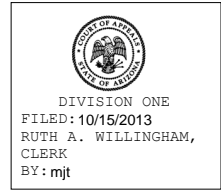


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

APRIL M. , ) No. 1 CA-JV 13-0059  
 )  
 Appellant, ) DEPARTMENT A  
 )  
 v. ) **MEMORANDUM DECISION**  
 )  
 ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
 SECURITY, A.M. , D.M. , ) 103(G) Ariz.R.P. Juv. Ct. ;  
 ) Rule 28 ARCAP  
 Appellees. )  
 )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. JD15699

The Honorable William R. Wingard, Judge Pro Tempore

**AFFIRMED**

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Robert D. Rosanelli Phoenix  
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix  
By Nicholas Chapman-Hushek, Assistant Attorney General  
Attorney for Arizona Department of Economic Security

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G E M M I L L, Judge

¶1 April M. ("Mother") appeals the juvenile court's order terminating her parental relationship with her two minor children, A.M. and D.M. For the following reasons, we affirm.

## BACKGROUND

¶2 A.M. was born in March 2007, exposed to methamphetamine. The Arizona Department of Economic Security ("ADES"), through Child Protective Services ("CPS"), intervened and the juvenile court found A.M. dependent; but the dependency matter was dismissed in November 2007 after the court found Mother compliant with CPS. Mother, who has a history of drug abuse, pleaded guilty to possession or use of marijuana in 2009 and was put on probation from August 2010 to August 2011.

¶3 D.M. was born in June 2011, while Mother was still on probation. D.M. was born exposed to methamphetamine and marijuana. ADES offered Mother voluntary services, which she temporarily engaged in; however, she left the state and traveled to Kentucky three months later, taking D.M. and possibly A.M. with her and cutting off contact with ADES. ADES later learned that A.M. was living in Arizona with a non-family member and investigated allegations that the non-family member had had inappropriate sexual contact with her. ADES removed A.M. from that home in March 2012 based on those allegations. Also in March, after locating Mother and D.M. in Arizona, ADES removed D.M. and initiated a dependency proceeding for both children.

¶4 ADES expressed concerns that Mother had unstable housing and employment and was unable to care for the children due to a long history of substance abuse. In September 2012,

A.M. and D.M. were adjudicated dependent as to Mother.<sup>1</sup>

¶15 ADES instituted a reunification plan that called for Mother to maintain stable housing and employment, sobriety, and control over her emotions, as well as to demonstrate she had "age-appropriate expectations" for the children. Although Mother participated in many supervised visits with A.M. and D.M., she also frequently missed visits or was late. The supervising parent aide reported multiple instances when Mother behaved erratically – including rocking back and forth, slowly opening and closing her eyes, speaking loudly, and overfeeding D.M. – and appeared to be under the influence of mind-altering substances. The aide also reported having to remind Mother to refrain from engaging in inappropriate conversations with A.M., such as asking her about the foster family and instructing her to tell the court she wanted to return to Mother. Mother responded aggressively to the aide's reminders. On multiple occasions, Mother refused to hand D.M. over when visits concluded or were canceled, and police had to intervene.

¶16 In October 2012, the juvenile court granted an ADES motion to suspend Mother's visitation rights with both children.

¶17 Although Mother submitted to scheduled urinalysis testing once in June 2012 and twice in December 2012, and

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<sup>1</sup> A.M.'s father and D.M.'s father are not parties to this appeal.

returned negative results for all tested substances on those dates, she missed all of her random urinalysis tests, despite reminders from ADES that it considered missed tests as positive for banned substances. Additionally, she refused a hair follicle test, did not submit to a substance abuse assessment, did not attend parenting classes, and missed all scheduled psychological evaluations.

¶18 In February 2013, ADES moved to terminate Mother's parental rights on grounds of substance abuse, under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3), and nine months' out-of-home placement, under A.R.S. § 8-533(B)(8)(a). As of that month, ADES reported that Mother had not demonstrated that she had achieved financial or housing stability – she indicated that she had moved to a new home but would not provide a copy of the lease, and she reported that she was not working.

¶19 Mother did not appear at the March 1, 2013, initial severance hearing. The court determined that Mother was properly served with notice of the hearing through counsel and of the consequences of not appearing and that no good cause was presented for Mother's failure to appear. The court ruled that it was appropriate to proceed in absentia and granted ADES's request to proceed with an evidentiary hearing on the issue of severance.

