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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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LAKESHA S., *Appellant*,

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, K.S., K.S.,  
*Appellees.*

No. 1 CA-JV 13-0170

FILED 12-10-2013

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Appeal from the Superior Court in Maricopa County  
No. JD509243  
The Honorable Kirby D. Kongable, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Tucson  
By Laura J. Huff

*Counsel for Appellee, ADES*

Robert D. Rosanelli Attorney at Law, Phoenix  
By Robert D. Rosanelli

*Counsel for Appellant*

**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Michael J. Brown joined.

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**K E S S L E R**, Judge:

¶1 Lakesha S. (“Mother”) appeals the juvenile court’s order terminating her relationship with her two children. We affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 Mother is the biological parent of both children, one born in January 2002 and the other born in November 2010. In November 2010, Child Protective Services (“CPS”) received a report that Mother had tested positive for phencyclidine (“PCP”) during a prenatal visit. Although Mother denied using PCP, she admitted to using marijuana at the beginning of the pregnancy and alcohol on weekends. As a result of the report and these concessions, CPS instituted a safety plan that allowed the children to remain in Mother’s care, but required Mother to have a safety monitor and participate in various services, including drug testing through TASC. Over the next three and a half months, Mother tested positive for alcohol three times, for cocaine once, and failed to report for testing on ten occasions.

¶3 In April 2011, Mother brought her younger child to his doctor for the first time since being born. No safety monitor was present at the appointment and Mother appeared under the influence. The doctor recommended she submit to a urinalysis, which indicated Mother had alcohol in her system. At this point, the Arizona Department of Economic Security (“ADES”) filed a dependency petition in juvenile court. The juvenile court found the children to be dependent and set the case goal as family reunification. Both children were removed from Mother’s care and placed in a foster home. Shortly thereafter, CPS placed the children with their maternal grandmother (“Grandmother”).

¶4 CPS offered Mother several services, including Parent Aide and a psychological consultation. The Parent Aide services included both supervised visitation and parenting skills sessions. Mother, however, missed sixteen of twenty scheduled visits and fifteen of eighteen

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scheduled parenting skills sessions. Due to Mother's lack of participation, CPS closed Parent Aide services. Further, Mother failed to appear at her scheduled full psychological evaluation, her participation in which was recommended by the psychological consultation.

¶5 CPS also referred Mother to TASC and TERROS Families First ("TERROS"). TERROS provided Mother with an initial assessment, case management, group counseling, outreach services, bus passes, drug screens, and placement in residential treatment. The levels of treatment included standard outpatient, intensive outpatient, and inpatient. Mother consistently refused to enter inpatient treatment. Instead, she attended outpatient treatment sporadically and often times while intoxicated. Further, between the beginning of April 2011 and the end of April 2012 Mother tested positive for alcohol on at least fifteen occasions. On May 23, 2012, Mother tested positive for PCP.<sup>1</sup> At this point, Mother's case manager at TERROS told Mother she must either attend inpatient treatment or be removed from the program. Mother agreed to undergo inpatient treatment and was admitted to Life Well in June 2012.<sup>2</sup>

¶6 At the commencement of her stay, Mother participated in the previously recommended psychological assessment with Dr. Ann Schroeckenstein. She spent three and a half months at Life Well, being admitted in mid-June 2012 and graduating in the beginning of October 2012.

¶7 After Mother's discharge from inpatient treatment, TERROS once again engaged Mother in treatment. ADES requested postponement of the parental severance trial to allow Mother an opportunity to demonstrate her ability to remain sober. However, within two months ADES requested that trial be reset, as there were concerns Mother was not "continuing on [a] positive track with her recovery." Specifically, after being discharged from Life Well, Mother had two urinalyses and one mouth swab test positive for alcohol.

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<sup>1</sup> TASC previously had not been testing Mother for PCP and only did so on this date based on reports Mother had been using and dealing PCP.

<sup>2</sup> Mother initially was placed at Guiding Starlight; however, as a result of insurance problems she was released and then put into a program at Life Well. Between her discharge from Guiding Starlight and her admittance to Life Well, Mother again tested positive for PCP.

¶8 A contested hearing was held and the juvenile court terminated Mother’s parental rights, finding ADES had proven by clear and convincing evidence that termination was appropriate under Arizona Revised Statutes (“A.R.S.”) sections 8-533(B)(3), 8-533(B)(8)(a), and 8-533(B)(8)(b) (Supp. 2013), and that termination was in the best interests of the child. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(1) (Supp. 2013).

### STANDARD OF REVIEW

¶9 The juvenile court is in the best position to weigh evidence and judge credibility, hence, “we review the juvenile court’s findings of fact for clear error and view the evidence in the light most favorable to affirming its decision.” *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 376, ¶ 13, 231 P.3d 377, 380 (App. 2010). As such, we “look only to determine if there is evidence to sustain the court’s ruling,” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004), and reverse only if no reasonable evidence to support the ruling exists. *Raymond F.*, 224 Ariz. at 376, ¶ 13, 231 P.3d at 380.

