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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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 03/20/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

NOELLE D., ) 1 CA-JV 11-0222  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Ariz. R.P. Juv. Ct. 103(G);  
SECURITY, RAVEN C., KASHAWN C., ) ARCAP 28)  
JAMORI'YEH P., DE'ARIANNA C., )  
)  
Appellees. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. JD 19380

The Honorable Joan M. Sinclair, Commissioner

**AFFIRMED**

Thomas C. Horne, Arizona Attorney General Phoenix  
By David M. Osterfeld, Assistant Attorney General  
Attorneys for Appellee

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

**N O R R I S**, Judge

¶1 Noelle D. ("Mother") timely appeals the juvenile court's order terminating her parental rights. Mother disputes the court's findings she was unable to discharge her parental

responsibilities because of her history of drug abuse and termination of her parental rights was in the best interests of the children. For the reasons discussed below, we disagree with Mother's arguments and affirm the order of the juvenile court.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶12 In May of 2010, employees of Child Protective Services ("CPS") visited Mother's home twice. CPS discovered "the electricity was cut off, and the home [was] filled with debris, cockroaches, and opened beer bottles scattered throughout the floor." CPS also found "a pipe used for smoking marijuana on the counter" which was "within reach of the children." On June 30, 2010, Mother visited an Urgent Psychiatric Care clinic, seeking help for depression. At the clinic, Mother gave a urine sample which "tested positive for methamphetamines, cocaine, [and] marijuana, and [Mother] said she had been drinking alcohol." On July 14, 2010, CPS removed Mother's four children from her home due to concerns about "neglect, the conditions of the home, the health of the children, and . . . [Mother's] substance abuse issues."

¶13 Appellee Arizona Department of Economic Security ("ADES") filed a dependency petition, and, shortly thereafter, the juvenile court found the children were dependent as to Mother "based on substance abuse, mental illness, and neglect." Over the following months, CPS provided Mother with referrals

and transportation to drug abuse treatment services and psychiatric care in an effort to reunify the family. A CPS case manager later testified that Mother failed to follow through with most of these referrals and had a "[m]inimal" level of engagement. Mother also continued to test positive for marijuana and methamphetamine and did not comply with mandatory random drug testing.

¶4 On April 14, 2011, Mother met with a TERROS clinician and discussed the possibility of in-patient residential drug treatment. The clinician "offered to provide [Mother] with contact information concerning [residential drug treatment] facilities" and Mother said she would "think about what she [was] going to do concerning her services." On April 29, 2011, the clinician "asked [Mother] if she [had] looked into the [residential drug treatment] facilities she was thinking about." Mother told the TERROS clinician that "she [had] given [residential treatment] some thought and decided she would try to keep herself sober and deal with her everyday stressors without using drugs."

¶5 On May 27, 2011, Mother again told the TERROS clinician she was "receptive to [residential treatment] . . . because she [was] unable to maintain sobriety for any period of time." The clinician provided Mother with "contact information for four different [residential drug treatment] programs," and

asked Mother to follow through with contacting the programs, and Mother agreed to do so and report back to the clinician by May 31. When Mother failed to report back, the clinician called her and asked "if she had checked the programs for which [the clinician had] provided her information." Mother told the clinician she had called, but "none of the programs would give her any information without a direct referral from [TERROS]." The clinician responded that "this did not sound correct . . . [because] most facilities are more than happy to provide basic information about their programs and about a wait time," but agreed to call one of the programs the next day to "enquire about their wait times and provide a referral if necessary." The clinician then spoke with a residential drug treatment program representative who told the clinician Mother would be accepted as a "self-referral" and agreed to call Mother and provide "information about [the program] and recommend she call [the program] to self-refer to their services."

¶16 On June 1, 2011, ADES filed a motion to terminate Mother's parental rights, noting Mother's children had been in the State's custody for nine months or longer and Mother had not remedied, among other things, her chronic drug abuse. Mother began the intake process for a residential drug treatment center later that month and, on July 29, 2011, finally entered a residential drug treatment program.

