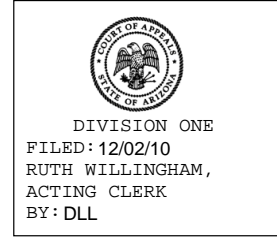


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24

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



MANUELA S., ) 1 CA-JV 10-0128  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Ariz.R.P.Juv.Ct.  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G); ARCAP 28)  
SECURITY, ISMAEL L. )  
Appellees. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. JD 14440

The Honorable Christopher A. Coury, Judge

**AFFIRMED**

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Denise L. Carroll  
Attorney for Appellant

Scottsdale

Terry Goddard, Attorney General  
By Carol A. Salvati, Assistant Attorney General  
Attorneys for Appellees

Phoenix

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**I R V I N E**, Judge

¶1 Manuela S. ("Mother") timely appeals from the juvenile court's order terminating her parental relationship with Ismael L. ("the son"). For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶2 The son was born exposed to methamphetamines in June 2004. The Arizona Department of Economic Security ("ADES") offered drug treatment and parenting classes, but Mother failed to complete them. In 2005 and 2007, Mother gave birth to two more children who tested positive for either methamphetamines or cocaine. Each time, ADES offered in-home intervention services and Mother relapsed. In 2008, Mother tested positive for cocaine during another pregnancy, but the child tested negative for drugs.

¶3 In November 2008, the son was diagnosed with attention-deficit hyperactivity disorder and was determined to be developmentally delayed. The son had severe behavioral problems and a learning disorder. He was moody and "out of control" and hit his younger siblings "in an impulsive manner." On January 7, 2009, Mother requested that ADES remove the son from the home because she could not control his violent behavior. Mother was offered supervised visitation.

¶4 On January 27, 2009, in-home intervention was rescinded as to the son, and the juvenile court found him dependent as to Mother. In February 2009, the son unzipped his pants and grabbed his penis while standing directly over a three-year-old girl. He stated he "wanted to molest the child

and have sex with her." When told that was wrong, he asked why it was not wrong when Mother's boyfriend did that to him.

¶15 In March 2009, the son was placed in a new foster home, where he has remained since. In June 2009, the son confided to his foster mother that he had been physically and sexually abused while in Mother's care. After consulting the son's psychologist, Dr. B., the case manager suspended Mother's visitation.

¶16 In February 2010, Mother again tested positive for methamphetamines. A best-interest evaluation was performed, and the case plan was changed to severance and adoption. In March 2010, Mother tested positive for marijuana. The next day, she gave birth to another child exposed to methamphetamines. ADES took Mother's other children into temporary custody.

¶17 As to the son, ADES filed a motion to terminate Mother's parental rights based on continuous out-of-home placement for nine months and cumulative out-of-home placement for fifteen months.<sup>1</sup> ADES amended its petition to allege that Mother was also unable to parent him due to chronic drug abuse.

¶18 At a contested evidentiary hearing on June 1 and 2, 2010, ADES withdrew its allegation of continuous out-of-home placement for nine months. On June 9, 2010, the court ordered

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<sup>1</sup> The severance motion also named the son's father, who is not a party to this appeal.

Mother's parental rights to the son terminated based on Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) and - 533(B)(3) (Supp. 2010).<sup>2</sup>

#### DISCUSSION

¶9 Mother contends that the juvenile court violated her rights to due process by terminating her parent-child relationship without "clear and convincing" evidence. We disagree.

¶10 We review an order terminating parental rights for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). Due process requires that the State prove allegations in termination proceedings by clear and convincing evidence. See *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 94, ¶ 8, 210 P.3d 1263, 1265 (App. 2009) (citations omitted). A juvenile court must find by clear and convincing evidence at least one statutory ground for termination pursuant to A.R.S. § 8-533(B), and that termination is in the best interests of the child.<sup>3</sup> *Jennifer G.*

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

<sup>3</sup> The juvenile court found by a preponderance of the evidence that termination was in the best interests of the son. Because Mother has not challenged this determination, we accept the juvenile court's findings and will not address the issue further.

*v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005).

¶11 Mother argues that the juvenile court should not have considered hearsay testimony from two case managers who were incompetent to testify. We disagree. Although they were only recently assigned to this case, both case managers were familiar with its facts. T.C. was the original case manager's supervisor and covered for him during the last month before trial while he was on medical leave. T.M. was the continuing case manager assigned to this and Mother's other children's cases in April 2010. These witnesses referenced, without objection or upon invitation of defense counsel, various documents to refresh their recollections. These documents were stipulated to at the outset of the hearings and are part of the record as Exhibits 1 to 16. These documents have not been challenged on appeal.

¶12 Additionally, the juvenile court did not err in considering the case managers' testimony because Mother never objected at the hearing. *See Starkins v. Bateman*, 150 Ariz. 537, 544, 724 P.2d 1206, 1213 (App. 1986) ("[I]f hearsay evidence is admitted without objection, it becomes competent evidence admissible for all purposes."). This issue has therefore been waived because Mother raises it for the first time on appeal. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 103, ¶ 24,

158 P.3d 225, 232 (App. 2007) (holding the failure to object to exhibits at trial waives that issue on appeal).

¶13 Mother further argues that the evidence presented in support of termination did not meet the "clear and convincing" standard because the "two case managers who [testified] were unprepared[,] knew little about the case and could not provide reliable details about the case on either direct or cross examination." Although she claims this is a violation of her due process rights, Mother actually raises an insufficiency of the evidence claim.

