alternate grounds for severance if evidence supports any one ground).

#### CONCLUSION

¶12 We affirm the termination of Father's parental rights.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
ANN A. SCOTT TIMMER, Presiding Judge

/s/  
JOHN C. GEMMILL, Judge