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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  
FILED: 01/03/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

TERESA V., ) No. 1 CA-JV 11-0084  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R.P. Juv.  
SECURITY, CYRUS H., JULIUS H., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD17860

The Honorable A. Craig Blakey, II, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Michael Valenzuela, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

The Law Offices of Scott J. McWilliams, LLC Phoenix  
By Scott J. McWilliams  
And Lisa C. Hauser  
Attorneys for Appellant

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O R O Z C O, Judge

¶1 Appellant Teresa V. (Mother) appeals a juvenile court order terminating her parent-child relationship with her children

(CH and JH). She argues the juvenile court erred because: (1) the Arizona Department of Economic Security (ADES) did not present clear and convincing evidence to establish that her rights should be terminated; and (2) she was deprived of due process when ADES was allowed to amend its severance motion at the end of the hearing to include a new ground for terminating her rights. For the reasons set forth herein, we affirm the order.

#### **PROCEDURAL AND FACTUAL HISTORY**

¶2 Mother is the biological parent of CH and JH. On June 4, 2007, ADES received a report that Mother had taken CH to the hospital with two fractured collar bones, which evaluating doctors opined were the result of abuse. After investigating the injuries, ADES removed CH from Mother's care, alleging CH suffered severe or serious non-accidental injuries that required immediate medical treatment. JH was born in May 2008. The day after he was born, ADES removed JH from Mother's care, alleging he was in imminent risk of harm as a result of Mother's unfitness as a parent.

¶3 Although ADES originally attempted to reunify Mother with the children, the State eventually moved to change the case plan to severance and adoption. In the severance motion, the State alleged that: (1) Mother suffered from mental illness; (2) the children had been an in out-of-home placement for more than

fifteen months and Mother had failed to correct the problems that caused the out-of-home placement; and (3) termination was in the best interests of the children. The juvenile court approved the change, noting concerns about Mother's criminal problems and failure to cooperate with ADES.

¶4 Mother contested the severance and a severance trial was held.<sup>1</sup> At the start of the trial, ADES withdrew its claim that mental illness was an appropriate ground for severance. ADES also advised the court that it intended to present evidence that Mother abandoned the children and would amend its motion to include abandonment as a ground for severance. At the end of the trial, ADES moved to amend its motion to include the abandonment ground, which the court granted over Mother's objection.

¶5 On April 26, 2011, the juvenile court filed an unsigned ruling granting ADES's motion. Mother filed a notice of appeal,<sup>2</sup> after which the court filed a signed Findings of Fact,

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<sup>1</sup> Father's rights were also terminated; however, he did not contest the severance and is not a party to this appeal.

<sup>2</sup> Although Mother filed the notice of appeal before the juvenile court filed its signed order, we have jurisdiction over the appeal because the juvenile court had already filed its final decision by unsigned minute entry when Mother filed the notice. See *Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011) (discussing the exception to the final judgment rule announced in *Barassi v. Matison*, 130 Ariz. 418, 636 P.2d 1200 (1981)).

Conclusions of Law, and Order terminating Mother's parent-child relationship with the children.

¶16 We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S) sections 8-235.A (2007), 12-120.21.A.1 (2003) and 12-2101.A.1 (2011).<sup>3</sup>

#### DISCUSSION

¶17 At the conclusion of the hearing, ADES alleged two grounds for the termination of Mother's parental rights: (1) the children had been in an out-of-home placement for a cumulative total of fifteen months or longer, Mother had been unable to remedy the circumstances that caused the children to be in an out-of-home placement and there was a substantial likelihood Mother would not be capable of exercising proper parental care and control in the near future, pursuant to A.R.S. § 8-533.B.8(c) (2011); and (2) Mother abandoned the children, pursuant to A.R.S. § 8-533.B.1. The juvenile court found that ADES proved both grounds for termination by clear and convincing evidence.<sup>4</sup>

¶18 Mother first contends the juvenile court erred because ADES did not prove the elements of § 8-533.B.8(c) by clear and

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<sup>3</sup> The Arizona Legislature recently renumbered A.R.S. § 12-2101. See 2011 Ariz. Sess. Laws, ch. 304, § 1 (1st Reg. Sess.) (effective July 20, 2011). We cite the current version of applicable statutes when no revisions material to this decision have since occurred.

