



### ***Facts and Procedural History***<sup>1</sup>

¶2 Mother is the biological mother of N., born June 2003; A., born January 2005; and S., born December 2006. On the day S. was born, the Arizona Department of Economic Security ("ADES") was notified that Mother had tested positive for amphetamines, barbiturates, and tricyclics. Although the hospital was unable to test S. for the presence of drugs, S. exhibited symptoms consistent with withdrawal. Upon S.'s discharge from the hospital on December 28, 2006, Mother voluntarily agreed to place N., A., and S. into temporary ADES custody. Thereafter, Mother refused to complete drug testing services required by ADES as part of the placement, and on January 16, 2007, Mother revoked the voluntary placement agreement. On January 29, 2007, ADES filed a dependency petition and N., A., and S. were subsequently removed from Mother's custody. On February 5, 2007, the juvenile court held a temporary custody hearing and ordered that the children be returned to Mother's custody. The court also ordered that Mother cooperate and participate in a MMPI evaluation (Minnesota Multiphasic Personality Inventory), a psychological evaluation, continued urinalysis ("UA") tests and a hair follicle test.

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<sup>1</sup> We view the facts in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 Between February and April 2007, Mother failed to submit to nearly all required UA tests, and in February and March, Mother's hair follicle tests returned positive results for methamphetamine. On April 23, 2007, the juvenile court found the children dependent as to Mother and her husband ("Father"). Thereafter, ADES took custody and placed the children in foster care. The case plan at that time was family reunification. In September 2008, it was changed to severance and adoption after Mother failed to comply with services provided by ADES.

¶4 In February 2007, to address Mother's drug problem, ADES made a referral for Mother to receive services from TERROS. After the February referral was closed because of Mother's non-compliance and refusal of services, ADES made another referral in June 2007. Mother completed the TERROS assessment, but because she failed to comply with the resulting recommendations and to contact TERROS as requested, the July referral was also closed. In February 2008, ADES made its final referral to TERROS, which was closed in April 2008 because of Mother's non-compliance and lack of contact.

¶5 ADES provided Mother with hair follicle tests and random UA tests from the beginning of the dependency to September 2008. Mother's case manager reported that while the UA tests were being requested during 2007 and 2008, Mother was

only minimally compliant with the random screenings. She testified at the severance hearing that despite being told that missed UA tests would be viewed as a positive result, Mother missed approximately seventy-five UA tests during 2007. From January to July 2008, Mother failed to submit to UA testing thirty-three out of fifty-one required times and submitted to UA tests on seven occasions on which she was not required to do so. Mother's case manager reported that although Mother's tests had been negative since July 2007, she did not test with enough regularity or in strict enough compliance with the randomized schedule to provide clear evidence that she had not in fact been using drugs in between tests. Additionally, in September 2008, Father admitted to police that both he and Mother used methamphetamine.

¶6 ADES provided Mother with an MMPI evaluation in April 2007. The resulting recommendations were that Mother should receive parenting classes, parent-aide services, a full psychological evaluation, a substance abuse assessment and supervised visitations. Consistent with the MMPI recommendations, from July 2007 to November 2008, ADES provided Mother with three consecutive referrals to Arizona Baptist Children's Services for parent-aide services. These services included supervised visitations between Mother and her children, as well as weekly one-on-one meetings to discuss various

parenting topics such as childhood developmental milestones, proper nutrition, feeding, and discipline techniques. Between September 2007 and August 2008, fifty-four visits were made available for Mother and children to visit under the supervision of parent aides. Mother missed twenty of the fifty-four appointments. As a result, ADES requested Mother arrive an hour early to the visitation appointments. Mother responded that she would not comply.

¶7 With respect to the one-on-one training sessions with parent aides, Mother's case manager testified that after the first month, Mother's attendance at those sessions was "sporadic, if at all" and that Mother did not complete all of the homework assignments from the sessions she did attend.

