

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

MELISSA M., LUIS A., ) 1 CA-JV 12-0093  
 ) 1 CA-JV 12-0133  
 Appellants, ) (Consolidated)  
 )  
 v. ) DEPARTMENT B  
 )  
 ARIZONA DEPARTMENT OF ECONOMIC ) **MEMORANDUM DECISION**  
 SECURITY, ANGELENA A., BIANCA ) (Not for Publication -  
 A., LUIS A., ADRIAN A., ANGELICA ) 103(G), Ariz. R.P. Juv. Ct.;  
 A., ) Rule 28, ARCAP)  
 )  
 Appellees. )  
 )  
 ) **FILED 12/20/2012**

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Appeal from the Superior Court in Maricopa County

Cause No. JD11556

The Honorable Colleen McNally, Judge

**AFFIRMED**

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Robert D. Rosanelli, Attorney at Law Phoenix  
by Robert D. Rosanelli  
Attorney for Appellant Melissa M.

John L. Popilek, PC Scottsdale  
by John L. Popilek  
Attorney for Appellant Luis A.

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by Jamie R. Heller, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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P O R T L E Y, Judge

¶1 Melissa M. ("Mother") and Luis M. ("Father") appeal the termination of their parental rights to their five children, Angelica A., Angelena A., Bianca A., Luis A., and Adrian A. For the reasons that follow, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 The police responded to a domestic violence call in February 2010. After Mother was arrested on an outstanding warrant and Father appeared to be under the influence of drugs, Child Protective Services ("CPS") took the four children into temporary custody and placed them with the paternal grandmother. Once the Arizona Department of Economic Security ("ADES") discovered that the parents had a history of substance abuse and domestic violence, and that the children felt unsafe living with them, it petitioned to have the children declared dependent.

¶3 The children were found dependent in March 2010, and the juvenile court adopted the case plan for family reunification. Soon thereafter, the couple's fifth child, Adrian, was born. Following several domestic violence incidents and positive drug tests for methamphetamine by both parents, Adrian was found dependent, and the court granted the request to change the case plan to severance and adoption. ADES moved to terminate the parents' parental rights to the children, alleging a history of chronic substance abuse; out-of-home placement of

the children for fifteen months or longer; and out-of-home placement of a child under three years old for six months or longer. ADES also alleged Father was unable to parent because of mental illness.

¶14 The parents contested the motions and the court conducted a five-day hearing. The court subsequently made its findings of fact and conclusions of law and terminated their parental rights.<sup>1</sup> We have jurisdiction over the consolidated appeal of the parents pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A), 12-2101(A)(1), and -2101(B) (West 2012).

#### DISCUSSION

¶15 Both parents claim that ADES presented insufficient evidence to support termination of their parental rights for a history of substance abuse. We review the judgment terminating parental rights for an abuse of discretion. *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 19, 153 P.3d 1074, 1081 (App. 2007). When reviewing the judgment "[w]e view the facts in the light most favorable to sustaining the juvenile court's decision." *Id.* at 449, ¶ 12, 153 P.3d at 1078. We will not disturb the judgment "unless there is no reasonable evidence

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<sup>1</sup> Initially, the court terminated the parents' parental rights to the four youngest children. Once Angelica, who is over the age of twelve, indicated her willingness to be adopted, the court terminated the parents' parental rights to her.

to support the findings." *Pima County Juvenile Severance Action* No. S-113432, 178 Ariz. 288, 292, 872 P.2d 1240, 1244 (App. 1993). And, "[i]f clear and convincing evidence supports any one of the statutory grounds" for severance, we need not consider claims pertaining to the other grounds. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶6 Parental rights may be terminated if the parent "is unable to discharge [his or her] parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3) (West 2012). "Parental responsibilities" refers to those duties including but not limited to providing a child with good physical care, emotional security, and parental guidance and control. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 19, 210 P.3d 1263, 1268 (App. 2009).

¶7 A parent's failure to remedy his or her substance abuse despite knowing that the loss of his or her child is imminent constitutes reasonable evidence that the parent has not overcome dependency on drugs or alcohol. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 29, 231 P.3d 377, 383 (App. 2010). When evaluating whether the substance abuse will

continue for a prolonged period, "we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future." *Id.* at 378, ¶ 25, 231 P.3d at 382. "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting[] and establish the essential support system to maintain sobriety, there is little hope of success in parenting." *Id.*

¶18 Here, clear and convincing evidence supported the finding that Mother and Father were unable to discharge their parental responsibilities due to chronic substance abuse. Both parents started using drugs in their early teen years and continued to use drugs. Both tested positive for methamphetamine repeatedly after their children were removed and admitted to using drugs and alcohol regularly after the removal. Despite their initial efforts to participate in reunification services, both parents failed to fully participate in drug testing and substance abuse classes or maintain a safe environment for the children. The psychologists who evaluated the parents testified that they were unable to abstain from substances and commit to a recovery program. As a result, the psychologists testified that the parents could not meet the needs of their children and their substance abuse would likely continue for a prolonged and indeterminate period.

¶9 Although Mother contends that her substance abuse did not prevent her from discharging her parental duties, she testified that her drug use was the reason ADES took her children. Moreover, the juvenile court had to determine the witnesses' credibility and the weight of the evidence, *Jesus M.*, 203 Ariz. at 282, ¶ 12, 53 P.3d at 207, and we will not second-guess the findings.

¶10 Furthermore, the preponderance of the evidence supported the finding that terminating Father's rights was in the best interests of the children.<sup>2</sup> The case manager testified that the paternal grandmother was providing a stable home for the children; was meeting their social, educational, emotional and psychological needs; and was willing to adopt the children. She also testified that the children would not be safe in their parents' care and their grandmother could provide them with a stable home free from drugs and domestic violence. Because there was evidence to show that the children would benefit from severance, the court did not abuse its discretion when determining that termination was in their best interests. See *Raymond F.*, 224 Ariz. at 379, ¶¶ 30-31, 231 P.3d at 383. Consequently, the court did not err when it terminated Mother and Father's parental rights.

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<sup>2</sup> Mother does not challenge the court's best interest determination.

**CONCLUSION**

¶11 Based on the foregoing, we affirm the termination of the parents' parental rights to their five children.

/s/

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MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

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PATRICIA A. OROZCO, Judge

/s/

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RANDALL M. HOWE, Judge