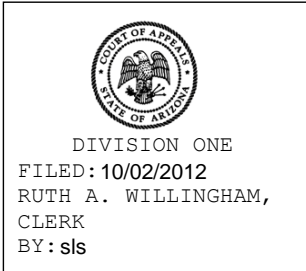


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



CANDY S., NEAL S., ) 1 CA-JV 12-0111  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication-  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, SERENITY S., RANDELL S., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Yavapai County

Cause No. P1300JD201000028

The Honorable David L. Mackey, Judge

**AFFIRMED**

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**G O U L D**, Judge

¶1 Candy S. ("Mother") and Neal S. ("Father") (collectively "Parents") appeal from the juvenile court's order terminating their parental rights to Serenity S. and Randell S. (collectively "Children"). For the following reasons, we affirm.

***Factual and Procedural Background***

¶2 The Children were removed from Parents' care in May 2010 after CPS received a report the Children were living in unsanitary, dangerous conditions with their Parents. Prior to the May 2010 report, Parents had a history of involvement with CPS. After CPS received the May 2010 report, a CPS worker visited the maternal grandmother's home where the family was living. The CPS worker noted that the home was covered in four to six inches of debris and created an unsafe living situation for the Children. The worker also observed that the Children were covered in bruises "all over their legs and body" and acted aggressively toward each other with no parental intervention; the relationship between the Parents was argumentative and controlling; and the Parents had no ability to provide for the Children or remove them from the unsafe living situation.

¶3 On May 6, 2010 CPS asked Parents to leave the maternal grandmother's home due to the unsafe conditions. CPS attempted to put a safety plan into place with Mother to identify and maintain a safe and stable residence. Mother did not comply with CPS' plan, choosing instead to live with friends. A few weeks later CPS found Mother and the Children living at a friend's home where, once again, the Children were living in unsanitary and dangerous conditions. As a result, CPS removed the Children from the Parents' care and placed them with their paternal grandparents.

¶4 The Arizona Department of Economic Security ("ADES") subsequently filed a dependency petition. The petition alleged the Children were dependent due to Parents' neglect in failing to provide a safe and stable environment, Mother's unstable mental health, and Parents' history of domestic violence.

¶5 ADES's original case plan was reunification. At the outset of the dependency, the Children's therapist, Ms. Walden-Shea, observed troubling behaviors in the Children related to the Parents' history of domestic violence. The Children were exhibiting aggression towards each other, hyperactivity, and anxiety. As a result, the reunification plan focused on the Parents' need to consistently display effective parenting at supervised visits, obtain stable employment, and secure appropriate housing. To accomplish these goals, Parents were

required to regularly attend monthly Child and Family Team Meetings ("CFTs"). During the CFTs, Parents were informed and reminded of the goals they needed to accomplish in order for reunification to occur.

¶6 In January 2011, the Children established a relationship with friends of the paternal grandmother and began spending weekends at the friends' home. In March 2011, CPS recommended that the Children be placed in the physical custody of the family friends because their grandparents were no longer able to care for them. Once the Children were in their new placement, Walden-Shea reported they displayed a great deal of improvement in their behavior. Walden-Shea opined that the Children's improved behavior was due to the permanency and routines of the new foster family. Walden-Shea also noted the foster parents were consistent in attending therapeutic groups with the Children, and were diligent in implementing the parenting techniques taught in the group sessions.

¶7 Over the course of the case, neither Parent was able to procure stable employment or housing. In addition, Father did not consistently attend his scheduled visits with the Children. Initially he was allotted three visits per week. After he began to cancel visits at the last minute, the visits were reduced to twice a week in order to accommodate his schedule. CPS also worked with Father to change the location of

visits, since he had difficulty traveling without a car. Nonetheless, Father continued to miss visits with the Children. Father's last minute cancellations and missed visits had an extremely negative effect on the Children, and as a result Father's visits were limited solely to therapeutic visits. Father continued to miss visits and, based on the recommendation of the Children's therapist, the court terminated Father's visitation.

¶8 Although Mother regularly attended visits with the Children, she was unable to consistently display proper parenting with the Children. Mother often required the assistance of the Children's grandmother or the parent aide during these visits. In addition, the Children's behavior seemed to stress and overwhelm her.