¶8 ADES arranged for Mother to participate in a psychological evaluation on July 4, 2007. Despite being aware of the appointment date in advance, and that it coincided with a holiday, Mother did not cancel until the day of the appointment. Consequently, ADES made another referral for the evaluation in October 2007. From the results of that evaluation, it was recommended that Mother continue to receive drug testing and parent aid, and that she receive individual counseling, and attend either a specific anger-management-skills training group or dialectical behavior therapy ("DBT").

¶9 In response to these recommendations, ADES referred Mother to individual therapy, but Mother refused to participate. ADES referred Mother to attend anger management sessions, but Mother made various complaints objecting to the nature and necessity of the anger management services. Mother complained that she wanted individual anger management sessions in her home and not group sessions. ADES accommodated the request by making a referral for individual sessions. After Mother requested that a different agency provide the counseling, ADES referred her to Ameripsych. From January to May 2008, Mother attended two anger management sessions, cancelled two, and failed to appear at three. Mother's anger management therapist reported that Mother did not return her phone calls, attended counseling inconsistently, was not making progress, and did not appear motivated for services. Anger management services were discontinued in June 2008.

¶10 Mother's case manager testified at the severance hearing that Mother still had anger management issues and that she had seen Mother have outbursts of anger, even while supervised, that would intimidate children. The case manager further testified that she was concerned about what Mother might do if supervisors were not present to de-escalate the situation and ensure the safety of the children.

¶11 At a permanency planning hearing in February 2008, Mother was ordered by the court to participate in DBT, which had been recommended previously and for which ADES made a referral. Mother did not comply. The court also ordered Mother to participate in a bonding assessment. Mother's original appointment with Dr. Moe was scheduled for May 16, 2008. Dr. Moe was later subpoenaed to testify in court on that date and was forced to cancel the appointment. Mother was not informed of the cancellation, but she did not show up for the appointment. The appointment was then changed to June 13, 2008. Mother did not appear for that appointment either. Because Mother had not appeared for two consecutive appointments, Dr. Moe did not schedule a third.

¶12 In April 2008, Mother pled guilty to one count of shoplifting. On September 11, 2008, Mother and Father were arrested for stealing goods from a commercial storage unit. Mother later pled guilty to one count of solicitation and was placed on probation for two years.

¶13 In September 2008, after changing the case plan from reunification to adoption and severance, ADES filed a motion to terminate Mother's and Father's parental rights, alleging two statutory grounds for termination. As to Mother, ADES alleged under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8) (2007) that Mother had substantially neglected or wilfully

refused to remedy the circumstances which caused the children to be in an out-of-home placement for nine months or more. ADES also alleged that Mother had been unable to remedy the circumstances which caused the children to be in an out-of-home placement for fifteen months or more and that there was a substantial likelihood that she would not be capable of exercising proper effective parental care and control in the near future.

¶14 Following the case-plan change, ADES continued to offer reunification services. As they had throughout the dependency, ADES continued to arrange visits between Mother and children and, when available, provide Mother with transportation. Because ADES had concerns about Mother's income, Mother was provided day care for her other child so that she could look for stable employment. ADES also offered Mother a housing subsidy if, among other things, she could provide proof that she and Father had sufficient income to support the housing costs once the financial assistance ended. Although Mother's case manager requested documentation of employment more than once, Mother failed to provide it.

¶15 A contested severance hearing was held on five days between August and November 2009. At the commencement of the hearing, N., A., and S. had been in their respective foster homes continuously for approximately twenty-eight months. On



February 2, 2010, the juvenile court issued an order severing Mother's and Father's parental rights pursuant to A.R.S. §§ 8-533(B)(8)(a) (nine months in care) and -533(B)(8)(c) (fifteen months in care). Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21 (2003), and 12-2101(B) (2003). For the reasons stated below, we affirm.

### ***Discussion***

¶16 Mother argues that the juvenile court erred in severing her parental rights pursuant to A.R.S. § 8-533(B)(8). In particular, Mother alleges that there was insufficient evidence to support the court's findings that (1) ADES made a diligent effort to provide appropriate reunification services, (2) Mother substantially neglected or wilfully refused to remedy the circumstances that caused her children to be in an out-of-home placement for nine months or longer,<sup>2</sup> and (3) it was in the best interest of the children to sever Mother's rights.

