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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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ESPERANZA B., *Appellant*,

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, H.R., T.R., K.M.,  
*Appellees.*

No. 1 CA-JV 13-0176  
FILED 12-12-2013

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Appeal from the Superior Court in Maricopa County  
No. JD 505802  
The Honorable Bradley H. Astrowsky, Judge

**AFFIRMED**

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COUNSEL

Maricopa County Public Advocate's Office, Mesa  
By Suzanne W. Sanchez

*Counsel for Appellant*

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

*Counsel for Appellee Arizona Department of Economic Security*

**MEMORANDUM DECISION**

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

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**D O W N I E**, Judge:

¶1 Esperanza B. (“Mother”) appeals the juvenile court’s order terminating her parental rights. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 Between 2004 and 2009, Child Protective Services (“CPS”) received reports that K.M., H.R., and T.R. (collectively, “the Children”) had been exposed to domestic violence and drugs. CPS also received several reports that one of the children was being sexually abused. Although CPS investigated, it could not substantiate these concerns. Nevertheless, a safety plan was implemented that prevented the Children from having contact with Mother’s father (“Grandfather”).

¶3 CPS personnel visited Mother’s apartment in March 2009 and observed marijuana and pills on the bathroom counter and floor. Additionally, trash bags were strewn about the apartment, broken glass shards posed a hazard to the Children, and remnants of old food littered the floor, with food residue smashed into the carpets. Despite the earlier safety plan, Mother had a demonstrated pattern of moving the family in with Grandfather when she could not provide for the Children. Mother had previously been abused by Grandfather and knew he was a “violent and irrational person.” She had witnessed Grandfather physically abuse T.R. She nevertheless left the Children alone with him and allowed Grandfather to discipline them. CPS learned that Grandfather had repeatedly hit T.R. in the face until he vomited and that he had disciplined the Children by beating them with his belt and cane, leaving bruises and marks.

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<sup>1</sup> 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) (citation omitted).

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¶4 In April 2011, Mother entered into a voluntary foster care agreement. To achieve family reunification, Mother was required to overcome her substance abuse issues, demonstrate sobriety via frequent drug testing, develop parenting skills, and maintain stable housing and employment. CPS offered Mother numerous services, including TERROS substance abuse counseling, drug screening, parenting skills courses, a psychological evaluation, and supervised visitation. Mother was advised that participation in these services was necessary to secure the return of the Children.

¶5 Mother failed to participate in services on a consistent basis. She was incarcerated in September 2011 after being convicted of aggravated driving under the influence, leading to a disruption of services. Mother's non-compliance with services resumed upon her release from jail in January 2012.

¶6 The juvenile court changed the case plan to severance and adoption. Arizona Department of Economic Security ("ADES") filed a motion to terminate Mother's parental rights in July 2012, alleging: (a) inability to parent due to chronic substance abuse, *see* Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3); and (b) substantially neglecting to remedy the circumstances that caused the Children to be in an out-of-home placement for at least nine months, *see* A.R.S. § 8-533(B)(8)(a). After a contested severance trial, the juvenile court granted ADES's severance motion on both grounds and found severance to be in the Children's best interest.

¶7 Mother timely appealed, challenging the evidence supporting the statutory grounds for severance, as well as the finding that termination was in the Children's best interest. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1) and Arizona Rule of Procedure for the Juvenile Court 103(A).

### DISCUSSION

¶8 A court may terminate parental rights if it finds one of the statutory grounds for severance by clear and convincing evidence. A.R.S. §§ 8-533(B), -537(B). The court must also find by a preponderance of the evidence that termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). "The 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.*

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*Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Therefore, we will affirm the juvenile court's termination order unless it is clearly erroneous. *Id.* (citation omitted).

¶9 The record supports the termination of Mother's rights based on chronic substance abuse. As such, we need not address the other independent ground for severance. *See id.* at ¶ 3 ("If clear and convincing evidence supports any one of the statutory grounds . . . we need not address claims pertaining to the other grounds.").

### I. Chronic Substance Abuse

¶10 To terminate parental rights under A.R.S. § 8-533(B)(3), the court must find by clear and convincing evidence that: (1) the parent has a history of chronic substance abuse; (2) the parent is unable to discharge parental responsibilities due to the chronic substance abuse; and (3) there are reasonable grounds to believe that the substance abuse will continue for a prolonged, indeterminate period.<sup>2</sup> *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010).

¶11 Mother has a prolonged history of substance abuse. *See id.* at ¶ 16 (defining "chronic abuse" as abuse that is "long-continued, lingering, and inveterate"). She began using marijuana at age 15 and used methamphetamine in her teenage years. Mother later began using marijuana daily for a "long" period of time. She tested positive for marijuana and opiates during the pendency of her case in the juvenile court. TERROS diagnosed Mother with cannabis dependence.