¶9 In August 2011, the case plan changed from reunification to severance and adoption based on the fact the case had been open for fifteen months and Parents still had not remedied the circumstances that caused the Children to be in out-of-home placement. In September 2011, ADES requested the court enter an order terminating the parent-child relationship between Parents and Children under A.R.S. § 8-533(B)(8)(c).

¶10 The court held a severance trial in January and February 2012. Mother, Father, CPS case workers, the Children's therapist, maternal grandmother, and Mother's fiancé all

testified at trial. At the conclusion of the trial, the court terminated Parent's rights based on neglect pursuant to A.R.S. § 8-533(B)(2), and fifteen months out-of-home placement pursuant to A.R.S. § 8-533(B)(8)(c). The court based its decisions on the Parents' neglect of the Children, lack of stable housing and employment, and the Parents' failure to make behavioral changes necessary to properly and effectively parent the Children.

¶11 Parents timely appealed the severance order. We have jurisdiction pursuant to A.R.S. §§ 8-235 and 12-120.21, and Arizona Rule of Procedure for the Juvenile Court 106.

#### ***Discussion***

¶12 Termination of the parent-child relationship is warranted if at least one of the statutory grounds alleged is supported by clear and convincing evidence and the termination is in the best interests of the child. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶¶ 3-4, 53 P.3d 203, 205 (App. 2002). We "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." *Id.* at ¶ 4. If clear and convincing evidence supports any one of the statutory grounds on which the court ordered severance, we need not address claims pertaining to the other grounds. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251 ¶ 27, 995 P.2d 682, 687 (2000).

**I. Mother**

¶13 Mother challenges the court's findings supporting severance on the following grounds: (1) ADES failed to meet its burden of proving that Mother neglected the Children pursuant to A.R.S. § 8-533(B)(2), (2) ADES failed to meet its burden of proving there was a "substantial likelihood that [Mother would] not be capable of exercising proper and effective parental care and control in the near future" pursuant to A.R.S. § 8-533(B)(8)(c), (3) ADES failed to make diligent efforts to reunify the family before it moved to sever the parent-child relationship as required by A.R.S. § 8-533(B)(8)(c), and (4) severance was not in the best interests of the Children. Because we find the court properly severed Mother's parental rights pursuant to A.R.S. § 8-533(B)(8)(c), we do not address Mother's claims regarding neglect under A.R.S. § 8-533(B)(2). *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 (citing *Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687).

**A. Severance Pursuant to A.R.S. § 8-533(B)(8)(c)**

¶14 Mother challenges the following findings by the court: (1) Mother failed to remedy the circumstances that caused the Children to be in out-of-home care, and (2) Mother is not capable of exercising proper and effective parental care and control in the near future. In determining whether a parent has remedied the circumstances causing the child to be placed in

out-of-home care, we consider "those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotations and citations omitted).

¶15 We conclude there is sufficient evidence to support the court's findings. At the time of severance, approximately twenty months after the Children were removed from Mother's care, Mother still had not remedied the circumstances that initially caused the Children to be placed in out-of-home care. Mother's primary problem was the ability to properly and effectively parent the Children. At the time of severance, Mother continued to have issues with handling the Children's behavior. Although Mother completed all services recommended to her, such as parenting classes, the CPS case worker "did not see any behavioral changes in the family." Walden-Shea observed that after completing her earlier education parenting class Mother was still unable to apply the parenting skills she was taught in the class. Mother could not set boundaries or establish structure with the Children and consequently their behaviors regressed during Mother's visits. There were concerns Mother could only handle the Children for a certain amount of time before she experienced difficulties. At trial, Walden-Shea



stated she did not believe Mother could parent by herself in the near future. Additionally, the CPS case worker's report admitted at trial stated there was a "huge gap" in Mother's ability to meet the Children's special needs and that Mother had not been able to provide "consistent redirection and attentiveness" to the Children during her visitation.

¶16 Mother was also never able to obtain stable housing and employment.<sup>1</sup> Mother asserts that she remedied her housing situation, claiming her current residence with her fiancé is stable. However, Mother did not provide her fiancé's address to CPS prior to the severance trial, thereby precluding CPS from being able to verify the appropriateness of her current living conditions.

