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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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BY: PJL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ELIGIO C., VANESSA C., )  
 ) No. 1 CA-JV 09-0234  
 )  
Appellants, ) DEPARTMENT B  
 )  
v. ) MEMORANDUM DECISION  
 )  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, ARIANNA C., ANJEL C., ) 103(G) Ariz.R.P. Juv. Ct. ;  
 ) Rule 28 ARCAP  
Appellees. )  
 )  
 )

Appeal from the Superior Court in Maricopa County

Cause No. JD14644

The Honorable Roger E. Brodman, Judge

**AFFIRMED**

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G E M M I L L, Judge

¶1 Appellants Eligio C. ("Father") and Vanessa C. ("Mother") appeal from the juvenile court's order terminating their parental rights to A.R. and A.N. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 Father and Mother are the biological parents of A.R., born in October 2006, and A.N., born in September 2007. At the time of A.R.'s birth, Mother had five other children from a previous relationship who were all involved in dependency proceedings with the Arizona Department of Economic Security ("ADES") and were not in Mother's custody.

¶3 In March 2007, following A.R.'s birth and while Mother was pregnant with A.N., Mother submitted a sample for urinalysis ("UA") that tested positive for cocaine. ADES filed a petition alleging A.R. was dependent as to both parents. The juvenile court stayed the dependency proceeding at ADES's request, and it implemented a case plan of in-home intervention. ADES provided the parents with several services, including parent-aide services, counseling, random drug testing, transportation, and parenting-skills training. Both parents failed to attend scheduled meetings and on several occasions failed to provide samples for UA.

¶4 In October 2007, after A.N.'s birth, ADES filed a petition alleging he was dependent as to Father and Mother but

it did not seek to remove him from the home. Two days later, Mother tested positive for cocaine. A.R. and A.N. were removed from Father and Mother's custody and placed by court order with their paternal aunt.<sup>1</sup> Following an uncontested dependency hearing in November 2007, the court found the children were dependent as to both parents and approved a case plan of family reunification.

¶15 ADES offered the parents reunification services, including substance abuse treatment through TERROS, random drug testing, parent-aide services, a psychological evaluation, transportation, and supervised visitation. From November 2007 to August 2008, Father and Mother failed to consistently participate in the services. For example, they missed TERROS meetings and did not submit several required samples for UA. In May, Father tested positive for cocaine. Both parents were also not compliant with parent-aide services.

¶16 On August 4, 2008, while investigating a report of prescription drug trafficking in Father and Mother's apartment, ADES found a "crack pipe" in the home. ADES moved to change the case plan to severance and adoption at a permanency planning hearing on August 26. The court denied the motion in order to permit the parents additional time to show compliance with

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<sup>1</sup> The children were later placed with their paternal cousins when a drug test indicated the aunt had used cocaine. The children remained with their cousins throughout the proceedings.

services and rescheduled a hearing for November. From August to November 2008, both parents failed on several occasions to provide samples for UA, and Father tested positive for cocaine in August and October and for alcohol twice in September. During this time Mother fully participated in TERROS, but Father did not.

¶17 In November 2008, the juvenile court granted ADES's request to change the case plan to severance and adoption. ADES moved to terminate Father and Mother's parental rights to A.R. and A.N. on the grounds: (1) both parents are unable to discharge their parental responsibilities because of a history of chronic abuse of dangerous drugs and there are reasonable grounds to believe the condition will continue for a prolonged period of time, see A.R.S. § 8-533(B)(3) (Supp. 2009); and (2) Father has substantially neglected or willfully refused to remedy the circumstances that caused the children to be in an out-of-home placement for a cumulative period of nine months or longer, see A.R.S. § 8-533(B)(8)(a). The court ordered the matter be set for mediation in February 2009.

