

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



DIVISION ONE  
FILED: 02/02/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RODRIGO B.,

Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC  
SECURITY, ADILENE C., GIOVANI C.,  
BETSY B., RODRIGO C., and LORENA B.

Appellees.

1 CA-JV 11-0170

DEPARTMENT B

**MEMORANDUM DECISION**

(Not for Publication -  
Ariz.R.P.Juv.Ct.  
103(G); ARCAP 28)

Appeal from the Superior Court in Maricopa County

Cause No. JD 16271

The Honorable Aimee L. Anderson, Judge

**AFFIRMED**

Christina Phillis, Maricopa County Public Advocate

Mesa

By Suzanne Sanchez, Deputy Public Advocate  
Attorneys for Appellant

Thomas C. Horne, Attorney General

Phoenix

By David M. Osterfeld, Assistant Attorney General  
Attorneys for Appellees

W I N T H R O P, Chief Judge

¶1 Rodrigo B. ("Father") appeals the juvenile court's  
order severing his parental rights to five children: A.C., G.C.,

B.B., R.C. and L.B. (collectively, "the children"). Because reasonable evidence supports severance based on cumulative out-of-home placement of fifteen months or more pursuant to court order, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 The four oldest children, all less than age ten at the time of severance, came to the attention of the Arizona Department of Economic Services ("ADES") in May 2007, when R.C. was born exposed to cocaine. ADES monitored the situation and offered family preservation services. The biological mother reported incidents of domestic violence and told ADES that Father brought home drugs and pressured her to use them with him.<sup>1</sup> Random drug testing confirmed that Father was using cocaine. In September 2007, Father agreed with ADES to leave the home and continue services. Other than an initial TERROS intake, however, Father did not comply with drug testing or other services. Several weeks later, Father moved back home, in violation of his agreement with ADES.

¶3 In November 2007, the mother was arrested and later deported to Mexico. In December 2007, ADES took temporary

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<sup>1</sup> In April 2011, the biological mother's parental rights to the children were severed. She did not appeal that order and is not party to this case.

custody of the four oldest children and filed a dependency petition ("first dependency"). Although Father initially complied with some services, he did not submit to random drug testing or substance-abuse counseling. After May 2008, Father stopped participating in services altogether.

¶4 Father did not contact ADES about the children again until January 2010. ADES later learned that Father had been arrested in June 2008, for an extreme DUI and assaulting a police officer. Father served a year-long prison sentence and was deported to Mexico in April 2009. He re-entered the country illegally the next month and was immediately detained.

¶5 While in Mexico, Father and the mother had given birth to a fifth child, L.B., in August 2008. The biological mother returned to Arizona and resumed services to reunite with the four oldest children. In September and October 2009, the mother regained physical custody of them. The mother successfully completed services, and the first dependency against both biological parents was dismissed in December 2009.

¶6 About two weeks later, ADES received a report that the mother had been arrested on an outstanding warrant and for giving police a false identity. On January 7, 2010, ADES filed a new dependency petition ("second dependency"), alleging that all five children had been left with two male strangers without any provision for food, clothing or shelter. The trial court

ordered that the children be returned to ADES's custody. ADES placed the children in the same foster home from the first dependency, where they have remained since.

¶17 In January 2010, about eighteen months after his last contact, Father called ADES from an immigration detention center in Florence. Through ADES, Father began writing a letter to the children about once every month. Father pled guilty to illegally entering the country and was transferred to a federal prison in Illinois to serve a thirty-two-month sentence. He remained incarcerated there for the rest of these proceedings.

¶18 After a separate contested hearing in June and July 2011, the juvenile court ordered Father's parental relationship with the children terminated based on abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (West 2012);<sup>2</sup> length of incarceration under § 8-533(B)(4); and cumulative out-of-home placement for fifteen months under § 8-533(B)(8)(C). Because the four oldest children were involved in a prior dependency, the court also severed Father's parental rights to them based on A.R.S. § 8-533(B)(11) (prior dependency).