#### **B. Efforts to Provide Reunification Services**

¶17 Mother argues the reunification services ADES provided were insufficient. ADES must "undertake measures with a reasonable prospect of success" of reuniting a family. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34, 971 P.2d 1046, 1053 (App. 1999). However, ADES is not required to make efforts that would be futile. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 94, ¶ 20, 219 P.3d 296, 304 (App.

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<sup>1</sup> Mother never obtained employment sufficient to provide for the needs of the Children. While Mother disputes this claim, it is also the case that she never provided CPS with any pay slips or receipts from her alleged current employment to prove she was properly employed.

2009). Mother asserts the State failed to provide family and individual counseling. Mother also contends that CPS did not allow overnight unsupervised visits, as recommended by Dr. Sullivan following Mother's psychological evaluation.

¶18 ADES provided numerous services to Mother to assist her in addressing the circumstances that caused the Children's out-of-home placement. Mother received psychiatric services from the West Yavapai Guidance Clinic, a Clinical Family Assessment, supervised visits, monthly CFTs, parenting classes, domestic violence classes, random urinalysis testing, a substance-abuse assessment, a parent aide for supervised visits, medication monitoring, transportation, case plan staffing, family therapy, and individual counseling sessions with Walden-Shea. Although Mother claims otherwise, the record shows ADES did provide individual counseling. Walden-Shea, the children's therapist at the West Yavapai Guidance Clinic, testified she had approximately five or six individual sessions with Mother. During these sessions, Walden-Shea worked on parenting skills with Mother. However, Walden-Shea discontinued these sessions to provide Mother an opportunity to put into practice the parenting skills she had learned during the sessions.

¶19 ADES also attempted to provide family counseling through Walden-Shea. After Mother and Father failed to appear for two scheduled family counseling sessions, ADES opted to

implement the Social Butterflies group and parenting classes instead. Mother completed the parenting classes, but Walden-Shea eventually asked that both Parents stop attending Social Butterflies because their presence negatively impacted the Children's behavior.

¶20 The State did not allow Mother to have unsupervised visits with the Children because it believed unsupervised visitation would place the Children in an unsafe environment. Mother was permitted to have a few unsupervised visits in December 2010. Following these visits she felt stressed and had difficulty handling the Children's behaviors; as a result, supervision was reinstated. In May 2011, CPS objected to unsupervised visits with Mother because case workers were uncomfortable with the presence of Mother's fiancé. Also, the parent aide reports showed that Mother was unable to adequately parent the Children during her supervised visits. On several occasions the parent aide had to step in to assist Mother with parenting, such as reminding Mother to watch the Children before they wandered off, or helping to discipline and de-escalate the Children's behavior when they got out of control.

### **C. Severance is in the Best Interests of Children**

¶21 "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship."

*Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The inquiry focuses "primarily upon the interests of the child, as distinct from those of the parent." *Kent K. v. Bobby M.*, 210 Ariz. 279, 287, ¶ 37, 110 P.3d 1013, 1021 (2005).

¶22 We find no error in the court's determination that severance of Mother's parental rights was in the best interests of the Children. Here, the court found that severance was in the Children's best interests because "[t]he parents are unable to provide for the children or meet their mental health needs. A termination of these parental rights would further the plan of adoption." Reasonable evidence supports the finding that the Children would be harmed by the continuation of the parental relationship and benefited by severance and adoption. The Children's behavior improved after they were settled in the foster parents' home. The foster parents consistently attended therapy sessions with the Children and implemented effective parenting techniques. The foster parents also maintained a good working relationship with the Children's therapist, Walden-Shea, and contacted her when they had questions on how to handle certain behaviors.

## **II. Father**

¶23 Father appeals the juvenile court's termination of his parental rights on the following grounds: (1) the court erred in

severing his rights under A.R.S. § 8-533(B)(8)(c) because ADES failed to make diligent efforts to provide reunification services when it terminated Father's visitation with the Children, and (2) the court erred in severing his rights under A.R.S. § 8-533(B)(2) because there was insufficient evidence to prove Father neglected the Children. Because we affirm the juvenile court's order granting severance on the basis of out-of-home placement for fifteen months under A.R.S. § 8-533(B)(8)(c), we do not address whether severance was justified on the other grounds challenged by Father. See *Michael*, 196 Ariz. at 251 ¶ 27, 995 P.2d at 687.

