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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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RENEE F., *Appellant*,

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, J.F., *Appellees.*

No. 1 CA-JV 13-0140  
FILED 12-3-2013

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Appeal from the Superior Court in Maricopa County  
No. JD20254  
The Honorable Cari A. Harrison, Judge

**AFFIRMED**

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COUNSEL

Thomas A. Vierling, Phoenix

*Counsel for Plaintiff/Appellant*

Arizona Attorney General's Office, Phoenix  
By Eric Devany

*Counsel for Appellee Arizona Department of Economic Security*

**MEMORANDUM DECISION**

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Margaret H. Downie joined.

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**T H O M P S O N**, Judge:

¶1 Renee F. (Renee) appeals from the juvenile court’s order severing her parental rights to her child, J.F.<sup>1</sup> For the following reasons, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 J.F. was born in 2003. One day in April 2011, Renee failed to pick J.F. up from school, and when the school could not reach Renee by phone Phoenix police went to Renee’s home. Upon entering the home, police found roach and animal feces, black mold, spider webs, five-foot high piles of clothing and trash, and a non-working kitchen sink and stove. A police officer opined that the house was “uninhabitable for any living creature.” Renee disclosed to police and a Child Protective Services (CPS) case manager that she had been addicted to heroin and cocaine and had recently relapsed. She later admitted that she started using marijuana at the age of fourteen, heroin at the age of fifteen, and that she had last used cocaine a few days prior to the intake, at the age of fifty. J.F. had been born cocaine exposed. CPS removed J.F. from Renee’s home and placed him in foster care. J.F. had a tick on his skin and disclosed that he had had other ticks on his body that Renee had removed.

¶3 The Arizona Department of Economic Security (ADES) filed a dependency petition. The juvenile court found that J.F. was a dependent child as to Renee and as to J.F.’s unidentified father.<sup>2</sup> The court approved a case plan of family reunification, and CPS put services into place.

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<sup>1</sup> The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

<sup>2</sup> John Doe is not a party to this appeal.

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¶4 Renee's participation in services was inconsistent. She participated in a psychological consultation with Dr. Shane Hunt in May 2011. Dr. Hunt recommended that Renee complete a substance abuse education program at TERROS, abstain from drugs and alcohol, and that she complete bi-weekly urinalysis testing. He recommended supervised visitation, and that Renee complete a psychological evaluation. Dr. Hunt further recommended that Renee become self-sufficient by obtaining employment and appropriate housing.

¶5 Renee began urinalysis testing in May 2011. She was required to complete five tests from May 10, 2011 to May 31, 2011, but failed to test at all that month. From June to August 2011, Renee completed four tests which were negative for drugs and alcohol, but missed five tests and had nine tests which were positive for alcohol. From September to December 2011, Renee completed seven tests which were negative for drugs and alcohol, missed thirteen tests, and tested positive three times: once for alcohol, once for cannabinoids, and once for cocaine. From January to May 2012, she completed eleven negative tests, missed ten tests, and tested positive for cocaine on May 29. In June and July 2012, Renee failed to test altogether, and testing had to be set up again. From August through December 2012, Renee had four negative tests, one invalid test, and nineteen missed tests.

¶6 Renee did an intake with TERROS in May 2011. However, TERROS closed out the referral because Renee had been receiving outpatient services at Chicanos por la Causa and she wanted to continue there. CPS agreed with this arrangement. Chicanos por la Causa provided Renee with both individual and group counseling sessions.

¶7 Renee began sessions with a parent aide in September 2011. By January 2012, the parent aide had concerns about Renee's lack of stable housing, lack of employment, and her failure to complete parenting homework assignments on time. These concerns continued throughout the dependency, until at least November 2012. Additionally, Renee missed several skills sessions, and the parent aide noted that she had "fallen asleep" during a June 2012 visit with J.F.

¶8 Renee participated in a psychological evaluation with Dr. James Thal in September and October of 2011. Dr. Thal concluded that Renee's prospects for parenting J.F. were poor due to her substance abuse problem. He recommended that Renee continue to participate in group therapy, complete drug treatment, and abstain from drugs and alcohol.