¶17 The juvenile court held a contested severance hearing on October 3, 2011. At the hearing, Mother testified she had been in the residential drug treatment program and sober for 63 days, and was planning to stay in the program for six months. After the hearing, the juvenile court found that, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (2008), Mother, due to her "chronic history of substance abuse," was "unable to discharge her parental responsibilities at the beginning of [the] case and remain[ed] unable to do so." The juvenile court recognized Mother had been sober for 63 days, but emphasized "two months of sobriety in a residential setting cannot wipe away years of substance abuse," and noted her history suggested she was highly susceptible to relapse. The court thus found that ADES had "met its burden of proof on the ground of chronic substance abuse."<sup>1</sup> The juvenile court further found that termination would be in the children's best interests, especially because they were "healthy and happy" and willing to be adopted. Accordingly, the juvenile court entered an order terminating Mother's parental rights to her four children.

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<sup>1</sup>The juvenile court also found there was clear and convincing evidence justifying termination of Mother's parental rights on other grounds listed in A.R.S. § 8-533(B), but we need not address all possible grounds for termination so long as one of the grounds provides sufficient evidence to support severance. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (citation omitted).

## DISCUSSION

¶18 On appeal, Mother argues that because ADES “failed to offer Mother the most critical service, inpatient treatment” at an earlier date, it breached its “affirmative duty to make all reasonable efforts to preserve the family relationship.” See *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1, 971 P.2d 1046, 1047 (App. 1999). Specifically, Mother asserts that if she had “been offered this service [earlier], she could have maintained her sobriety and continued to participate in all of the other services that CPS was requiring Mother to participate in for family reunification.” Mother thus argues ADES failed to prove by clear and convincing evidence she was unable to discharge her parental responsibilities because of her history of chronic drug abuse. Mother further challenges the juvenile court’s conclusion that severance was in the children’s best interests. We disagree with both arguments.

¶19 We review the juvenile court’s severance order in the light most favorable to sustaining it. See *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). To terminate a parent-child relationship, the juvenile court must find clear and convincing evidence supports one of the statutory grounds for termination. *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citing A.R.S. § 8-537(B) (2007)). We will affirm the juvenile court’s finding “unless we must say as

a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (quotation omitted). In addition, the juvenile court must find by a preponderance of the evidence that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

#### *I. Inpatient Drug Abuse Treatment*

¶10 As Mother emphasizes, A.R.S. § 8-830(A) (2003) required ADES to "contract with a provider to . . . provide the necessary services, including residential drug treatment services, to protect the child and support the family on referral from the department." The record is clear that ADES, through TERROS, made diligent efforts to provide residential drug treatment services for Mother once it became clear such treatment was warranted. See *supra* ¶¶ 4-6. The record also reflects that any delay in Mother receiving effective treatment for her drug abuse was due to Mother's lack of engagement. Mother's "failure or refusal to participate in the programs and services DES offered or recommended does not foreclose termination of her parental rights." *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). We therefore reject Mother's argument that ADES failed

to provide her with appropriate reunification services, and affirm the juvenile court's finding that clear and convincing evidence established Mother is unable to discharge her parental responsibilities due to her history of chronic drug abuse.

## *II. Best Interests of the Children*

¶11 Termination is in a child's best interests when "the child will benefit from termination of the relationship or . . . would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998) (citation omitted). During the severance hearing, a CPS case manager testified all four children were together and had been placed in a home that was willing to adopt them all, and were "extremely happy to be together . . . [and] will be living in an environment that's safe and stable and free of substance abuse . . . and neglect." The case manager also testified the two oldest children, who were above the age of 12, had voluntarily consented to adoption. The juvenile court found the children were "healthy and happy" in their current placement and noted "[i]f Mother's rights are not terminated, the children will remain in foster care longer waiting for Mother to resolve her issues." On the record before us, the preponderance of the evidence supports the juvenile court's finding termination was in the best interests of the children.



**CONCLUSION**

¶12 For the foregoing reasons, we affirm the juvenile court's order terminating Mother's parental rights.

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

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Judge