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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



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

ROSA C., ) No. 1 CA-JV 10-0038  
)  
) DEPARTMENT C  
Appellant, )  
) **MEMORANDUM DECISION**  
)  
v. )  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Ariz. R.P. Juv. Ct. 103(G);  
SECURITY, Do.E., De.E., J.B., ) ARCAP 28)  
A.B., M.C.,<sup>1</sup> )  
)  
Appellees. )

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Appeal from the Superior Court in Maricopa County

Cause No. JD16780

The Honorable Shellie Smith, Judge *Pro Tempore*

**AFFIRMED**

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Terry Goddard, Arizona Attorney General Mesa  
By Amanda Holguin, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

The Stavris Law Firm, PLLC Scottsdale  
By Alison Stavris  
Attorneys for Appellant

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<sup>1</sup> The caption is amended to refer to the children by their initials.

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J O H N S E N, Judge

¶1 Rosa C. ("Mother") appeals from the superior court's order terminating her parental rights to her five children. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 This matter commenced in May 2008 with the filing of a private dependency action as to two of Mother's children, J.B. and A.B. In July 2008, the Arizona Department of Economic Security ("ADES") filed an in-home dependency regarding two other children, Do.E. and De.E. The superior court found each of the children dependent as to Mother and set the case plan as family reunification. All four children were in Mother's physical custody.

¶3 After a few months, however, in arresting Mother's oldest son (not a minor), the police found a methamphetamine pipe in the children's bedroom. In addition, the case manager was informed that two homeless women were living in the home and that background checks had not been conducted on them, the children were dirty and the children had been left alone on several occasions. The four children were removed from Mother's physical custody on December 31, 2008. In March 2009, ADES filed a supplemental dependency petition regarding M.C., who was born in January 2009 and taken into custody on March 19, 2009.

When Mother failed to appear at the pretrial conference, the court found M.C. dependent as to Mother.

¶14 At the Permanency Hearing on September 29, 2009, the court changed the case plan to severance and adoption. The Department filed a motion for termination of parent-child relationship regarding all five children, alleging termination was warranted pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(Supp. 2009). Mother contested the termination, and the court advised Mother on the record that if she failed to appear at the next hearing, the court "could go ahead in [her] absence and make rulings up to and including terminating [her] parental rights." Mother stated that she understood. The court also provided Mother with a Form III, which she signed, acknowledging that she understood that her failure to appear at future hearings could result in the court terminating her parental rights.

¶15 The court held a scheduled pretrial conference on January 5, 2010, at which Mother did not appear. The court found she had proper notice and no good cause for failing to appear. The court then proceeded to take evidence on the motion for termination. Nine exhibits were admitted, and the case manager testified. The court amended the motion for termination in accordance with a request by the children's guardian ad litem to include A.R.S. § 8-533(B)(3) (mental illness). The court

found all grounds for termination had been met by clear and convincing evidence and that termination was in the children's best interests and granted ADES's motion to terminate.

¶16 In its formal findings of fact and conclusions of law, the court found termination appropriate based upon A.R.S. § 8-533(B)(8)(a), (b) (time-in-care) and § 8-533(B)(3) (substance abuse). Mother timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235 (2007).

#### DISCUSSION

¶17 On appeal, Mother argues only that the court erred by considering mental illness as a ground for termination and that the evidence did not support termination on the ground of substance abuse. ADES does not contend on appeal that the judgment may be supported on grounds of mental illness or substance abuse, but argues the superior court correctly terminated Mother's rights based on time-in-care, pursuant to A.R.S. § 8-533(B)(8)(a), (b).

¶18 Although Mother's brief does not address A.R.S. § 8-533(B)(8)(a) or (b), we have examined the record and conclude it contains sufficient evidence to support the superior court's order. The superior court must find at least one of the statutory grounds for termination by clear and convincing evidence. A.R.S. § 8-537(B) (2007); *Kent K. v. Bobby M.*, 210 Ariz. 279, 281-82, ¶ 7, 110 P.3d 1013, 1015-16 (2005). When the

court severs parental rights on more than one ground, we may affirm on any one ground. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). We "will accept the juvenile court's findings in support of severance unless those findings are clearly erroneous." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 190, ¶ 25, 971 P.2d 1046, 1051 (App. 1999).

¶19 Section 8-533(B)(8) states the court may terminate the parent-child relationship when:

the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that either of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order . . . and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

(b) The child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department.

¶10 According to the case manager's testimony at trial, the four older children were taken into ADES custody on January 9, 2009, and M.C. was taken into ADES custody on March 19, 2009. Therefore, by the date of the hearing, the older children had been in an out-of-home placement for more than nine months and M.C. for more than six months.

¶11 The court found ADES had made diligent efforts at reunification, including offering Mother "substance abuse assessment and treatment, Parent aide services, visitation, and counseling." This finding was supported by evidence that ADES offered Mother a psychological consultation, two psychological evaluations, parent aide services, visitation, transportation, a Families First intake and group sessions, and random urinalysis testing.

¶12 The court further concluded by clear and convincing evidence that Mother "substantially neglect[ed] or willfully refus[ed] to remedy the circumstances that cause the children to be in an out-of-home placement." The relevant "circumstances" are those that exist at the time of severance, not the circumstances that existed when the children were first removed. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007). In support of its conclusion, the court found Mother had not participated in services that were designed to enable her to appropriately care

for her children, including parent aide services, counseling services and substance abuse treatment services, and had failed to provide a safe home for the children.

¶13 Evidence in the record supports these findings by the court. The case manager testified that Mother's family-preservation and parent-aide services were closed unsuccessfully, she was confrontational with the parent aide and failed to do her homework from parent aide services, she made no positive behavioral changes throughout the period in which she received services and over that time may have actually declined in her behavior by being "more confrontational, more argumentative, ruder . . . [and] physically threatening." According to the case manager, Mother's "actions have gotten progressively worse instead of better." Also, despite several requests, Mother had not provided documentation of her financial status.

¶14 The case manager testified that Dr. James Thal, who examined Mother in September 2009, recommended caution before reunification because of Mother's "chronic pattern of inadequate care of her children." Additionally, Thal stated that Mother "suffer[s] from significant characterological deficits that will lead her to repetitiously committing the same mistakes." He further characterized her decisions and actions as "dysfunctional" and concluded that "[h]er narcissistic traits

make it very difficult for her to place the needs of others, including her children, ahead of her own."

¶15 Finally, the court also found that termination would be in the children's best interests because it would provide them permanency and stability so that they "would be free from abuse or neglect stemming from Mother's lack of supervision" and would permit them to be adopted. The evidence in the record, including that adoptive placements had been identified for each of the children, supports the court's conclusions that termination was in the children's best interests.

#### CONCLUSION

¶16 For the foregoing reasons, we affirm the superior court's order terminating Mother's parental rights to her five children.

/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/\_\_\_\_\_  
DONN KESSLER, Judge

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