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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 01-28-2010  
PHILIP G. URRY, CLERK  
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ANDREA S., ) 1 CA-JV 09-0114  
)  
Appellant, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R.P. Juv. Ct.;  
SECURITY, HAILEY E., ) Rule 28, ARCAP)  
)  
Appellees. )  
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Appeal from the Superior Court in Maricopa County

Cause No. JD16382

The Honorable Dawn M. Bergin, Judge

**AFFIRMED**

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Law Office of Kathleen M. Mucerino  
by Kathleen M. Mucerino  
Attorney for Appellant

Sun City

Terry Goddard, Attorney General  
by Eric Devany, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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Mesa

**P O R T L E Y**, Judge

¶1 Andrea S. ("Mother") challenges the termination of her parental rights to her daughter. Specifically, she argues that the juvenile court erred when it implicitly found that the Arizona Department of Economic Security ("ADES") had made reasonable and diligent efforts to provide appropriate family reunification services. For the following reasons, we affirm the termination of her parental rights.

**FACTS AND PROCEDURAL HISTORY**

¶2 Mother's daughter ("the child") was born in August 2005. Shortly thereafter, in November 2005, ADES investigated a report that police officers had found stolen property in Mother's home and that she had been arrested for theft and possession of drug paraphernalia. Case Manager, Kathleen Cruz, reported that the home was "dirty," the parents were using methamphetamine, and their bedroom "smell[ed] of meth." ADES referred Mother and James E. ("Father") to substance abuse treatment and to Family Preservation, a counseling service.

¶3 In August 2006, ADES investigated an allegation that Mother had brought cocaine in the child's diaper bag to daycare. Although the allegation could not be substantiated, Ms. Cruz reported that the "home was littered with car and bike parts and filth" and that Mother admitted to recently using methamphetamine.

¶4 ADES investigated an October 2007 report that the child was living in an "inappropriate home environment" and that Mother was using and selling drugs. The child was removed after the investigation revealed that Mother was unemployed, would soon be homeless, used methamphetamine on a "daily basis," and that "[t]rash, feces, clothing, rotting food, multiple DVD players, nuts, bolts, wires and clutter" were present throughout the home, including the child's "filthy" room.

¶5 The child was placed with a family relative cleared as a "safety monitor." Mother agreed to continue counseling services through Family Preservation and agreed to participate in substance abuse treatment at New Arizona Families ("NAF"). Although she began treatment in December 2007, she failed to complete either the NAF inpatient or outpatient programs.

¶6 The child was taken into temporary custody on January 14, 2008, and ADES filed a dependency petition. ADES alleged that Mother was unable to parent due to neglect, substance abuse, domestic violence, mental illness, and an unfit home. The juvenile court found the child dependent on April 18, 2008, and set the case plan for family reunification.

¶7 ADES offered Mother a psychological evaluation, substance abuse treatment, urinalysis ("UA") drug testing, counseling, parent aide services, visitation, and transportation to facilitate family reunification. Mother participated in a

psychological evaluation on June 24, 2008, with licensed psychologist Kathryn Menendez. Dr. Menendez diagnosed her with amphetamine dependence, neglect of child, sexual abuse, physical abuse, and borderline personality disorder. Her report noted that "[t]he . . . evaluation reveal[ed] significant emotional maladjustment due to a history of sexual victimization . . . with incomplete resolution" and that Mother was "also affected by the severe abuse of methamphetamine which further interrupt[ed] her personal, and social development." Additionally, the report stated that "the nature of [Mother's] personality disorder also predisposes her to self destructive episodes such as . . . leaving [] treatment center[s] prematurely [and] relapsing with drugs." The report concluded that Mother's prognosis was "very poor" and that her treatment needs were "highly complex." She specifically recommended that Mother enroll in a residential substance abuse treatment center and that she receive collateral psychiatric services to "treat [the] symptoms of her severe borderline personality disorder." Despite the recommendation for collateral psychiatric management during substance abuse treatment, the record does not demonstrate that such treatment was ever made part of the case plan or was provided to Mother.