¶10 The court considered the evidence, including testimony

from a CPS case manager, who opined that Mother was unable to discharge her parental responsibilities because of a history of chronic drug abuse and that there were reasonable grounds to believe the condition would continue for a prolonged, indeterminate period. The case manager noted in particular Mother's refusal to participate in regular urinalysis testing, Mother's appearance of intoxication and drug influence during several of the visits with the children, and Mother's general lack of compliance with ADES's requests to resolve the issues and remedy the circumstances that caused the children's out-of-home placement. As of the date of the hearing, the children were in a shared housing placement, where D.M. had been for about 12 months and A.M. for about 10 months.

¶11 The court found that ADES had made reasonable efforts to provide Mother with rehabilitative services but that Mother was unable to discharge her parental responsibilities because of chronic substance abuse. The court further found that the children had been in continuous out-of-home placement for more than 11 months, that ADES had diligently attempted to provide reunification services, and that Mother had substantially neglected or willfully refused to remedy the circumstances causing the out-of-home placement. The court held that ADES had proven, by a preponderance of the evidence, that termination of the parent-child relationship was in the children's best

interest.

¶12 Mother filed a Notice of Appeal on March 12, 2013, after the court had announced its decision but prior to the entry of the final judgment with findings of fact and conclusions of law. The final judgment was filed April 29, 2013. Mother did not file a new or amended notice of appeal. Although Mother's notice of appeal was premature, we conclude that the "Barassi exception" is applicable and this court has jurisdiction over this appeal. See *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981) (holding that a premature appeal from a minute entry order in which no appellee has been prejudiced and in which a subsequent final judgment has been entered need not be dismissed); *Baker v. Bradley*, 231 Ariz. 475, 479-81, ¶¶ 13-19, 296 P.3d 1011, 1015-17 (App. 2013); Ariz. Rev. Stat. ("A.R.S.") § 8-235(A); A.R.S. § 12-120.21(A)(1); A.R.S. § 12-2101(A)(1).

#### ANALYSIS

¶13 A juvenile court may terminate a parent-child relationship if it finds by clear and convincing evidence at least one of the statutory grounds for severance under A.R.S. § 8-533(B) and finds, based on a preponderance of the evidence, that severance is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280-88, ¶¶ 1-41, 110 P.3d 1013, 1014-22 (2005). "If clear and convincing evidence supports any

one of the statutory grounds on which the juvenile court ordered severance, we need not address 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). Because the juvenile court, as the trier of fact, "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, . . . we will 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, 53 P.3d at 205 (citations omitted). We view the evidence in a light most favorable to upholding the juvenile court's findings. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000).

¶14 Mother does not challenge on appeal the juvenile court's finding that severance was in the best interests of the children. Therefore, we need only address the statutory grounds nine months' out-of-home placement and chronic substance abuse and may affirm if we find either one supported by clear and convincing evidence.

**Nine Months' Out-of-Home Placement  
Under A.R.S. § 8-533(B)(8)(a)**

¶15 Under A.R.S. § 8-533(B)(8)(a), termination of parental rights is justified if the child has been in an out-of-home

placement for a cumulative total period of at least nine months and the parent has "substantially neglected or willfully refused to remedy the circumstances" that caused the out-of-home placement. A.R.S. § 8-533(B)(8)(a). Additionally, the agency responsible for the child's care must have made a "diligent effort" to provide reunification services. *Id.*

¶16 Under the statute, "parents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties [within the set time period]." *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). However, when a parent "makes only sporadic, aborted attempts to remedy [the circumstances,] . . . a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id.*

¶17 A.M. and D.M. were taken into ADES custody in mid-March, 2012. They remained in out-of-home placements continuously after that, for a total of more than 11 months by the time of the severance hearing.<sup>2</sup>

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<sup>2</sup> Mother has not contested that the portion of the statute requiring nine months in an out-of-home placement is met. Nor does she challenge the juvenile court's finding that ADES made a diligent effort to provide reunification services.



¶18 During that time period, Mother largely refused to participate in the programs and services ADES offered to help her remedy the circumstances that led to the out-of-home placements. She did not attend parenting classes and scheduled psychological evaluations, she refused to participate in regular drug testing and a hair follicle test, and she exhibited signs of drug use at her irregular visits with the children. She also failed to meet the other established requirements, such as demonstrating housing and employment stability and showing control over her emotions.

¶19 Mother claims she did not need to participate in the prescribed services because she was no longer abusing substances, so the circumstances that caused the out-of-home placement did not exist. She failed, however, to submit to regular drug testing and to a hair follicle test. Thus, she did not establish the absence of a problem or show that she had made "appreciable, good faith efforts to comply" with recommended remediation. *JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229.

