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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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VANIA A., *Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY, SONIA J., CARMEN T., A.J.,  
*Appellees.*

No. 1 CA-JV 16-0415  
FILED 7-6-2017

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Appeal from the Superior Court in Mohave County  
No. L8015JD201307021 and SV201507006  
The Honorable Douglas Camacho, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

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

Arizona Attorney General's Office, Tucson  
By Dawn Rachele Williams  
*Counsel for Appellee Department of Child Safety*

Law Offices of Heather C. Wellborn PC, Lake Havasu City  
By Heather C. Wellborn  
*Counsel for Appellees Sonia J. and Carmen T.*

**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

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

¶1 Vania A. (“Mother”) appeals from the superior court’s order terminating her parental rights as to her children, L.J. and A.J. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother and Francisco J. (“Father”) are the biological parents of L.J. and A.J.<sup>1</sup> In December 2010, A.J. was born substance exposed to THC, and Mother thereafter participated in voluntary outpatient services with the Department of Child Safety (“DCS”). In July 2013, L.J. was born substance exposed to methamphetamine, and DCS took both children into care. The superior court found both children dependent as to Mother and Father.

¶3 The children were placed with their paternal aunts (“Aunts”), and except for a two-month period in fall 2013, the children have been in out-of-home care since removal. DCS offered the parents services including substance abuse testing and treatment, mental health assessment, parenting classes, and visitation.

¶4 Mother continued to struggle with substance abuse over the next year, missing multiple drug tests and periodically testing positive for methamphetamine through September 2014. She then entered a sober living program and, after leaving the program in early 2015, consistently tested negative. Father, however, continued to abuse drugs and alcohol, frequently missing required drug tests and periodically testing positive for methamphetamine, THC, or alcohol.

¶5 Father’s substance abuse led to violence on multiple occasions. In August 2015, Mother called the police twice to report that Father was drunk and aggressive, physically pushing her on one occasion

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<sup>1</sup> Father’s parental rights to A.J. and L.J. have also been terminated, but he is not a party to this appeal.

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and arguing verbally after attempting to break into a car on another. In October 2015, again while intoxicated, Father threatened to kill a woman and attempted to stab her with a knife. He was arrested and charged with aggravated assault and disorderly conduct, and later pleaded guilty to the latter.

¶6 In mid-2015, after Father had tested positive for THC three tests in a row, Aunts petitioned to terminate Mother's and Father's parental rights on grounds of abuse, neglect, substance abuse, and 9- and 15-months' time in care. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2), (3), (8)(a), (c).<sup>2</sup> Mother in turn filed a motion for return of the children to her physical custody. *See* Ariz. R.P. Juv. Ct. 59. After an evidentiary hearing, the superior court denied Mother's request, finding that the children would be at risk if returned to Mother's custody because of her continued relationship with Father. DCS subsequently noted Mother's positive behavioral changes, but expressed concern that Mother appeared to believe Father's denials of wrongdoing regarding his drug use and criminal conduct.

¶7 Thereafter, Mother appeared to reassess her relationship with Father in an effort to secure the children's return. She filed for divorce in November 2015, which was finalized by a March 2016 default decree. She had Father removed from her residential lease as of January 2016. And she described to the court that she had come to hate Father because "he's done everything in his power for me not to get my kids back even though I tried everything. I got clean. . . . And he's still making my life impossible. He's trying to mess up everything I've done."

¶8 But other evidence suggested that Mother was simply hiding an ongoing relationship. Through the end of 2015, Mother and Father regularly completed drug tests within minutes of each other, including on multiple occasions when Mother was not even required to test. After the Court Appointed Special Advocate and the DCS case manager observed this pattern in January 2016, the parents generally tested at different times, but would still occasionally call in within minutes of each other.

¶9 Although the parents were ostensibly living apart, a private investigator's surveillance in April 2016 revealed that Father was regularly staying at Mother's apartment overnight. The parents continued to call and text each other hundreds of times per month well into spring 2016. Mother's text messages to Father continued to use terms of endearment and

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

affection, and Father's texts indicated that they "can't be seen together" and that "im sneaking in our apt with my sweater over my head and a backpack" to hide the relationship.

¶10 The superior court consolidated the Aunts' severance petition with the dependency proceeding, and DCS supported the petition. After a six-day trial, the court terminated Mother's parental rights based on neglect (prenatal exposure to drugs) and 9- and 15-months' time in care, but found no evidence of abuse and insufficient evidence to show ongoing substance abuse by Mother. Mother timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

### DISCUSSION

¶11 The superior court is authorized to terminate a parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶12 Severance based on 15-months' time in care under A.R.S. § 8-533(B)(8)(c) requires proof that: (1) the child has been in an out-of-home placement for at least 15 months, (2) "[DCS] has made a diligent effort to provide appropriate reunification services," (3) "the parent has been unable to remedy the circumstances" necessitating the out-of-home placement, and (4) "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." The relevant circumstances are those existing at the time of severance. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96 n.14, ¶ 31 (App. 2009).

¶13 Mother argues the superior court erred by finding statutory grounds for severance based on, among other grounds, 15-months' time in care; she does not challenge the court's best interests finding. Mother asserts that she successfully remedied the circumstances previously necessitating out-of-home placement by overcoming her substance abuse, participating in services, and maintaining a residence and stable employment. But the superior court's conclusion was based not on concerns with Mother's substance abuse, but rather on Mother's persistent

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and continuing relationship with Father—who had failed to address his own substance abuse issues or his tendency toward violence while intoxicated—which the court found would put the children in danger.

¶14 Mother was aware of this concern at least by September 2015 when the superior court denied her motion to return the children on the basis that exposing the children to Father (as they would be if returned) would put the children at risk. Although Mother thereafter appeared to distance herself from Father to ensure the children’s safety, the record supports the court’s conclusion that the parents continued their relationship while attempting to hide it from DCS. The parents divorced and ostensibly maintained separate residences, but surveillance showed Father still staying at Mother’s apartment overnight in April 2016. Father’s text messages from late 2015 show an attempt to appear to be apart while in fact continuing to live together. And the frequency as well as substance of the parents’ phone calls and text messages to each other support the court’s assessment of an ongoing relationship. Although Mother testified that she no longer wanted anything to do with Father, the court found her not credible as to this issue in light of the evidence to the contrary. We defer to this credibility assessment. *Jesus M.*, 203 Ariz. at 280, ¶ 4.

¶15 Mother asserts that the court further erred by finding a substantial likelihood that she would be incapable of parenting in the near future. Her active efforts to hide the relationship with Father, however, indicate not only that she had failed to remedy the problem, but also that she would be unlikely to do so in the near future. Mother likewise argues that DCS failed to provide adequate rehabilitative services. But she did not request additional services during the dependency, and she does not now indicate what additional services should have been provided.

¶16 Accordingly, the record supports the superior court’s ruling that severance was warranted based on 15-months’ time in care. Because we affirm on this basis, we need not address the alternative severance grounds of neglect and 9-months’ time in care. *See id.* at ¶ 3.

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**CONCLUSION**

¶17 The severance order is affirmed.



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