¶8 Mother, however, failed to adequately participate in the services offered by ADES. For example, visits with the

child at the child crisis center were cancelled after Mother repeatedly missed visits and was consistently tardy over a six-month period. Counseling services failed because Mother "minimally participat[ed]" and did not attend most of her sessions. Although Mother agreed to bi-weekly UA testing in January 2008, she provided only twelve specimens over the next sixteen-month period, seven of which tested positive for methamphetamine. Mother missed or was late to several scheduled visits with the child and the parent aide from July through October, 2008. She also missed three of nine scheduled "skill sessions" with the parent aide service. Finally, despite numerous opportunities to receive substance abuse treatment with TERROS, NAF, and Native American Connections, Mother either failed to enroll or dropped out of the programs before completion. She repeatedly testified that if she could not have the child with her in treatment, it was "not worth doing."

¶9 On November 26, 2008, nearly a year after the child was taken into custody, Case Manager, Regina Narbaez, reported that Mother had "only partially complied with her case plan tasks and ha[d] not demonstrated a behavioral change." She recommended reunification services be discontinued and that the case plan be changed to severance and adoption. The court ordered the case plan changed during the permanency hearing on December 4, 2008.

¶10 ADES filed its motion to terminate Mother's parental rights on December 16, 2008, and amended the motion on February 24, 2009, and May 1, 2009. ADES alleged that Mother's parental rights should be terminated because of chronic substance abuse and time in care. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (B)(8)(a), and (B)(8)(c) (Supp. 2008). Mother contested severance, and there was a bench trial on May 1, 2009. During her testimony, Mother requested additional time to "do services," but reiterated that she was unwilling to participate in substance abuse treatment if the child could not be with her during treatment.

¶11 The court found that ADES had met its burden of proof by clear and convincing evidence on each of the three statutory bases and that termination and severance were in the child's best interests. The court reasoned:

Upon mother's own admission, her substance abuse problem has remained unabated throughout this dependency. Although the Court believes that Mother truly loves her daughter, she has neglected to take advantage of the multiple opportunities provided by the Department to obtain intensive substance abuse treatment. She left two inpatient treatment programs within weeks. She failed to participate consistently in urinalyses, and when she did, she tested positive for methamphetamine more than half the time. She admitted that the only period of sobriety she has had since the age of twelve was approximately nine months, which spanned the last half of her pregnancy and the first 4 months or so of [the child's] life. In light of mother's admissions and her failure to complete any substance abuse treatment program, the Court has no

doubt that her condition will continue for a prolonged indeterminate period of time.

Moreover, the court found that ADES had "offered many services to mother, including urinalysis, substance abuse assessment and treatment, a psychological evaluation, individual counseling, parent aide services, transportation and supervised visits."

¶12 Mother appeals, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21 and -2101(B) (2003).

#### DISCUSSION

¶13 To justify termination of parental rights, a juvenile court must find, by clear and convincing evidence, A.R.S. § 8-863(B) (2007), the existence of at least one statutory basis for termination pursuant to § 8-533(B), and also find, by a preponderance of the evidence, that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *In re Maricopa County Juvenile Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[W]e will affirm a severance order unless it is clearly erroneous," and "we accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). "[W]e will presume that the juvenile

court made every finding necessary to support the severance order[,] . . . [and] [i]f the juvenile court fails to expressly make a necessary finding, we may examine the record to determine whether the facts support that implicit finding." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 17, 83 P.3d 43, 50 (App. 2004).

¶14 Termination on the ground of chronic substance abuse under § 8-533(B)(3) requires proof that "the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs" and that there are "reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." Prior to severance on this basis, however, the court must also find that ADES made reasonable efforts to reunify the family or that such efforts would have been futile. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶¶ 31-34, 971 P.2d 1046, 1052-53 (App. 1999); *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005).

¶15 Termination of parental rights under § 8-533(B)(8)(a) requires proof that a child has been in court-ordered out-of-home placement for at least nine months, that ADES had "made a diligent effort to provide appropriate reunification services," and that the parent had "substantially neglected or willfully refused to remedy the circumstances" necessitating the



placement. Similarly, termination under § 8-533(B)(8)(c) requires proof that a child has been in court-ordered out-of-home placement for at least fifteen months, that ADES has "made a diligent effort to provide appropriate reunification services," and that "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."

¶16 Mother contends that the juvenile court erred when it terminated her parental rights because the court "[could] not find that [she] was provided appropriate reunification services or that ADES made diligent efforts to provide reunification services . . . where [the court] [did] not even address[] the issue that ADES failed to provide psychiatric services as recommended by the psychologist."<sup>1</sup> Mother primarily relies upon *Mary Ellen C.* where we reversed a termination order after finding that ADES had failed to make a reasonable effort to rehabilitate a mentally ill parent in order to preserve the family. 193 Ariz. at 193-94, ¶¶ 42-44, 971 P.2d at 1054-55.