¶14 When considering whether evidence supporting the statutory grounds for termination is sufficient, we defer to the juvenile court's factual findings and will not reweigh the evidence unless no reasonable evidence supports them. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We will affirm a severance order unless it is clearly erroneous. *Id.*

¶15 The juvenile court terminated Mother's parental rights pursuant to A.R.S. § 8-533(B)(8)(c). Under this statute, a court may terminate a parent's rights if: (1) the child has been "in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order"; (2) the parent has been "unable to remedy the circumstances that cause the child to be in an out-of-home placement"; and (3) "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." A.R.S. § 8-533(B)(8)(c). The juvenile court must also find that ADES has made a diligent effort to provide reunification services. A.R.S. § 8-533(B)(8).

¶16 The testimony of uncontested witnesses and documentary evidence support termination under A.R.S. § 8-533(B)(8)(c). First, there is no dispute that the son was placed out of the home for a period of over fifteen months. Second, ADES took custody because Mother, by her own admission, was unable to control her son, who was born exposed to methamphetamines and developed severe behavioral problems. Mother was also aware of developmental problems but neglected to make arrangements to provide mental health or long-term care for the son, relying on the case manager to do so for her. Instead, she continued to use methamphetamines and cocaine. She lived with her boyfriend, who had multiple drug convictions, and because she did not work, was completely dependent on his income.

¶17 After the son was removed from the home, he told the foster mother that he was physically abused by Mother's boyfriend. He said that the Mother assisted the boyfriend by tying him up outside and locking the door as the boyfriend kicked him. The son also revealed that he had been sexually abused by Mother's boyfriend. He had recurring nightmares about

the Mother and her boyfriend, whom he called "monsters." A psychological evaluation diagnosed the son with post-traumatic stress disorder and anxiety disorder consistent with physical and sexual abuse.

¶18           Meanwhile, Mother did little to remedy the situation. Mother denied that the son was sexually abused and called him a liar. She testified, "[T]he boy never said anything to me," and that she never witnessed any abuse. She told her therapist, however, that the boyfriend's brother had molested the son. At trial, she recanted and said her boyfriend's brother hit the son on the bottom twice. When asked, "If [the son] told his counselor that he has been abused, do you think he's lying?" she replied, "Yes."

¶19           In addition, Mother continued to live with her boyfriend until he went to prison on a drug offense. She missed psychological evaluations and numerous family counseling sessions ("CFT"), stating "It ha[s] been a long time since I ha[ve] gone to any of them." Even though Mother was not even aware that her visitation had been suspended, she testified that the last time she visited her son was "like nine months ago or a year." Mother also did not participate in substance abuse treatment and continued to test positive for drugs.

¶20           In stark contrast, the foster mother made significant progress in correcting the son's behavior. Under the foster



mother's care, the son is now developmentally on track in speech, no longer requires physical therapy, and continues to receive psychological therapy.

¶21 Third, the evidence shows a substantial likelihood that Mother will not be able to provide proper care for the son in the near future. Dr. B. reported that the son will need continuing "psychotherapeutic services to resolve the effects of previous abuse and neglect," and "a very structured residential setting that provides attention to his special need[s]." He opined that the son "is going to need more than a minimally adequate parent." Dr. B. did not believe that Mother could provide that care because she functions "in the Borderline range of intelligence," and such a person will have "great trouble acquiring the knowledge to be able to attend to [the son's] special needs." Mother also has never worked in her life and has no income to support the son.

¶22 Significantly, Mother's own psychologist diagnosed her with "polysubstance dependence which was in remission." She concluded that Mother had high levels of stress which made her vulnerable to relapse. Mother agreed that a relapse would put her children "at risk." Although Mother admitted that she has a drug problem and needs treatment, she denied that she relapsed. The trial court did not find her testimony credible. Mother repeatedly tested positive for drugs and admitted using cocaine

on at least one occasion after the son was removed. In March 2010, she gave birth to a methamphetamine-exposed child. Mother did not seek any treatment for her substance abuse problem.

¶23 Finally, the evidence shows that ADES has fulfilled its statutory duty to provide Mother with reunification services, including drug treatment, parenting skills training, CFTs, psychological evaluations, and arranging for the child's special needs education. These services are well documented in Exhibits 1 through 16.

¶24 On this record, we cannot say that the juvenile court clearly erred in terminating Mother's parental rights under A.R.S. § 8-533(B)(8)(c). Because we affirm on this basis, we do not reach whether severance was justified on the chronic substance abuse ground. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000).

#### CONCLUSION

¶25 For the reasons stated, we affirm.

/s/  
\_\_\_\_\_  
PATRICK IRVINE, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
LAWRENCE F. WINTHROP, Presiding Judge

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