### DISCUSSION

¶10 Mother argues that (1) the juvenile court’s order terminating Mother’s parental rights on the substance-abuse ground of A.R.S. § 8-533(B)(3) was clearly erroneous and not supported by substantial evidence, and (2) the juvenile court’s order terminating Mother’s parental rights on the nine-month and six-month out-of-home placement grounds of A.R.S. § 8-533(B)(8)(a) and (b) was clearly erroneous and contrary to substantial evidence.<sup>3</sup>

¶11 “[A] parent’s right to care, custody, and control of his or her children has long been recognized as fundamental,” but not absolute. *Linda V. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 76, 78, ¶ 6, 117 P.3d 795, 797 (App. 2005). As such, the State may terminate this fundamental right if a juvenile court finds by clear and convincing evidence that one of the

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<sup>3</sup> Mother does not contest the juvenile court’s finding that ADES made reasonable efforts to provide her with appropriate rehabilitative and reunification services. Therefore, this Court may assume Mother concedes the accuracy of this finding. *Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960).

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statutory grounds of A.R.S. § 8-533(B) applies. *Id.* Additionally, the juvenile court must “find by a preponderance of the evidence that termination is in the child’s best interests.” *Marina P. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 326, 329, ¶ 18, 152 P.3d 1209, 1212 (App. 2007).

I. The juvenile court did not err in finding that Mother was unable to discharge her parental responsibilities because of chronic alcohol abuse and that there were reasonable grounds to believe her condition would continue for a prolonged indeterminate period.

¶12 Mother argues there was insufficient evidence for the juvenile court to find she was unable to discharge her parental responsibilities because of a history of chronic alcohol and substance abuse pursuant to A.R.S. § 8-533(B)(3). She further argues there were not reasonable grounds to believe the condition would “continue for a prolonged indeterminate period” of time, as she had completed “appropriate treatment,” and could now “deal with her alcohol use and be an effective parent.” Mother claims that in coming to its decision, the juvenile court inappropriately relied on Mother’s past and the “dated” opinion of Dr. Schroeckenstein, and “had to ignore the most current and most informed expert testimony.”

A. Chronic Alcohol and Substance Abuse

¶13 This Court previously has defined chronic substance abuse as “lasting a long time, long-continued, lingering, and inveterate.” *Raymond F.*, 224 Ariz. at 377, ¶ 16, 231 P.3d at 381. To be considered chronic, however, the abuse need not be constant. *Id.* As such, consideration of a parent’s previous substance abuse and treatment is essential in determining the chronic nature of alcohol and substance abuse.

¶14 Mother has an extensive history with alcohol and substance abuse. She was arrested and imprisoned from August 2006 to December 2008 for possession with intent to sell crack cocaine.<sup>4</sup> Mother allegedly was sober during her imprisonment; however, her substance abuse continued after her release. Further, despite her time in prison, she testified that her positive cocaine test in 2011 resulted from cutting and dealing cocaine, and that her positive PCP tests resulted from her

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<sup>4</sup> Mother testified that her older child was in her care when she was selling PCP at that time.

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activities lacing cigarettes with PCP for sale, rather than her own consumption of PCP.

¶15 Once the children were removed from her care, Mother continued to prove incapable of remaining sober, as was required of her. Mother testified that, at that point, she did not know she needed to remain sober. However, her involvement in intensive outpatient services and the multiple requests by TERROS personnel that she participate in inpatient services suggest otherwise.

¶16 During her stay at Life Well, Mother remained sober. However, Mother continued to test positive for alcohol once released from inpatient care. Based on Mother's history of alcohol and substance abuse, her previous failure to respond to treatment, as well as the three most recent positive tests after her inpatient treatment, there was sufficient evidence for the juvenile court to find that Mother's alcohol and substance abuse was chronic under A.R.S. § 8-533(B)(3).

B. Inability to Discharge Parental Responsibilities

¶17 Mother contends that there was insufficient evidence that her alcohol and substance abuse made her unable to discharge parental responsibilities. Although A.R.S. § 8-533(B)(3) requires the juvenile court to find that Mother's alcohol and substance abuse impedes her ability to discharge parental responsibilities, it "does not require that [Mother] be found unable to discharge *any* parental responsibilities." *Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985). Parental responsibilities consist of "those duties or obligations which a parent has with regard to his child." *Maricopa Cnty. Juv. Action No. JS-5209 and JS-4963*, 143 Ariz. 178, 185, 692 P.2d 1027, 1034 (App. 1984). The term "parental responsibilities" is a general standard rather than a set of factors, so as to allow flexibility in the consideration of each case. *See JS-5894*, 145 Ariz. at 409, 701 P.2d at 1217.

¶18 The record supports the juvenile court's finding that Mother is unable to discharge her parental responsibilities because of her chronic alcohol and substance abuse. First, as a result of her chronic alcohol and substance abuse, Mother previously spent two and a half years in prison for possession with intent to sell, and Grandmother was required to care for the older child during Mother's incarceration. After her release and during her second pregnancy, Mother tested positive for PCP and admitted to using marijuana and alcohol during the pregnancy. Further, after the younger child was born, Mother did not take him to the doctor

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again until he was almost five months old. Once the children were no longer in her care, Mother missed the majority of the visiting and parenting skills sessions CPS provided for her. At the visitation sessions Mother did attend, the parent aide reported she appeared intoxicated or would not be prepared with snacks or activities for the children.

