

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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MARKUS M., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, K.M., R.M., M.M., *Appellees*.

No. 1 CA-JV 16-0325  
FILED 3-28-2017

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Appeal from the Superior Court in Maricopa County  
No. JD16708  
The Honorable Daniel G. Martin, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Christopher Stavris  
*Counsel for Appellant*

Arizona Attorney General's Office, Phoenix  
By Amber E. Pershon  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

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**C A T T A N I**, Judge:

¶1 Markus M. (“Father”) appeals the superior court’s termination of his parental rights to his children K.M., R.M., and M.M. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 All three children were born to Father and Tamar B. (“Mother”) between February 2011 and October 2013.<sup>1</sup> By November 2013, two-week-old M.M. had lost eleven percent of his birth weight, and Mother and Father took him to the hospital, where he was diagnosed with “failure to thrive.” Hospital staff noted that K.M. and R.M. appeared hungry and dirty, and that Mother asked staff and hospital patients for oxycodone.

¶3 The Department of Child Safety (“DCS”) received a report regarding the children, and sent a case manager to the family’s home. The home had no furniture except an air mattress and a broken crib. DCS told Mother and Father to obtain furniture and public assistance, and told Father not to leave the children alone with Mother. Mother and Father did not comply, and DCS learned that Father had continued to leave the children alone with Mother. DCS then removed K.M. and R.M., and took M.M. into care upon his discharge from the hospital. All three children have been in out-of-home placements since November 2013.

¶4 The superior court found all three children dependent as to both Mother and Father shortly after their removal. DCS offered Father several services, including parent aide, visitation, individual counseling, transportation, and psychological evaluations. Father’s engagement with these services varied. While Father eventually completed both individual counseling and parent-aide services, he attended only four of twenty-four scheduled visits with his children during the final four months of his case.

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<sup>1</sup> The superior court also terminated Mother’s parental rights, and we affirmed that decision in *Tamar B. v. Dep’t of Child Safety*, 1 CA-JV 16-0242, 2017 WL 586405 (Ariz. App. Feb. 14, 2017) (mem. decision).

¶5 Father underwent two psychological evaluations. After Father's initial evaluation in March 2014, a psychologist noted that Father demonstrated academic deficits, including a lack of knowledge regarding parenting skills. During this evaluation, Father denied that M.M. had been diagnosed with failure to thrive. Although Mother has significant mental health needs, Father did not seem to recognize her problems or the potential risk that her mental health might pose to the children. And he was not aware that a court had previously terminated Mother's parental rights as to a child from a past relationship. The psychologist noted that Father had demonstrated improvements in his follow-up evaluation a year later, but opined that Father still was not prepared to care for the children on his own.

¶6 DCS moved to terminate Father's rights as to the three children in July 2015, citing the fifteen months' out-of-home placement ground. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8)(c).<sup>2</sup> After a two-day evidentiary hearing, the court found grounds for severance based on fifteen months' time in care and that severance would be in the children's best interests, and thus terminated Father's parental rights. Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

## DISCUSSION

¶7 The superior court may terminate the parent-child relationship if it finds by clear and convincing evidence at least one statutory ground for severance, and finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. § 8-533; *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a termination order for an abuse of discretion, "view[ing] the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009); *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

¶8 Severance based on the fifteen months' time-in-care ground under A.R.S. § 8-533(B)(8)(c) requires proof that (1) "[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer," (2) "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement," (3) "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," and (4)

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<sup>2</sup> Absent material revisions after the relevant date, we cite a statute's current version.

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DCS “has made a diligent effort to provide appropriate reunification services” to the parent.

¶9 Father has only challenged the court’s finding that he likely will not be able to parent effectively in the near future. But reasonable evidence supports the court’s finding. As Father conceded, at the time of the severance hearing, he did not have a stable home for the children. Although he participated successfully in some services, he missed several visits with his children, including a large majority of visits scheduled during the final months before the severance hearing. And both the psychologist and a DCS case manager testified that Father was notably slow to recognize the changes required for successful reunification, and cited his recently missed visits as a sign that he was unprepared to parent the children. Neither the psychologist nor the DCS case manager recommended placing the children with Father.

¶10 Father contends that the court’s decision is not supported by the record because he obtained employment and housing and ended his relationship with Mother. But the court expressly considered this evidence and ultimately gave greater weight to the testimony of the psychologist and case manager regarding Father’s current ability to parent. We defer to the superior court’s credibility determinations, and we will not reweigh the evidence on appeal. *See Mary Lou C.*, 207 Ariz. at 47, ¶ 8; *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

CONCLUSION

¶11 For the foregoing reasons, we affirm the superior court’s order terminating Father’s parental rights as to K.M., R.M., and M.M.



AMY M. WOOD • Clerk of the Court  
FILED: AA