¶17 In *Mary Ellen C.*, CPS had waited "more than a year after removing the child before referring a mother with a serious mental illness for psychological evaluation." *Id.* at 192, ¶ 35, 971 P.2d at 1053. The psychologist recommended

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<sup>1</sup> Mother does not dispute that all other elements under subsections 8-533(B)(3), (B)(8)(a), and (B)(8)(c) were sufficiently proven at trial.

intensive mental health services and a psychiatric evaluation for the mother. *Id.* at 187, ¶ 9, 971 P.2d at 1048. Although he doubted that she could resolve her mental health issues in less than a year, he suggested that "intensive psychiatric services might turn [her] around sooner." *Id.* CPS then delayed another three months before it referred the mother to a mental-health provider. *Id.* at 192, ¶ 35, 971 P.2d at 1053. It "never followed up sufficiently to secure . . . records of her progress" and so never learned that the services being provided were inconsistent with the "intensive psychiatric services" recommended by its consultant. *Id.* ¶¶ 35-37. We reversed the severance and held that the "juvenile court could not reasonably conclude that the State made a concerted or diligent or reasonable effort to preserve the parent-child relationship" where "it neglects to offer the very services that its consulting expert recommends." *Id.* at 192-93, ¶¶ 37-42, 971 P.2d at 1053-54.

¶18 "It is well established that the State, before acting to terminate parental rights, has an affirmative duty to make *all reasonable efforts* to preserve the family relationship." *Id.* at 186, ¶ 1, 971 P.2d at 1047 (emphasis added). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs designed to help [him or] her become an effective parent." *In re Maricopa County Juvenile*

*Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). However, ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.* Nor is it "oblige[d] . . . to undertake rehabilitative measures that are futile." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053. It need only "undertake measures with a reasonable prospect of success." *Id.*

¶19 Here, unlike in *Mary Ellen C.*, ADES offered reunification services continuously from the beginning of the case. Mother, however, contends that the court erred when it implicitly concluded that ADES had made all reasonable efforts to preserve the family relationship because ADES failed to offer the psychiatric service recommended by the state-hired psychologist. ADES argues that the offered services were sufficient to support the court's ruling.

¶20 During the termination hearing, Dr. Menendez testified that "the standard of practice is to treat the chemical abuse first" and that "services would have to begin with drug treatment and rehabilitation, because oftentimes in an acute state of usage, there are many behaviors that can mask and smokescreen other conditions or that [i]nhibit the treatment of other conditions." She also testified that her recommendation to ADES was to begin with residential substance abuse treatment, and, once addressed, proceed to psycho-therapy. However, she

stood by her recommendation that Mother receive psychiatric management during substance abuse treatment in order to "monitor any of the symptoms [of her personality disorder] to help augment the success of recovery and to guide the client through the treatment."

¶21 Although the record supports the conclusion that collateral psychiatric care during substance abuse treatment was an appropriate service, the record also contains substantial evidence supporting a finding that psychiatric management was not a measure with "a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053; see *Mary Lou C.*, 207 Ariz. at 50, ¶ 17, 83 P.3d at 50 (holding that "[i]f the juvenile court fails to expressly make a necessary finding, we may examine the record to determine whether the facts support that implicit finding"). Despite recommending collateral psychiatric care, Dr. Menendez concluded that Mother's "prognosis [was] very poor," that "[h]er treatment needs [were] highly complex," and that she "[was] not predicted to resolve [her] issues within the foreseeable future." She also testified that "services would have to begin with drug treatment and rehabilitation." Despite numerous opportunities to participate in such treatment, however, Mother consistently avoided or dropped out of the programs because the child could not be with her. In fact, after asking the court for more time to

participate in reunification services, she admitted that she would not be willing to receive substance abuse treatment if the child could not be with her. Based on the record, there is substantial evidence the juvenile court did not err. Therefore, we find no abuse of discretion.

**CONCLUSION**

¶22 For the foregoing reasons, we affirm the termination of the parental rights.

/s/ \_\_\_\_\_  
MAURICE PORTLEY, Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Presiding Judge

/s/

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DANIEL A. BARKER, Judge