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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



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

DENISE P., ) No. 1 CA-JV 09-0155  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
)  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Ariz. R.P. Juv. Ct. 103(G);  
SECURITY, N.P., ) ARCAP 28)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD 16067

The Honorable Benjamin R. Norris, Judge

**AFFIRMED**

Popilek & Jones, P.A. Scottsdale  
By John L. Popilek  
Attorneys for Appellant

Terry Goddard, Arizona Attorney General Phoenix  
By David M. Osterfeld, Assistant Attorney General  
Attorneys for Appellee Arizona Department  
Of Economic Security

**B R O W N**, Judge

¶1 Denise P. ("Mother") appeals the juvenile court's order terminating her parental rights to her minor child (the "child"). For the following reasons, we affirm.

#### **BACKGROUND**

¶2 Mother and Raymond H. ("Father") are the biological parents of the child, who was born in August 2007.<sup>1</sup> Child Protective Services ("CPS") took the child into temporary custody after both Mother and the child tested positive for methamphetamines at the child's birth. Mother subsequently entered into a voluntary ninety-day foster care agreement and agreed to participate in a substance abuse assessment, random urinalysis testing, as well as psychological consultation, visitation, and family preservation services.

¶3 Mother completed the substance abuse assessment but tested positive for methamphetamines on the same day. Mother did not participate in the recommended outpatient treatment, failed to attend a scheduled psychological consultation, and did not complete her family preservation services assessment. Mother also missed two of the five visits scheduled with the child during that time.

¶4 Based on Mother's lack of participation in services, Arizona Department of Economic Security ("ADES") changed the

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<sup>1</sup> Father is not a party on appeal. He stipulated to severance of his parental rights to the child and the court ordered severance based on that stipulation.

case plan from family preservation to out-of-home dependency. ADES filed a dependency petition alleging that the child was dependent as to Mother because Mother was reportedly abusing methamphetamines, had abandoned the child, and had failed to provide the child with a fit home. Mother attended the preliminary protective hearing and denied all allegations. The juvenile court subsequently adjudicated the child dependent and approved a plan for family reunification.

¶15 ADES offered Mother reunification services, including a TERROS family first assessment, random urinalysis testing, psychological evaluations, counseling, visitations with the child, and parent aide services. Mother participated in the family first assessment but completed only eight of sixteen parenting classes. She also did not participate in random urinalysis testing, complete court ordered hair follicle testing, or participate in substance abuse assessments or follow treatment recommendations. Due to Mother's failure to participate in services, ADES moved to change Mother's case plan from family reunification to severance and adoption. The juvenile court granted ADES' motion based on out-of-home placement for nine months or longer under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(a) (Supp. 2009).<sup>2</sup>

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<sup>2</sup> We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

¶16 Mother remained unengaged in services even after ADES moved to change the case plan to severance and adoption. She then gave birth to a second child approximately three months after the plan changed and partially re-engaged in some services for a short time. For example, she participated in two urinalysis tests, both which proved negative for restricted substances. She also resumed visits with the child. Shortly thereafter, Mother moved to a new home that needed significant repair. Mother's parent aide reported concerns about the home's safety and reported that Mother needed a lot of direction during parental visits due to nervousness and anxiety when the newborn cried. Mother also continued to refuse to participate in hair follicle testing, even though she was court ordered to do so, and failed to attend continued substance abuse assessments with TERROS. Mother only completed half of the parenting modules assigned by parent aid services and none of the homework.

¶17 After multiple refusals to obtain a psychological evaluation, Mother eventually participated in a meeting with Dr. Bluth. Dr. Bluth diagnosed Mother with amphetamine abuse, anxiety disorder, and antisocial and dependent traits. He also stated Mother's minimization of her drug use indicated that she was at a moderate to moderately high risk of relapse. Dr. Bluth opined that it was beyond Mother's capacity to care for more than one child and that Mother would need psychotherapy and

psychiatric care to improve her condition. He also stated that the child should not be returned to Mother until Mother was substance abuse free for at least one year with verification through drug screenings.