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¶9 In the fall of 2012, Renee relapsed and went to Maverick House for treatment. Renee completed the in-patient treatment at Maverick House in November 2012, but failed to participate in Maverick House’s aftercare program. She did not return to Chicanos por la Causa for aftercare until February 2013. Thereafter, her participation at Chicanos por la Causa was inconsistent until the time of the severance trial.

¶10 ADES filed a severance motion in November 2012. The juvenile court held a contested severance trial in May 2013. By the time of the severance trial, Renee had a new apartment and part time employment cleaning apartments. The court terminated Renee’s parental rights pursuant to Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (2007) (parent’s history of chronic abuse of dangerous drugs), A.R.S. § 8-533(B)(8)(a) (Supp. 2012) (nine months time in care), and A.R.S. § (B)(8)(c) (Supp. 2012) (fifteen months time in care). The court also found that severance was in J.F.’s best interests. Renee timely appealed. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 8-235 (2013).<sup>3</sup>

## DISCUSSION

¶11 On appeal, Renee argues that the juvenile court abused its discretion by terminating her parental rights pursuant to A.R.S. § 8-533(B)(3), (B)(8)(a)<sup>4</sup>, and (B)(8)(c), and that severance was not in J.F.’s best interests.

¶12 “We will not disturb the juvenile court’s order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them.” *Audra T. v. Ariz.*

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<sup>3</sup> Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

<sup>4</sup> Although Renee cites A.R.S. § 8-533(B)(8)(b), the juvenile court did not sever her parental rights pursuant to § 8-533(B)(8)(b) (which pertains only to children under the age of three) but rather § 8-533(B)(8)(a): “[Renee] has willfully refused or substantially neglected to remedy the circumstances that brought her child into care . . .” We will presume, as did ADES, that Renee intended to challenge the juvenile court’s finding under § 8-533(B)(8)(a).

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*Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, because "[t]he juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if ADES proves by clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that severance is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

**A. Fifteen Months Time in Care**

¶13 Renee argues that ADES failed to produce clear and convincing evidence that she had failed to remedy the circumstances that caused J.F. to be in an out-of-home placement pursuant to court order for at least fifteen months and that there was a substantial likelihood that she would not be capable of exercising proper and effective parental care and control in the near future, as required by A.R.S. § 8-533(B)(8)(c). She also argues that ADES failed to provide her with appropriate reunification services. The statute provides, in relevant part:

**B.** Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

...

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services

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and that one of the following circumstances exists:

...

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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.

A.R.S. § 8-533(B)(8)(c). We construe the “circumstances” in A.R.S. § 8-533(B)(8)(c) to mean the circumstances that exist at the time of the severance that prevent a parent from appropriately providing for his or her child. *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (citation omitted).

¶14 Reasonable evidence supported the juvenile court’s finding that ADES had proven the fifteen months time in care ground. By the time of the severance trial in May 2013, J.F. had been in an out-of-home placement for more than two years. CPS provided Renee with appropriate services including urinalysis testing, parent aide services, referrals for drug counseling, a psychological consultation and evaluation, and bus passes. At trial, Renee testified that she agreed that she had been provided with the services that she needed to regain custody of J.F. For the two years that J.F. was in foster care, Renee’s participation in services was inconsistent and she was unable to demonstrate long-term sobriety. On this record, the juvenile court properly could conclude that ADES met its burden for severance on the fifteen months time in care ground.

¶15 Because we affirm the court’s order granting severance on the basis of fifteen months in an out-of-home placement, we need not address arguments concerning A.R.S. §§ 8-533(B)(3) and -533(B)(8)(a). *See Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

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**B. Best Interests**

¶16 Renee further argues that the trial court erred in finding that severance was in J.F.'s best interests. To establish that severance is in a child's best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the continuation of the relationship. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.* Here, the evidence was that J.F. was adoptable and that CPS had a current case plan of adoption for J.F. J.F.'s foster placement was willing to adopt him and provide him with a stable, permanent home. Accordingly, we find no error in the juvenile court's finding that severance was in J.F.'s best interests.

¶17 For the foregoing reasons, the juvenile court's severance order is affirmed.



Ruth A. Willingham · Clerk of the Court  
FILED : mjt