¶12 Additionally, despite knowing that CPS would treat missed drug screens as positive, Mother missed over 75% of the required tests. Although two samples submitted in November 2012 and January 2013 were negative for drugs, that brief period of abstinence was dwarfed by Mother's lengthy periods of non-compliance and her positive drug tests. *Cf. id.* at ¶¶ 16-18 (intermittent periods of cleanliness do not destroy

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<sup>2</sup> In her opening brief, Mother argues only that there are no reasonable grounds to believe her substance abuse will continue for a prolonged, indeterminate period. She has inferentially conceded the accuracy of the findings regarding her history of chronic substance abuse and her resulting inability to discharge parental responsibilities. *See State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990) (argument not raised in opening brief is waived).

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chronic nature of substance abuse). The record supports the juvenile court's finding that Mother "ha[s] a history of substance abuse."

¶13 The evidence also established that Mother's substance abuse negatively affected her parenting. Mother left unsecured drugs in plain sight in the home, and the conditions she maintained were unsanitary and hazardous to young children. Mother moved the Children in with Grandfather and allowed him to be alone with them, despite his past abuse. When taken into care, the Children had visible bruising and told CPS they had been beaten by and feared Grandfather. The Children were also "filthy." They reported watching Mother make drug paraphernalia out of aluminum foil. Mother was closed out of parent aide services after failing to participate in a single one-on-one parenting skills session, though she did participate in supervised visitations. The evidence amply supports the determination that Mother is incapable of discharging parental duties due to chronic substance abuse.

¶14 The evidence also supports the conclusion that Mother's substance abuse will continue for a prolonged, indeterminate period of time. *See Raymond F.*, 224 Ariz. at 378-79, ¶¶ 25-26, 231 P.3d at 382-83 (evidence of parent's "significant history of drug use, recent drug use, and failure to complete various reunification services" sufficient to show that drug abuse will continue for prolonged, indeterminate period). Mother has had many opportunities to participate in services designed to address her substance abuse, but her participation has been minimal at best.

¶15 Mother concedes missing over 75% of the required screenings, despite knowing that missed tests would be viewed as positive for drug use. Her TERROS account was twice closed for non-compliance. She delayed seeking substance abuse counseling. When Mother was placed in a group, she missed sessions and "show[ed] little motivation toward[] recovery." TERROS reports indicate that Mother promised "numerous times that she [would show for group] and then never [did]." CPS gave Mother bus passes and cab rides for counseling sessions, but later scaled back the practice because of her "dishonesty about attending group." When TERROS inquired about her absences, Mother responded that she was "wanting to engage" but was "too busy." At trial, Mother offered a different reason for her non-compliance: dissatisfaction with the instructor's professionalism. But rather than asking CPS to place her in a different group, Mother simply quit attending.

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¶16 Mother argues that her participation in Narcotics Anonymous (“N.A.”) for “[a]lmost two weeks” before the severance trial is entitled to significant weight. We disagree. Such efforts are rightfully considered “too little, too late.” *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994). Mother waited until the eve of trial to attend N.A., and she failed to submit documentation of her participation in N.A., claiming her “fax didn’t go through.”

¶17 Based on the evidence before it, the juvenile court could reasonably conclude that Mother’s chronic substance abuse will continue for an indeterminate, prolonged period.

## II. Best Interest

¶18 Severance must also be in a child’s best interest. *See Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990). The juvenile court is required to make a specific finding as to how the children will benefit from severance or be harmed by continuation of the relationship. *Id.* at 5, 804 P.2d at 734. Relevant to such a finding is evidence of an adoption plan and evidence that the placement is meeting the child’s needs. *See Jesus M.*, 203 Ariz. at 282, ¶ 14, 53 P.3d at 207 (citation omitted). “In most cases, the presence of a statutory ground will have a negative effect on the children.” *Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988).

¶19 The juvenile court found that the Children would “be harmed by the continuation of the neglect and mental trauma that [would] likely persist in the relationship with their Mother.” This finding is supported by the record. Although the Children love Mother, she has not provided them with a safe, stable, or drug-free home. While in her care, the Children lived in unsanitary and unsafe conditions. Given Mother’s long history of drug abuse and her record of non-compliance with services specifically designed to assist her in parenting, the juvenile court had no reason to believe the Children’s circumstances would be different if severance were denied.

¶20 The Children are placed together in a licensed foster home. Their foster parent is a physician who has experience with children suffering similar abuse and neglect. The Children are thriving under the stability provided by this home. They are physically healthy, have caught up in school, and are developmentally on track. The placement is willing to adopt the Children together. The juvenile court concluded that the Children would continue to “benefit from the dependable love and safety

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. . . their foster placement has to offer.” The evidence supports the finding that severance is in the Children’s best interest.

**CONCLUSION**

¶21 We affirm the juvenile court’s severance order.



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