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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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IN RE TERMINATION OF  
PARENTAL RIGHTS AS TO G.B.

No. 1 CA-JV 22-0178  
FILED 12-20-2022

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Appeal from the Superior Court in Yavapai County  
No. V1300JD202180041  
The Honorable Anna C. Young, Judge

**AFFIRMED**

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COUNSEL

Robert D. Rosanelli Attorney at Law, Phoenix  
By Robert D. Rosanelli  
*Counsel for Appellant Patricia E.*

Arizona Attorney General's Office, Tucson  
By Autumn Spritzer  
*Counsel for Appellee Department of Child Safety*

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**MEMORANDUM DECISION**

Vice Chief Judge David B. Gass delivered the decision of the court, in which  
Presiding Judge Samuel A. Thumma and Judge Cynthia J. Bailey joined.

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**G A S S**, Vice Chief Judge:

¶1 Mother appeals the superior court's finding she lacked good cause for her absence from the initial termination hearing and the resulting order terminating her parent-child relationship with G.B., her biological child. G.B.'s father is not a party to this appeal. Because mother has shown no error, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 This court views the evidence, and reasonable inferences drawn from it, in the light most favorable to sustaining the superior court's decision. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13 (App. 2002).

¶3 Mother has two biological children, including G.B. who was born in August 2018. G.B. is the only child subject to this appeal. G.B. lived with mother but often stayed with G.B.'s grandmother.

¶4 In September 2021, the Department of Child Safety (DCS) and police responded to a report concerning mother's substance abuse and unsafe living conditions for her children. In response, mother fled and took G.B. to grandmother's home. After the police arrested mother, DCS removed G.B. from grandmother's home because of numerous safety concerns. Medical professionals diagnosed G.B. with language and behavioral disorders.

¶5 Later that month, the superior court found G.B. dependent after mother pled no contest to the allegations and adopted a family reunification case plan. DCS offered case management services, childcare, individual and family counseling, drug testing, visitation, and substance-abuse assessment and treatment. Mother inconsistently visited G.B. and repeatedly did not follow directions to provide healthy snacks for him. In March 2022, DCS closed the visitation referral because mother missed several consecutive visits.

¶6 Mother also inconsistently participated in drug testing. In September 2021, mother had one negative hair follicle test. The next two months, she tested positive for marijuana and morphine several times and for fentanyl once. Between December 2021 and April 2022, mother missed all 46 scheduled drug tests. According to mother's probation officer, she tested positive for drugs on June 8, 2022.

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¶7 At a May 2022 permanency hearing, the superior court changed the case plan to severance and adoption and set the initial termination hearing for 3:00 p.m. on June 8, 2022. Mother was present for the permanency hearing. The superior court provided mother with a Form 3, and DCS notified her of the initial termination hearing and consequences if she failed to appear.

¶8 Mother did not appear at the initial termination hearing. In an effort to find mother, the superior court called her probation officer but was not able to reach him until about 4:00 p.m. The probation officer testified mother arrived at his office at 2:30 p.m. At 2:58 p.m., she told him about the hearing. He told mother to leave and go to the hearing, but he did not know where she went. Mother's counsel asked the court to continue the hearing, saying "I think that the hearing being set at 3, [mother] thought if she wasn't here at 3, that there probably wasn't any point in showing up late, because she would have missed the hearing."

¶9 Based on the information it had, the superior court found mother "certainly did not need to go to the probation office at the time that this hearing was supposed to start," and found no good cause for mother's absence. After finding mother's absence voluntary, the superior court deemed mother's nonappearance as an admission to the allegations in DCS's motion for termination.

¶10 The superior court then heard testimony and took judicial notice of the DCS court reports. A DCS case manager testified mother recently completed some parenting classes and may have started mental-health services but noted mother inconsistently participated and had not evidenced much behavioral change. DCS reports showed mother also inconsistently participated in visits, drug testing, and other services.

¶11 The superior court granted DCS's motion for termination, finding DCS proved two grounds: chronic abuse of dangerous drugs and nine-months out-of-home placement. *See* A.R.S. §§ 8-533.B.3, .8(a).

¶12 Mother did not file a motion to reconsider with supporting evidence or argument. Instead, she timely appealed. This court has jurisdiction under article VI, section 9, of the Arizona Constitution, and A.R.S. §§ 8-235.A, 12-120.21.A.1, and -2101.A.1.

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**DISCUSSION**

**I. The superior court did not abuse its discretion when it found no good cause for mother's failure to appear.**

¶13 Mother argues the superior court erred in finding she lacked good cause for her failure to appear at the initial termination hearing because she was with her probation officer.