<sup>4</sup> The court also found that ADES proved severance was in the children's best interest, as required by A.R.S. § 8-533.B. Mother does not contest this finding on appeal.

convincing evidence. Pursuant to § 8-533.B.8(c), parental rights may be terminated if:

The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to [A.R.S.] § 8-806, the parent has been unable to remedy the circumstances that cause the child 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.

Mother argues ADES did not meet its burden of proof because (1) the evidence presented at the hearing established that she remedied the circumstances that led to the removal of the children from her care and (2) she was capable of exercising parental care in the near future.

¶9 Regarding the circumstances that led to the children's removal, Mother contends she remedied the circumstances that were alleged in the initial dependency petition. Specifically, she claims that evidence presented at the hearing established that she: (1) did not abuse CH;<sup>5</sup> (2) acted in the best interest of her children and protected them while in her care; (3) did not use illegal substances; and (4) did not have a mental illness that prevents her from properly caring for her children.

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<sup>5</sup> In making this argument, Mother relies on a medical report that was not introduced as evidence before the juvenile court and is not part of the record on appeal. We do not consider the report in our analysis. See *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996).

¶10 Mother's argument is misplaced, however, because, even assuming her claims to be true, the relevant circumstances to be considered under § 8-533.B.8(c) are those "existing at the time of the severance" rather than those existing at the time of the initial dependency petition. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96 n.14, ¶ 31, 219 P.3d 296, 306 n.14 (App. 2009) (citations omitted). Accordingly, the relevant inquiry is whether there were unremedied circumstances at the time of the severance trial.

¶11 In this case, the juvenile court made detailed findings that Mother did not remedy the circumstances that, at the time of the hearing, were the cause of the children's out-of-home placement. Specifically, the court found that Mother: (1) was "minimally compliant with parent aide services and counseling"; (2) failed to maintain contact or cooperate with parent aides or her case manager from ADES; (3) minimally participated in parent education and supervised visits; (4) had "unresolved issues with controlling her anger, as well as with feelings of persecution and victimization"; (5) had difficulty acknowledging the reason why her children were removed; and (6) failed to maintain a normal parent-child relationship with her children after they were removed. Accordingly, the court concluded that Mother "simply refused to fully participate in services that would assure [ADES], and [the juvenile court], that she's able to

adequately provide for, and more important protect, her children." All of these findings deal with Mother's inability to remedy circumstances that arose after the filing of the initial dependency petition and existed at the time of the severance trial.

¶12 Furthermore, to the extent Mother disputes the juvenile court's factual findings or argues she presented evidence that could support different factual interpretations,<sup>6</sup> our review on appeal is limited to whether there is any reasonable theory of evidence that could support the court's findings. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93-94, ¶¶ 4-5, 210 P.3d 1263, 1264-65 (App. 2009); see also *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citations omitted) (noting that the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings."). Accordingly, we do not reweigh the evidence and "will accept the juvenile court's findings of fact unless no reasonable evidence

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<sup>6</sup> Mother's discussion in her opening brief of her ability to remedy the circumstances that initially led to her children's removal does not address the court's findings regarding her inability to remedy circumstances that existed at the time of the hearing. In her reply brief, moreover, Mother disputes ADES's arguments that she did not remedy circumstances existing at the time of the hearing by merely arguing she introduced evidence to the contrary.

supports those findings.” *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citations omitted).

¶13 At trial, ADES introduced into evidence findings and recommendations from the Foster Care Review Board (the Board) as well as progress reports written by Mother’s ADES case manager. In its findings and recommendations, the Board found that Mother was not complying with parent aide services and that her attitude was preventing progress. Similarly, in his progress reports, the case manager described Mother’s failure to visit or build a relationship with her children and her inability to document her participation in counseling or parenting education. The case manager also described Mother’s uncooperative attitude and her tendency to become verbally aggressive and threatening. Finally, the case manager described Mother’s domestic violence problems, ongoing legal troubles and sporadic employment.