¶17 On appeal, we do not reweigh the evidence or make credibility determinations; instead, we examine the record merely to determine whether there is reasonable evidence of the grounds for termination. *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002)

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<sup>2</sup> Mother also asserts insufficiency of evidence as to the fifteen months in care provision. A.R.S. § 8-533(B)(8)(c). We discuss this briefly in footnote 4, *infra* ¶ 26.

("The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings."); *Audra T. v. Ariz. Dep't. of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (explaining that this court "will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them.").

### **1. Diligent Efforts to Provide Reunification Services**

¶18 In order to terminate the parent-child relationship based on a child's placement in out-of-home care for nine months, the court must find "that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8). ADES fulfills its obligation when it provides the parent "the time and opportunity to participate in programs designed to help [him or her] become an effective parent." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). ADES is not required to "provide 'every conceivable service'" or to "undertake rehabilitative measures that are futile." *Mary Ellen C.*, 193 Ariz. 185, 192, ¶¶ 34, 37, 971 P.2d 1046, 1053, (quoting *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239.)

¶19 Here, reasonable evidence supports the juvenile court's finding that ADES "made a diligent effort to provide appropriate reunification services." In response to Mother's drug problem, ADES provided Mother with three separate referrals to TERROS and continuous drug testing from the beginning of the dependency until September 2008 when Mother's case manager said the tests were no longer necessary. In response to the MMPI evaluation, ADES provided Mother with a psychological evaluation and three consecutive referrals to parent-aide services, which included supervised visits and parenting skills classes. In response to the results of the psychological evaluation, ADES referred Mother to individual therapy and anger management sessions.

¶20 After a permanency planning hearing was held, ADES provided Mother with a referral to DBT services and two appointments for a bonding assessment. When ADES concluded that employment was an issue preventing reunification, ADES provided Mother with day care services to allow Mother to look for steady employment. When stable housing became an issue, ADES offered Mother a housing subsidy on condition that she could demonstrate the ability to afford the housing in the future. Finally, throughout the entire dependency, Mother was provided with regular visits with her children and, when available, was given transportation to those visits. Thus, we conclude that there is

sufficient evidence to support the juvenile court's finding that ADES was diligent in offering appropriate reunification services.

## **2. Substantial Neglect or Wilful Refusal to Remedy Circumstances**

¶21 In order to terminate the parent-child relationship based on a child's placement in out-of-home care for nine months or more, the court must find that "the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." A.R.S. § 8-533(B)(8)(a). "Termination is not limited to those who have *completely* neglected or wilfully refused to remedy such circumstances." *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). We have construed § 8-533(B)(8) "'to mean 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).

¶22 Here, sufficient evidence supports the juvenile court's finding of substantial neglect or wilful refusal under § 8-533(B)(8)(a). At trial, the case manager testified that mother's drug history was still "significant."<sup>3</sup> Mother had three

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<sup>3</sup> The exact language was as follows:

Q. "What would you say about the parents' drug history?"

TERROS referrals closed due to non-compliance. She also failed to comply with random UA testing to such a degree that her case manager reported that Mother had essentially created her own schedule and that no clear evidence existed to show that she had not used drugs in between tests. Despite being informed that a missed test would be viewed as a positive result, Mother chronically missed her required UA tests. Moreover, despite Mother's negative test results during 2008, Father told police that he and Mother were still using methamphetamine as of September 2008.

¶23 There was also evidence that Mother substantially neglected parent-aide services offered by Arizona Baptist Children's Services. Mother missed twenty of the fifty-four supervised visits offered by Arizona Baptist Children's Services. Her attendance at the weekly parent-aide meetings was also "sporadic," and she did not complete all the homework assigned for the classes she did attend.