¶14 When a parent fails to appear at an initial termination hearing without good cause, the superior court may proceed with a termination adjudication if it finds the parent (1) "had notice of the initial termination hearing"; (2) "was properly served pursuant to Rule 351"; and (3) "had been admonished regarding the consequences of failing to appear." Ariz. R.P. Juv. Ct. 352(f)(1).<sup>1</sup> Failing to appear constitutes "a waiver of rights and an admission of the allegations in the termination petition or motion." Ariz. R.P. Juv. Ct. 352(f)(1)(C). The superior court may terminate parental rights based on the record and evidence presented if it finds the "moving party has met the burden of proof required for termination" and no procedural violations occurred. Ariz. R.P. Juv. Ct. 352(f)(2); *see also* A.R.S. § 8-863.C.

¶15 To prevail on a claim of good cause for nonappearance, a party must show (1) "mistake, inadvertence, surprise or excusable neglect" and (2) "a meritorious defense to the claims." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 304, ¶ 16 (App. 2007). "Excusable neglect exists if the neglect or inadvertence 'is such as might be the act of a reasonably prudent person in the same circumstances.'" *Id.* (quoting *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163 (App. 1993)). The superior court has broad discretion in deciding whether to find good cause for failure to appear. *See John C. v. Sargeant*, 208 Ariz. 44, 47, ¶ 13 (App. 2004), *superseded on other grounds as recognized by Ariz. Dep't of Econ. Sec. v. Reinstein*, 214 Ariz. 209, 211, ¶ 4 (App. 2007).

¶16 This court reviews for an abuse of discretion a finding a parent lacked good cause to be absent from an initial termination hearing. *See Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15 (App. 2007). This court reverses only if the superior court's exercise of discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* (cleaned up).

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<sup>1</sup> Rule 352(f) abrogated former Rule 65.C.5.c on July 1, 2022. Rule 352(f) is substantively identical to the former rule.

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¶17 Mother argues she had good cause for her absence from the initial termination hearing. But mother neither denies receiving notice of the hearing nor challenges the finding of proper service with the motion through counsel. Mother also does not argue she did not know her absence could result in her waiving certain rights, her admitting to DCS's allegations, and the superior court continuing with a termination adjudication. *See* Ariz. R.P. Juv. Ct. 352(f). Instead, mother argues her probation officer's request for a urine test that day caused her to miss the hearing. But the record refutes her argument, showing mother could have told her probation officer about the conflict when he requested the test and completed the test earlier in the day. A reasonably prudent person would have taken such action or at least called her attorney and the court once the conflict arose. Mother provides no other explanation for her absence and does not explain where she went when she left the probation officer.

¶18 Accordingly, the superior court did not err in finding no good cause for mother's absence.

**II. Mother established no meritorious defense to the termination.**

¶19 Because mother lacked good cause for her absence, we need not address whether she established a meritorious defense. Even so, we conclude the superior court did not err in finding DCS proved by clear and convincing evidence at least one ground for termination – mother's history of chronic abuse of dangerous drugs. *See* A.R.S. § 8-533.B.3.

¶20 A superior court may terminate parental rights if clear and convincing evidence establishes at least one statutory ground and if a preponderance of the evidence shows termination is in the child's best interests. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149–50, ¶ 8 (2018). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights if reasonable evidence supports the order. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citations omitted). This court does not reweigh the evidence and defers to the superior court. *See id.*

¶21 As to a parent's substance abuse, a superior court may terminate parental rights if "the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533.B.3. Though chronic abuse must be long-lasting, it

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need not be constant, and temporary abstinence does not negate a history of abuse. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, 379, ¶¶ 16, 29 (App. 2010). To determine whether a parent's condition will continue for a prolonged indeterminate period, the superior court may consider "the length and frequency of [the parent's] substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses." *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 287, ¶ 20 (App. 2016).

¶22 Mother argues DCS provided insufficient evidence to show her "current sobriety, substance abuse, or any [effect] her past drug use may have on her parenting now." The superior court, however, considered the testimony provided, DCS's court reports, and the uncontested allegations in DCS's motion for termination. Though mother points to testimony regarding her recent participation in parenting classes and mental health services, she alleges nothing more in terms of her participation or efforts to remedy her drug abuse issues. Mother does not allege she has taken any other actions to participate in services and admits she did not consistently drug test. Mother notes only one negative drug test from more than one year earlier. The record shows mother missed every drug test scheduled for nearly five months. Her most recent tests in November 2021 and the day of the hearing were positive. Mother points to no evidence of her sobriety or efforts to establish sobriety. The superior court did not err in finding DCS proved termination on the grounds of chronic abuse of dangerous drugs.

¶23 Mother does not contest the superior court's finding termination is in G.B.'s best interests, and the record supports the finding.

CONCLUSION

¶24 We affirm.



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