¶19 Although these instances were all prior to Mother's inpatient treatment, the evidence shows she still is unable to remain sober for prolonged periods of time. Dr. Schroeckenstein testified that such an inability would make her prone to "inconsistent" parenting, impulsiveness, and outbursts. According to Dr. Schroeckenstein, such parenting would result in an environment lacking in stability and security. Dr. Schroeckenstein further testified that she was concerned Mother's alcohol and substance abuse would affect Mother's ability to provide her children with appropriate supervision and attention, especially given their ages.

¶20 Collectively, the evidence supports the juvenile court's determination that Mother's alcohol and substance abuse makes her unable to discharge her parental duties and obligations.

C. Continuation for a Prolonged Indeterminate Amount of Time

¶21 Mother's previous substance abuse and treatment is also pertinent in determining whether there were reasonable grounds to believe her condition would continue for a prolonged indeterminate period of time. "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 (internal citation omitted). As previously noted, Mother's history of alcohol and substance abuse is extensive and includes periods of sobriety. Mother's history of treatment also is extensive, the most current treatment spanning over the course of two years. Further, that history demonstrates Mother's repeated failure in rising above that addiction in noncustodial settings.

¶22 With regards to the present circumstances of Mother's chronic alcohol and substance abuse, Mother maintains that because she has now completed "appropriate treatment," she can now "deal with her alcohol use and be an effective parent." Her positive tests and testimony, however, suggest otherwise. As previously addressed, Mother tested

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positive for alcohol on three different occasions within five months of her discharge from Life Well. At trial, she explained these positive tests by claiming they resulted from her use of Nyquil. Further, Mother denied having a problem with alcohol and stated that she does not consider herself to be an alcoholic.

¶23 Mother's testimony is consistent with Dr. Schroeckenstein's psychological evaluation and testimony, even though the evaluation was conducted at the beginning of Mother's stay at Life Well. Dr. Schroeckenstein testified that her evaluation indicated Mother had a poor prognosis to remain sober based on Mother's history, numerous relapses, minimization of situations, and lack of accountability. Mother's testimony and continued abuse of alcohol reflects the patterns of minimization and lack of accountability, as explained by Dr. Schroeckenstein's psychological evaluation and testimony.

¶24 Dr. Schroeckenstein testified that Mother's prognosis for recovery would improve if she took responsibility and acknowledged her problem. However, Mother's testimony demonstrates that she continues to refuse to take responsibility for her alcohol and substance abuse and continues to minimize it. Even after her most recent treatment, Mother's "prognosis continues to be poor, given the longevity [of her alcohol and substance abuse and treatment] and the continued positive tests."<sup>5</sup> Such a prognosis, arising out of current circumstances, provides sufficient evidence for the juvenile court to find that Mother's condition would continue for a prolonged indeterminate period.

II. The juvenile court did not err in finding that termination of Mother's parental rights was in the children's best interests.

¶25 Although Mother does not specifically challenge the juvenile court's finding that termination of her parental rights is in the best interests of the children, we address that issue to ensure the severance complied with state law. "To prove that the termination of parental rights would be in a child's best interests, ADES must present credible evidence demonstrating how the child would benefit from a severance or be harmed by the continuation of the relationship." *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 8, 177 P.3d 327, 329 (App. 2008) (internal

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<sup>5</sup> Dr. Schroeckenstein also diagnosed Mother with characteristics consistent with addiction and addictive behaviors, alcohol dependency, and antisocial personality traits.



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quotes omitted). In determining whether severance and termination is in the best interests of a child, the juvenile court may look at several factors, including whether an adoptive placement is immediately available, whether the existing placement is meeting the needs of the child, and whether the child is adoptable. *Raymond F.*, 224 Ariz. at 379, ¶ 30, 231 P.3d at 383.

¶26 At the termination hearing, the CPS case manager testified that termination was appropriate to provide permanency and stability for both children, who had been “in a state of limbo” for over two years. Further, according to the case manager, both children were adoptable, their current placement was meeting their needs, and an adoptive placement was immediately available, as Grandmother was willing to adopt both children. The case manager further emphasized the benefits of termination and adoption by stating that she had no safety concerns with regards to Grandmother and that Grandmother allowed for appropriate contact between Mother and the children. Accordingly, there is sufficient evidence that severance was in the children’s best interests.

**CONCLUSION**

¶27 Because there is sufficient evidence to support the juvenile court’s findings, we affirm its order terminating Mother’s parental rights pursuant to A.R.S. § 8-533(B)(3).<sup>6</sup>



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

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<sup>6</sup> “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). Thus, because we affirm the severance order based on A.R.S. § 8-533(B)(3), we do not reach Mother’s argument based on A.R.S. § 8-533(B)(8)(a) and (b).