¶24 After ADES attempted to accommodate Mother's requests for the anger management classes, Mother still attended only two classes, cancelled two, and simply failed to appear at three. Her therapist reported that Mother would not return her phone

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A. . . . .  
"I would say it would be significant. There has never been consistent tests that have proven otherwise."

calls, that no progress was being made, and that mother did not appear motivated for services. All this occurred despite instances in which Mother had become so angry in front of supervisors that her case manager was concerned for the safety of the children if they were returned.

¶25 Mother also failed to comply with the court's orders at the February 2008 permanency planning hearing. She did not participate in DBT services and failed to appear at both bonding assessment appointments. At the hearing, Mother was also told that she needed to find stable housing. Despite this, between the permanency planning hearing and the end of the severance hearing, Mother had lived in at least six different locations.

¶26 Mother's case manager reported that Mother had been "resistant to participating in the case plan and seem[ed] to believe that the services that she ha[d] been asked to participate in [were] not warranted." The case manager also stated that Mother "[had] made little to no effort in regards to the services [ADES had] offered to [her]." Based on the foregoing, we conclude that sufficient evidence supports the juvenile court's finding that Mother substantially neglected or wilfully refused to remedy the circumstances that caused her

children to be in an out-of-home placement for more than nine months.<sup>4</sup>

### **3. Children's Best Interests**

¶27 To prove that termination is in the children's best interests, ADES "must present credible evidence" showing by a preponderance of the evidence that the children "'would benefit from a severance or be harmed by the continuation of the relationship.'" *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶¶ 7, 8, 177 P.3d 327, 329 (App. 2008) (quoting *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004)). ADES may satisfy this burden by presenting "credible evidence that the child is adoptable." *Id.* at ¶ 8. The trier of fact is not *required* to terminate upon a finding that a child is "adoptable," but it is within the fact finder's discretion to terminate on that basis alone. *Id.* at 588, ¶ 11, 177 P.3d at 330; *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50 ("The best interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child or even that the child is adoptable.") (citation omitted).

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<sup>4</sup> We need not address Mother's additional arguments that severance was inappropriate pursuant to A.R.S. § 8-533(B)(8)(c) (fifteen months), because proof of only one statutory ground for severance is needed to uphold the juvenile court's order. A.R.S. § 8-533(B). However, the facts that support severance under A.R.S. § 8-533(B)(8)(a) also support severance under § 8-533(B)(8)(c).

¶128 Here, the case manager testified that the children had spent the past twenty-eight months, and the majority of their lives, in foster care. Of S.'s thirty-two months of life - as of the time of the severance hearing - she had spent twenty-nine months in ADES custody. A. had spent forty out of fifty-five months in foster care. And N. had spent fifty-four out of seventy-two months in the same foster home. Additionally, N.'s foster mother testified that N. was very attached to her and that she was willing to adopt him. When N.'s foster mother was asked if she would maintain contact between N., A., and S., she stated that she was "very committed to making sure they're always a part of each other's life."

¶129 Mother's case manager testified that the severance would provide the children with the stability and structure that they needed. She stated that even if the severance were denied, she would recommend the children stay in their out-of-home placements for another year while Mother demonstrated stable housing and employment. Moreover, because it was established that this was not the first dependency for Mother, there was evidence that if the children were returned, they might be removed again at a later time.

¶130 Evidence was also presented that living with Mother might expose the children to crime, drugs, and violence. In September 2008, after having pled guilty to one count of



shoplifting, Mother was arrested for stealing goods from a commercial storage unit and was placed on two-years probation. Despite Mother's testing clean for drugs, evidence showed that methamphetamine continued to be an issue. Finally, Mother's case manager testified that because of Mother's unresolved anger issues, she was concerned about what Mother might do without supervisors present to ensure the safety of the children. In light of the above facts, we conclude that sufficient evidence supports the juvenile court's finding that termination was in the best interests of the children.

***Conclusion***

¶31 Finding sufficient evidence to support the termination of Mother's parental rights, we affirm.

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

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DONN KESSLER, Presiding Judge

/s/

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JON W. THOMPSON, Judge