¶18 The juvenile court held a contested severance hearing at which time Mother moved to change counsel claiming improper representation.<sup>3</sup> The court denied Mother's request, finding insufficient grounds to change counsel. At the hearing, the State moved to amend its severance motion to include the allegation that Mother had failed to remedy the circumstances that caused the child to be in out-of-home placement for fifteen months or longer pursuant to A.R.S. § 8-533(B)(8)(c). Mother's case manager testified that Mother was informed of the services that had been offered to her and believed severance was in the child's best interests. The court found ADES had made a diligent effort to provide reunification services and had proven by clear and convincing evidence the grounds for severance based on nine months' and fifteen months' time in care. The court also determined that termination was in the child's best interests. Mother filed a timely appeal and we have

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<sup>3</sup> This was Mother's second request to change counsel. During a prior hearing Mother requested a change of appointed counsel because she felt she was not properly represented. Mother's counsel then moved to withdraw citing difficulty in engaging Mother and Mother's failure to attend a scheduled meeting. The court granted the motion and appointed new counsel for Mother.

jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1) (2003), and -2101(B) (2003).

#### DISCUSSION

¶9 An order terminating parental rights must be supported by clear and convincing evidence showing at least one statutory ground for severance and by a preponderance of the evidence indicating that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will reverse a severance order only if no reasonable evidence supports it, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002), and we consider the facts in the light most favorable to accepting the juvenile court's findings. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

##### A. Fifteen Months' Time in Care

¶10 Pursuant to A.R.S. § 8-533(B)(8)(c), the juvenile court can properly sever a parent's rights if (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood existed that the parent would not be able to properly care for the child in the near future. We consider "those circumstances existing at the time of the severance that prevent

a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotes and citation omitted). To avoid severance, the parent must make more than trivial or de minimus efforts at remediation. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994).

¶11 Mother does not contest that the child has been in out-of-home placement for longer than fifteen months. Rather, she contests the court's findings that she has been unable to remedy the circumstances causing the child's out-of-home placement and that she will not be able to properly care for the child in the near future. Although Mother made some efforts to remedy the circumstances, there is reasonable evidence in the record to support the court's determination.

¶12 Mother successfully completed the TERROS substance-abuse assessment. However, on the day of completion, Mother again tested positive for methamphetamines. Mother then failed to attend outpatient treatment for drug abuse and failed to complete urinalysis screening and court mandated hair follicle testing. After repeated refusals, Mother attended a psychological examination in which the doctor found Mother minimized her drug use. From this examination, Dr. Bluth also found Mother had a moderate to moderately high likelihood of

substance-abuse relapse. Dr. Bluth further concluded that Mother's anxiety, dependency, impulsiveness, irresponsibility, and the fact that she would be caring for two children, suggested that she would be unable to properly discharge her parental responsibilities in the near future.

¶13 In addition to Mother's ongoing struggles with substance abuse, Mother continued to live in housing which was inadequate to accommodate the child. Mother moved from a hotel to a house that was greatly in need of repair. The house had electrical and plumbing problems and it had no air conditioning. Mother's parent aide reported a concern for the safety of the child if she were to live in that home. The aide also noted Mother's need for direction in carrying out her parental responsibilities in her visits with the child. Additionally, psychological and case worker evaluations indicated a poor prognosis for Mother's ability to adequately provide for the child in the near future. Thus, we find reasonable evidence in the record to support the court's determination that Mother was unable to remedy the circumstances that caused the child to be in an out-of-home placement and a substantial likelihood existed that Mother would not be capable of exercising proper and effective parental care in the near future.<sup>4</sup>

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<sup>4</sup> Based on our conclusion, we need not address whether the evidence supports the juvenile court's findings of severance



**B. Best Interests**

¶14 To the extent that Mother's opening brief may suggest that termination of her parental rights was not in the child's best interests, we disagree.

¶15 In addition to finding a statutory ground for severance, the court must also consider a child's best interests prior to terminating parental rights. A.R.S. § 8-533(B). This means that "a determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by continuation of the relationship." *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). In making the determination, the juvenile court may consider evidence that an existing placement is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004) (citations omitted).

¶16 Mother's case manager testified that severance was in the best interest of the child. The case manager believed the child was adoptable and the child's current placement gave the child structure and love. The case manager also testified Mother's anxiety would inhibit her performance of maternal

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based on nine months' time in care. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

responsibilities and that she was concerned with Mother's potential for relapse. The evidence supports the juvenile court's best interests' finding.

### **C. Request for New Counsel**

¶17 Mother argues that the juvenile court's failure to grant her request for new counsel, on the grounds that she had "no contact with her appointed counsel prior to the hearing," caused her to effectively proceed through the hearing without effective assistance of counsel. We construe Mother's argument as asserting that the juvenile court improperly denied her request for change of counsel.