¶18 Father and Mother were not compliant with ADES's services following the change in case plan to severance and adoption. In December 2008, Mother tested positive for cocaine

and she missed TERROS meetings over the next several months.<sup>2</sup> Father did not submit samples for UA from November 2008 to April 2009. In April 2009, he was indicted on one count of possession for sale of narcotic drugs and was later convicted and sentenced to two years' imprisonment.

¶19 At the mediation in February 2009, the parents and ADES were unable to reach an agreement. Later that month, ADES filed a "First Amended Motion for Termination of Parent-Child Relationship" to add the allegation that Father and Mother were unable to remedy the circumstances that caused the children to be in an out-of-home placement for fifteen months or longer, see A.R.S. § 8-533(B)(8)(c). A contested severance hearing was held on May 12, September 23, and October 28, 2009. The court heard testimony from Father, Mother, and the case manager.

¶10 The court subsequently found that ADES had not sufficiently proved the grounds for severance as to Mother based on substance abuse under § 8-533(B)(3). But the court found severance was warranted as to both parents based on the children's out-of-home placement for fifteen months or longer under § 8-533(B)(8)(c), and as to Father alone based on substance abuse under § 8-533(B)(3) and the children's out-of-home placement for nine months or more under § 8-533(B)(8)(a).

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<sup>2</sup> Mother also tested positive for opiates throughout December 2008 and January 2009. She had a doctor's prescription for Vicodin, however, which she produced to her case manager.

The court also found that severance was in the best interests of the children.

¶11 Father and Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1) (2003), and 12-2101(B) (2003).

#### **ANALYSIS**

¶12 In Arizona, termination of the parent-child relationship is governed by A.R.S. §§ 8-531 to -544. To terminate a parent's rights the court must find one or more of the grounds for termination listed in § 8-533(B) by clear and convincing evidence. A.R.S. § 8-533(B). The court must also find by a preponderance of the evidence that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284 ¶ 22, 110 P.3d 1013, 1018 (2005). Because the juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses, and make appropriate factual findings, we will not reweigh the evidence but will only look to determine if there is substantial evidence to support the court's ruling. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). We will not disturb the court's ruling absent an abuse of discretion. *Id.*

#### **Termination of Father's Parental Rights**

¶13 Father contends the court erred when it terminated his parental rights to A.R. and A.N. based on chronic substance

abuse under § 8-533(B)(3). To terminate on this ground, there must be clear and convincing evidence that Father was unable to discharge his parental responsibilities "because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol" and that there were "reasonable grounds to believe that the condition [would] continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3). We find no error.

¶14 Father testified at the severance hearing that he had been addicted to cocaine "for over 30 years." During the course of the dependency proceedings he was referred three times to substance abuse treatment by ADES, and each time he failed to complete the treatment. He testified he had stopped attending these treatments because of his addiction and because "[he] felt [he] didn't have a problem and [he] did."

¶15 Father tested positive for cocaine in May, August, and October 2008, and he tested positive for alcohol twice in September 2008. In February 2009, three months prior to the start of the severance hearing, he was arrested for possessing cocaine base or hydrolyzed cocaine for sale. He began participating in substance abuse services in May 2009, the same month the severance hearing began, but he tested positive for alcohol twice in September 2009. On September 23, 2009, the last day the court heard testimony during the hearing, Father had abstained from cocaine for only five months and from alcohol

for less than one month. He testified that it was the longest period he had ever maintained sobriety and that doing so had been "a struggle."

¶16 Father asserts he is "on the road to recovery and intends to maintain his sobriety through programs offered in prison," and he argues the court's ruling is inconsistent because it did not also find Mother was unable to discharge her parental responsibilities because of substance abuse even though she had also tested positive for cocaine during the proceedings and had failed to submit samples for urinalysis on several occasions. There is sufficient evidence, however, that Father has a history of chronic substance abuse that will continue for a prolonged indeterminate period, and we will not reweigh that evidence. See *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47. Because there is sufficient evidence supporting the court's findings under § 8-533(B)(3), we do not address Father's arguments regarding § 8-533(B)(8)(a) and (c). See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) ("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.").

