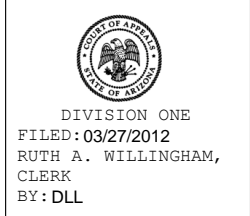


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



MORGAN E.,	)	1 CA-JV 11-0153
	)	
Appellant,	)	DEPARTMENT D
	)	
v.	)	<b>MEMORANDUM DECISION</b>
	)	(Not for Publication-
ARIZONA DEPARTMENT OF ECONOMIC	)	Ariz. R.P. Juv. Ct.
SECURITY, RYAN E., HAYDEN E.,	)	88(G); ARCAP 28)
	)	
Appellees.	)	
	)	
	)	

---

Appeal from the Superior Court of Maricopa County

Cause No. JD 507959

The Honorable Kirby Kongable, Commissioner

**AFFIRMED**

---

Christina Phillis, Maricopa County Public Advocate	Mesa
By Suzanne Sanchez, Deputy Public Advocate	
Attorneys for Appellant	

Thomas C. Horne, Attorney General	Mesa
By Eric Devany, Assistant Attorney General	
Attorneys for Appellee Arizona Department of Economic Security	

Stephanie Stromfors, Guardian Ad Litem for Ryan E. And Hayden E.	Mesa
---	------

---

**T H O M P S O N, Judge**

¶1 Morgan E. (Morgan) appeals from the juvenile court's order severing her parental rights to her children, Ryan and Hayden. For the following reasons, we affirm.

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

¶2 Ryan was born in June 2006 and Hayden was born in May 2009. Ryan first came to the attention of Child Protective Services (CPS) in 2006 when he was two months old. In 2007, Morgan was asked to complete an assessment at TERROS and to take weekly drug tests but she did not cooperate with CPS. After Hayden was born exposed to methamphetamine in 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition. The first dependency was dismissed after custody of the children was given to the children's father.<sup>1</sup> ADES filed a second dependency petition in March 2010, alleging that both parents were unable to parent due to their methamphetamine use. The juvenile court found the children dependent as to both of their parents in April 2010.

¶3 In December 2010, ADES filed a motion to terminate Morgan's parental rights. After a two-day severance trial, the juvenile court terminated Morgan's parental rights pursuant to Arizona Revised Statutes (A.R.S.) § 8-533(B)(3) (mother's history of chronic abuse of dangerous drugs), (B)(8)(a) (nine

---

<sup>1</sup> Father's parental rights have been terminated and he is not involved in this appeal.

months time in care- both children), (B)(8)(b) (six months time in care- child under three years old (Hayden)), and (B)(8)(c) (fifteen months time in care- both children). At the severance trial, Morgan testified that she still had a methamphetamine addiction and that she used methamphetamine approximately every ten days. Morgan timely appealed.

#### **DISCUSSION**

¶4 Morgan raises one issue on appeal: whether the juvenile court abused its discretion by terminating her parental rights because ADES failed to offer her an essential service. Specifically, she argues that ADES failed to offer her additional inpatient drug treatment.

¶5 Here, ADES first referred Morgan to TERROS for a substance abuse assessment in 2007. Morgan did not participate in that service and also failed to participate in weekly drug testing. In 2007, Morgan "briefly" participated in an intensive outpatient drug program through Banner but did not complete the program. ADES referred Morgan to TERROS again in 2009 after Hayden was born positive for methamphetamine (this time for inpatient drug treatment). Morgan completed the TERROS intake but did not complete the inpatient program. In April 2010, Morgan went back to TERROS and did an assessment. She briefly participated in the intensive outpatient drug treatment program

that TERROS referred her to until an inpatient bed could be found; however, when she was offered an inpatient bed in May of 2010 she turned it down. In July 2010, TERROS sent Morgan a closure letter for failing to engage in treatment. She was re-referred in August 2010 and placed back on the waiting list for inpatient treatment. Morgan finally went to inpatient drug rehabilitation in September 2010, but she relapsed shortly after leaving the program. Morgan's TERROS referral remained open through February 2011, however she did not re-engage in drug treatment. Her caseworker subsequently gave her information about another drug treatment program with New Arizona Families, Inc. Morgan did an intake with New Arizona Families in March 2011, but she did not end up participating in that service due to a conflict with her visitation. In May 2011, just two months prior to the severance trial, Morgan's CPS caseworker gave her another referral to TERROS, but she admittedly did not engage in that referral. At trial, Morgan agreed that CPS had been attempting to provide her with drug treatment for five years, from 2007-2011, and admitted that she was addicted to methamphetamine.

¶6 "We 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." *Audra T. v. ADES*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[A]lthough the State is not obliged to undertake futile rehabilitative measures, it is obliged to undertake those which offer a reasonable possibility of success." *Mary Ellen C. v. ADES*, 193 Ariz. 185, 187, ¶ 1, 971 P.2d 1046, 1048 (App. 1999). In this case, reasonable evidence supports the juvenile court's finding that ADES made a diligent effort to provide appropriate reunification services to Morgan for her drug addiction. ADES' efforts were prolonged - extending for a period of years. The record indicates that Morgan had every chance to rehabilitate herself but was unable to do so. We find no error.

¶7 Morgan additionally argues that the juvenile court "misinterpreted the law" by considering only what was best for the children, citing the commissioner's statement in court that "I think that if the focus were on mom, we'd want to give her another chance. But the focus is on the kids, it's not on mom. So we have to look at what's best for the kids." To the extent that Morgan argues that the juvenile court abused its discretion in her case by making this remark, we disagree. The court's statement was made in connection with the best interests determination that the court undertook after finding statutory grounds for severance.

**CONCLUSION**

¶8 For the foregoing reasons, the juvenile court's severance order is affirmed.

/s/

---

JON W. THOMPSON, Judge

CONCURRING:

/s/

---

PETER B. SWANN, Presiding Judge

/s/

---

MICHAEL J. BROWN, Judge