**A. Severance Pursuant to A.R.S. § 8-533(B)(8)(c)**

¶24 We conclude there is sufficient evidence to support the court's decision to terminate Father's parental rights pursuant to A.R.S. § 8-533(B)(8)(c). Throughout the dependency proceeding, Father frequently missed visits with the Children. Moreover, when Father did attend the visits, his parenting was not effective. The importance of Father's consistent attendance at visits was discussed at his monthly CFTs. When Father cancelled visits at the last minute the Children experienced "stress, anxiety, and sadness." The CPS team tried various strategies to work on Father's inconsistency, but Father did not follow their recommendations. Father was placed on a 24 hour notice contract, which required him to contact the parent aide

24 hours prior to his scheduled visit to confirm that he would attend. Nonetheless, Father continued to miss his scheduled visits. Walden-Shea informed Father several times of the importance of consistency with his behaviors and attendance; however, she did not observe any resulting improvement in Father's attendance or his behavior. The team tried changing the time and location of visits in order to make it easier for Father to attend, but after seeing no improvement, the CPS case worker recommended the visits stop.

**¶25** In September 2011, more than a year after the Children were removed from his custody, Father was still unable to consistently display effective parenting. As a result, the family's caseworker recommended that Father's visitation be terminated. During Father's visits with the Children, his parenting style was inconsistent; he vacillated between being overly autocratic and a strict disciplinarian to being overly playful. Walden-Shea stated that the Children would be harmed emotionally if the visits continued and that it was in their best interests to stop the visits. She also recommended Father have therapeutic visitations with the Children and another therapist at the West Yavapai Guidance Clinic, but Father canceled the appointment at the last minute and never attempted to schedule another visit.

¶26 At the time of severance, Father had not obtained stable employment nor had he qualified to receive Social Security benefits. He had not produced any documentation that he was following through on the process to apply for Social Security or disability benefits. Father also failed to obtain stable housing and was dependent on others for his living situation.

¶27 Father was provided a number of services over the course of the case. Father was also provided many opportunities to demonstrate his ability to provide a proper home and care for the Children. However, Father resisted making changes in his parenting and failed to follow through on services offered.

**B. Efforts to Provide Reunification Services**

¶28 Father argues ADES failed to make diligent efforts to provide reunification services prior to the court's decision to terminate his parental rights. However, the record shows the State provided numerous reunification services to Father throughout the dependency case. Father received a Clinical Family Assessment, supervised visits, monthly CFTs, anger management, domestic violence classes, services with Arizona Families F.I.R.S.T., random urinalysis testing, a substance-abuse assessment, a parent aide for supervised visits, and parenting classes.

¶29 Father was not receptive to the services offered by the State. He resisted working with Walden-Shea during individual sessions in order to address how his parenting style and personal choices were affecting his Children. Father was unwilling to accept recommendations or to try new parenting methods. Father also refused to accept responsibility for his actions and blamed Mother for the dependency action.

¶30 Walden-Shea spent almost a year trying to work out visitation with Father. At the beginning of the case, Father had supervised visits with the Children's maternal grandmother. However, grandmother eventually requested to stop supervising visits because Father and Mother were frequently late, canceled visits, were disrespectful of grandmother's home, and were more interested in interacting with each other than with their Children. Later, Walden-Shea recommended a decrease in Father's visits because his inconsistent parenting (alternating between overly authoritative to overly lax) caused the Children to display "out of control" behaviors. In August 2011, Walden-Shea recommended that visitation stop entirely because Father did not follow through with his therapy sessions and often cancelled visits at the last minute, which had a deleterious effect on the Children's emotions and well-being. This resulted in the court eventually terminating Father's visitation with the Children in September 2011.



**Conclusion**

For the foregoing reasons, we affirm the court's order terminating Mother's and Father's rights to Children.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

MICHAEL J. BROWN, Presiding Judge

/S/

DONN KESSLER, Judge