¶17 Father also argues the court erred in finding termination of his parental rights is in the children's best



interest. To establish that termination is in the children's best interest, ADES was required to show the children would derive an affirmative benefit from termination or incur a detriment from continuing the relationship. See *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6, 100 P.3d 943, 945 (App. 2004). "The existence of a current adoptive plan is one well-recognized example of such a benefit." *Id.*

¶18 The evidence shows that the children are currently placed with their paternal cousins and that these cousins are willing to adopt the children. At the time of the severance hearing, A.R. and A.N. had been in that home for more than one year, the placement was meeting the children's physical, social, educational, medical, psychological, and emotional needs, and the children were bonded to their placement and referred to them as "mom" and "dad." In light of the children's placement in a home willing to adopt them, the court did not err in finding termination is in their best interest. See *id.* at ¶ 8.

#### **Termination of Mother's Parental Rights**

¶19 The juvenile court terminated Mother's parental rights to A.R. and A.N. based on the children being in an out-of-home placement for fifteen months or longer under A.R.S. § 8-533(B)(8)(c). Under § 8-533(B)(8)(c), there is a sufficient basis to terminate parental rights if the children have been in an out-of-home placement "for a cumulative total period of

fifteen months or longer pursuant to court order," the parent has been "unable to remedy the circumstances that cause the child[ren] to be in an out-of-home placement," and "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."

¶20 The children were placed with their paternal aunt in October 2007. It is uncontested that they have been in an out-of-home placement for fifteen months or longer.

¶21 In its detailed ruling, the juvenile court found Mother had failed to consistently comply with services offered by ADES. It stated: "To be sure, since May 2009 (when this trial began), Mother has been more consistent in complying with CPS services. Mother has not, however, been fully compliant. She has missed a number of UA's and a significant number of call-ins." It also found Mother would be "overwhelmed by the responsibilities of parenting a three year old and a four year old." The court summarized its findings as follows:

Mother is not capable or exercising proper and effective parental control over the children, and she has not done so for at least 15 months. Mother does not yet have stable housing and employment. She has a prior history with CPS, in that five of her other children were already permanently removed from her care. Although she hasn't dropped a positive UA since December 2008, Mother has missed a significant number of tests. She has a history of using drugs

after testing clean for a period of time. She relapsed into drug use after having her UA's stopped in 2008. She did not successfully complete parent aide services, and has not progressed to unsupervised visits.

¶22 Mother argues she had recently begun to comply with ADES's services, had made recent attempts to find stable housing and employment, had not used illegal drugs since September 2008, and she contends "it is her most recent behavior, the consistent efforts over the last 10 months of the case that matter most."

¶23 We find no error, however. Mother's case plan required her to obtain and maintain stable housing and employment, but she did not do so. Mother had eight different housing arrangements from September 2007 (when A.R. and A.N. were removed from her care) to September 2009 (when she testified at the severance hearing). She testified at the hearing that she had lived for the past few weeks in a studio apartment, she did not have a lease, she paid her rent weekly, and her boyfriend had paid the security deposit. The case manager testified she was concerned that Mother was unable to provide the children safe and stable housing. Moreover, Mother did not successfully complete her parent aide services and did not consistently provide samples for UA. And a psychologist who consulted with Mother concluded "the prognosis of her adequately parenting her children in the long-term is poor." There was

sufficient evidence, therefore, that Mother had not remedied the circumstances that caused the children to be in an out-of-home placement. Based on her failure to remedy these circumstances and on the psychologist's assessment, there was also evidence that she would likely not be able to exercise parental control in the near future.

**CONCLUSION**

¶24 For the foregoing reasons, we affirm the juvenile court's order terminating the parental rights of Eligio C. and Vanessa C. to their children A.R. and A.N.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA K. NORRIS, Judge

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