¶18 Pursuant to A.R.S. § 8-221(B) (2007), as an indigent parent, Mother was entitled to court-appointed counsel during the severance proceeding. See *Pima County Juv. Action No. J-64016*, 127 Ariz. 296, 298, 619 P.2d 1073, 1075 (App. 1980). She was not, however, entitled to her choice of counsel or a meaningful relationship with the counsel appointed for her. See *State v. Moody*, 192 Ariz. 505, 507, ¶ 11, 968 P.2d 578, 580 (1998) (applying the right to counsel in a criminal proceeding). When ruling on a party's request for substitute counsel, courts should consider the rights and interests of the requesting party tempered by the necessity of judicial economy. See *State v. LaGrand*, 152 Ariz. 483, 486, 733 P.2d 1066, 1069 (1987). We review a court's denial of a defendant's request for substitute

counsel for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, 504, 154 P.3d 1046, 1050 (App. 2007).

¶19 The record here supports the juvenile court's determination that there were insufficient grounds to warrant appointment of new counsel, particularly since Mother had previously been granted such relief. Mother's second request for new counsel was made on the day of the severance hearing. Had the substitution been permitted at that stage in the proceedings, resolution of the matter would have been significantly delayed. In addition, Mother's assertion that she had "no contact" with her counsel proved to be unfounded. Mother's counsel informed the court that prior to the hearing, Mother had attended a meeting in counsel's office, wherein he explained to Mother what she needed to do regarding this case. Further, Mother and counsel attended several hearings together prior to the severance hearing. Moreover, as the juvenile court noted, Mother took no action to contact her appointed counsel with questions or concerns. The only support Mother offered at trial for her assertion that she was not effectively represented was that she had not "gotten any letters in the mail or any phone calls or anything" from her counsel. Her general assertion about lack of representation was clearly insufficient to merit a change of counsel.

¶120 Mother relies on *Daniel Y. v. Ariz. Dep't of Econ. Sec.* to support her contention that the court was required to appoint new counsel upon her request. 206 Ariz. 257, 77 P.3d 55 (App. 2003). In that case, the juvenile court refused to appoint a third attorney for the father after allowing the first two attorneys to withdraw. 206 Ariz. at 258-59, ¶¶ 6-7, 77 P.3d at 56-57. As a result, the father was forced to participate in a severance hearing without counsel. *Id.* at 259-60, ¶¶ 8-10, 77 P.3d at 57-58. On appeal, we held that the trial court erred in not appointing new counsel because the father was not given "the choice of keeping his present counsel, nor ... advise[d]... of the risks of self-representation." *Id.* at 262, ¶ 22, 77 P.3d at 60.

¶121 The facts here are markedly different. The hearing transcript reflects that unlike the father in *Daniel Y.*, who proceeded to trial without counsel, Mother was represented by counsel throughout the severance proceeding. Further, Mother was informed of her right to represent herself and she expressly declined to do so. Thus, the court did not abuse its discretion in denying Mother's request for new counsel.

#### **D. Examination of Exhibits**

¶122 Mother further argues she was denied the right to participate in the severance hearing because she was not permitted to examine trial exhibits. We disagree.

¶23 Parents have a fundamental right to care, custody, and control of their children. *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 306, ¶ 22, 173 P.3d 463, 470 (App. 2007). This includes the right to be present and to participate at hearings regarding the termination of parental rights. See *id.* The right of participation includes the right to cross-examine witnesses and testify in relation to the best interests of the child. See *id.* at ¶ 23.

¶24 The record reflects that Mother was present and participated throughout the severance hearing. Mother testified on her own behalf, presented documentary evidence to contest the statutory basis for termination, and was permitted to cross-examine witnesses. Mother also stipulated to the entry of eleven exhibits into the record, which consisted of TASC records, TERROS records, CPS case manager reports, and psychological evaluations. During her testimony, Mother requested an opportunity to review the trial exhibits, and was informed by the court that she could "look at those documents whenever [she's] not on the stand testifying." The denial to review the exhibits while on the stand did not amount to a denial of the right to participate; Mother could have reviewed the exhibits at any other time during the proceedings. She was not denied the right to a fair trial.

**CONCLUSION**

¶25 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights to the child.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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PATRICK IRVINE, Presiding Judge

/s/

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DONN KESSLER, Judge