¶14 ADES also introduced records from AmeriPsych and Friendly House, the agencies responsible for supervising Mother’s visits with the children. The records from AmeriPsych describe Mother’s verbal altercations with parent aides and other families at the agency, which resulted in AmeriPsych banning Mother from visiting her children at the center. The records from Friendly House describe Mother verbally antagonizing parent aides, failing to routinely attend visitations and failing to comply with or participate in the parent aide program. Friendly House also



documented its attempts to accommodate Mother by providing her with different parent aides and agreeing to arrange visitations at a location halfway between the agency and Mother's residence. Despite these accommodations, Mother still failed to fully comply with Friendly House's program, and the agency closed Mother's file for lack of participation.

¶15 In addition, ADES introduced Mother's counseling records from the Mohave Mental Health Clinic. During counseling, Mother expressed that she did not trust ADES, the police, parent aides or counselors and believed these groups were colluding to prevent her from seeing her children. Mother also accused her counselors of being discriminatory and threatened to physically harm ADES workers.

¶16 Finally, Mother's ADES case manager testified about his efforts to engage Mother in services by contacting her, sending her letters, visiting her and showing her how to purchase a bus ticket to visit her children. He testified, however, that his efforts to engage Mother were not successful and she often became upset and would scream and threaten him. He also testified that Mother missed meetings designed to evaluate her progress and that Mother visited the children only once in the year prior to the severance hearing. He opined that Mother failed to develop or maintain a normal parent-child relationship with the children and had not resolved issues regarding her parenting ability.

Accordingly, the case manager concluded that Mother would have been unable to parent the children because of her problems with domestic violence, verbal aggression and uncooperative behavior, and failure to participate in services or visitation.

¶17 The evidence presented by ADES clearly supports the juvenile court's factual findings. Therefore, we affirm the court's determination that Mother did not "remedy the circumstances that cause the child[ren] to be in an out-of-home placement." A.R.S. § 8-533.B.8(c).

¶18 Concerning her ability to exercise parental care in the future, Mother argues she actively participated in the services offered by ADES in order to improve her parenting skills. She contends she completed phase one of anger management counseling, completed family preservation services and underwent psychological evaluations that indicate she did not suffer from mental illness. She also claims she maintained stable housing, enrolled in school and was capable of financially providing for her children.<sup>7</sup>

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<sup>7</sup> Mother also claims that "ADES appeared determined to terminate [Mother's] parental rights by putting as many obstacles in her path as possible to prevent her from reuniting with her children" and that "ADES actions and inactions were geared towards removing the children from [Mother's] care and ultimately severing [her] parental rights no matter what [she] did." Because these allegations are not supported with citation to the record, we do not address them. See ARCAP 13(a)6.

¶19 As already discussed, however, ADES presented substantial evidence that contradicts Mother's claims. Several parent aides, counselors and Mother's ADES case manager reported that Mother refused to fully participate in the services offered, which were designed to help her reunite and develop a relationship with her children. In addition, Mother's ADES case manager testified that she made minimal attempts to participate in services or visit her children. Furthermore, Mother's own testimony indicates that she had financial difficulties, had been inconsistently employed and depended on financial support from others.

¶20 Based on the evidence presented at trial, the juvenile court found that "despite the many accommodations offered to her, Mother has made little attempt to work with the program designed to improve her parenting skills" and failed to understand "her child's injuries and how to assure that no future harm will come to the children." The court also described Mother's lack of regular employment and dependence on relatives for income as "disconcerting and subject to capricious change." Accordingly, the juvenile court found that ADES had shown by "clear and convincing evidence that there is a substantial likelihood that Mother is not [] capable of exercising proper parental care in the near future." These findings are clearly supported by evidence in the record, and we therefore affirm them.

¶21 Mother next argues she was denied due process when the juvenile court allowed ADES to amend the severance motion to include abandonment as a ground for terminating her parental rights. She argues the court abused its discretion by allowing the amendment because she was deprived of notice and an adequate opportunity to present evidence regarding the ground of abandonment.

¶22 However, because we affirm the court's ruling under § 8-533.B.8(c), and therefore affirm the order terminating Mother's parental rights on that ground, we do not address whether the court abused its discretion by allowing ADES to amend the severance motion. *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.") (citations omitted).

**CONCLUSION**

¶23 For the reasons set forth above, we affirm the order terminating Mother's parent-child relationship with the children.

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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DIANE M. JOHNSEN, Presiding Judge

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PATRICK IRVINE, Judge