¶19 Father has timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235(A).

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

Father argues the juvenile court abused its discretion by severing his parental rights to the children based on each of the four statutory grounds. We disagree.

¶10 The juvenile court may sever a parental relationship based on clear and convincing evidence of at least one statutory ground enumerated in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). In addition, the juvenile court must find by a preponderance of the evidence that severance will serve the children's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm a severance order unless there is no reasonable evidence to support the juvenile court's findings. *Minh T. v. Ariz. Dep't of Econ. Sec.*, 202 Ariz. 76, 78-79, ¶ 9, 41 P.3d 614, 616-17 (App. 2001).

¶11 Under A.R.S. § 8-533(B)(8)(b), Father's parental rights could be terminated upon a showing that (1) the children were in an out-of-home placement for fifteen months or longer; (2) ADES had made diligent efforts to provide appropriate reunification services; (3) Father was unable to remedy the circumstances causing the children's placement; (4) there was a "substantial likelihood" that Father would "not be capable of exercising proper and effective parental care and control in the near future;" and (5) severance was in the children's best

interests. Because Father does not challenge the finding that severance was in the children's best interests, we accept that finding and do not consider the issue further.

¶12 There is no dispute that the children were placed in foster care pursuant to court order for a cumulative period of over fifteen months. Father appears to argue, however, that ADES caused the out-of-home placement by failing to place the children with a paternal uncle who had been approved by the United States and Mexican governments for foster placement. We disagree.

¶13 The juvenile court ordered the children removed from Father's custody because of his substance abuse, domestic violence against the mother, abandonment of the children, and incarceration. Regardless of whether the children were placed with the foster parents or the paternal uncle, other than incarceration, Father failed to remedy these circumstances, requiring continued out-of-home care.

¶14 Nevertheless, ADES acted properly with regard to Father's requests to place the children with his family. Upon the child psychologist's recommendation, ADES sought to establish contact and build a relationship between the paternal uncle and the children. The uncle called the children twice. ADES then requested that the uncle send cards, letters or pictures of the home, town and school, so that the children

could learn what their home would look like. This request was reasonable in light of the psychologist's report that the children would be uncomfortable moving to Mexico without further communication from the uncle. Because the uncle did not respond, ADES was unable to proceed with placement. Upon Father's request, ADES contacted the Mexican consulate about his mother for foster placement, but she also did not respond. The family's failure to follow through with the placement process should not be attributed to ADES.

¶15 Finally, the record shows that ADES made diligent efforts to provide services, including drug treatment and testing, parenting classes, supervised visits and psychological evaluations. Although he does not dispute this finding, Father argues that the trial court should have waited two months for him to be released from prison so that he could participate in reunification services. To the extent Father challenges the juvenile court's finding that he will not likely be capable of exercising proper and effective parental care in the near future, we also find no error.

¶16 Services would have been difficult to provide because Father was to be immediately deported upon his release from prison. While Father stated that he is willing to participate in social services in Mexico, he did not do so during the first dependency proceedings.

¶17 Even assuming that reunification services were offered after Father's release from prison, the caseworker testified that it would take another nine to twelve months of full participation before ADES could even recommend reunification. Given Father's history of inconsistent or lack of participation with services, unresolved allegations of drug abuse and illegal activity, the caseworker did not believe Father could maintain sobriety or complete the other services. She thus opined that the children would be damaged by delaying permanency by a year or "substantially longer" without any likelihood of success. On this record, the juvenile court correctly determined that there is a substantial likelihood that Father would not be able to provide proper and effective parental care in the near future.

¶18 We find no error based on the out-of-home placement of the children for a cumulative period of fifteen or more months under A.R.S. § 8-533(B)(8)(c). Accordingly, we need not consider whether severance was justified on the other statutory grounds. *Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.



**CONCLUSION**

¶19 For the foregoing reasons, we affirm.

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LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

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DIANE M. JOHNSEN, Presiding Judge

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DONN KESSLER, Judge