¶20 Based on this record, the juvenile court had sufficient evidence to conclude that Mother had substantially neglected or willfully refused to remedy the circumstances that led to A.M.'s and D.M.'s removal from the home, supporting a finding that severance was appropriate based on nine months of out-of-home placement.

**Chronic Substance Abuse  
Under A.R.S. § 8-533(B)(3)**

¶21 To terminate parental rights based on a parent's chronic substance abuse under A.R.S. § 8-533(B)(3), a court must find that: 1) the parent has a history of chronically abusing controlled substances, 2) the "parent is unable to discharge parental responsibilities" because of that chronic substance abuse, and 3) "there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010).

¶22 Under the first prong of the test, "drug abuse need not be constant to be considered chronic." *Id.* at ¶ 16, 231 P.3d at 381. In finding chronic substance abuse, a court may consider factors such as whether such abuse has persisted over a long period of time. *Id.* at ¶¶ 16-17, 231 P.3d at 381.

¶23 The court need not find that the parent is "unable to discharge any parental responsibilities but rather that the parent [is] unable to discharge 'the parental responsibilities.'" *Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985). The term "parental responsibilities" refers to "those duties or obligations which a parent has with regard to his child" and is intended to give the juvenile court "flexibility in considering

the unique circumstances of each termination case." *Id.* at 408-09, 701 P.2d at 1216-17 (citation omitted).

¶24 Various forms of evidence may be sufficient to support a finding that substance abuse is likely to continue for a prolonged, indeterminate period. "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." *Raymond F.*, 224 Ariz. at 378, ¶ 25, 231 P.3d at 382 (citing *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998)). This court has pointed to a parent's "significant history of drug use, recent drug use, and failure to complete various reunification services" as an example of sufficient evidence to show that drug abuse would continue for a prolonged, indeterminate period and has held that a parent's failure to remedy drug abuse, despite facing a loss of parental rights, was likewise sufficient evidence. *Raymond F.*, 224 Ariz. at 379-80, ¶¶ 26-29, 231 P.3d at 383-84.

¶25 Mother now argues that there is no evidence that she is currently using drugs or that her past substance abuse will impact her parenting abilities. She points to her clean drug tests in March and December 2012 and the lack of expert testimony that her prior drug use will prevent her from discharging her parental responsibilities.

¶26 The juvenile court reasonably concluded, however, based on the evidence of Mother's refusal to attend random drug screening and reports that she appeared to be under the influence of drugs during several visits, that Mother's drug use continued, despite the clean drug tests. See *Raymond F.*, 224 Ariz. at 377, ¶ 17, 231 P.3d at 381 (concluding that father was continuing to abuse substances based largely on eight sporadic failed substance tests, despite his frequent clean tests).

¶27 Although missed tests may not offer the same level of evidence as dirty tests, Mother knew that missed tests were considered positive for illegal substances, yet she failed to submit to a single random test ordered by ADES. Her clean results in the three pre-scheduled tests – one right after A.M. and D.M. were removed from the home and two others soon after she was cut off from visiting them – do not outweigh months of refusing to test. See *Id.* at ¶ 16, 231 P.3d at 381 (“[D]rug abuse need not be constant to be considered chronic.”).

¶28 Furthermore, Mother's history of substance abuse, including the fact that both of her children were born exposed to methamphetamine, together with her erratic behavior at several of the visits, indicated a significant ongoing problem with substance abuse.

¶29 Mother's conduct revealed that her parenting abilities were impeded: She frequently missed opportunities to visit the

children, she often did not interact appropriately with A.M., and she obsessively overfed D.M. She did not take advantage of opportunities to build a support system to maintain sobriety, did not complete the bulk of the proffered reunification services, and failed to remedy the situation while knowing the loss of her children was imminent – all factors identified in *Raymond F.* as indicating prolonged substance abuse.

¶30 Therefore, the evidence reasonably supported the juvenile court's finding that Mother's drug abuse left her unable to discharge her parental responsibilities and that the substance abuse would likely continue for a prolonged, indeterminate period of time.

#### CONCLUSION

¶31 For the foregoing reasons, we affirm the juvenile court's decision terminating Mother's parental rights to A.M. and D.M.

/s/

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JOHN C. GEMMILL, Judge

CONCURRING:

/s/

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MAURICE PORTLEY, Presiding Judge

/s/

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KENT E. CATTANI, Judge