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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 04/17/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

AMELIA P., ) 1 CA-JV 11-0226  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, ANTHONY P., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
)  
)

Appeal from the Superior Court in Yavapai County

Cause NO. P1300JD201100003

The Honorable David L. Mackey, Judge

**AFFIRMED**

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O R O Z C O, Judge

¶1 Appellant Amelia P. (Mother) appeals a juvenile court order terminating her parent-child relationship with her child

(Anthony). On appeal, she argues: (1) the Arizona Department of Economic Security (ADES) failed to prove a statutory ground for termination by clear and convincing evidence; (2) ADES failed to present sufficient evidence that termination would be in Anthony's best interest; and (3) the State failed to provide Mother with reasonable reunification services prior to termination. For the following reasons, we affirm the termination order.

#### PROCEDURAL AND FACTUAL HISTORY

¶2 Mother is the biological parent of Anthony and has two older daughters, Jaime and Ambrosia.<sup>1</sup> On January 5, 2011, ADES took custody of Anthony following Mother's arrest for possession of marijuana and drug paraphernalia. Mother was subsequently sentenced to one and one-half years imprisonment, with a maximum release date of July 5, 2012, following her guilty plea to felony drug offenses and the revocation of her probation.

¶3 On January 10, ADES filed a petition alleging Anthony, Jaime and Ambrosia to be dependent. At the preliminary protective hearing, Mother denied the allegations in the dependency petition but submitted the matter on the record to the juvenile court. In a detailed order, the court adjudicated the

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<sup>1</sup> Because of their ages and preference for retaining their relationships with Mother, ADES did not recommend terminating Mother's parent-child relationship with either Jaime or Ambrosia. Accordingly, neither daughter was a party to the termination proceedings.

children to be dependent, finding that ADES proved by a preponderance of the evidence that Mother: (1) neglected the children due to her incarceration; (2) neglected the children by failing to protect them and provide appropriate supervision; (3) failed to meet the educational needs of the children; (4) neglected the children due to her substance abuse; (5) neglected the children due to an unsafe/unfit home; (6) was unable to maintain appropriate parental control and supervision of Amborisa; and (7) was unable to parent due to mental health issues. The court ordered a case plan of family reunification and ordered ADES to provide reunification services. The court further ordered that "[w]hen Mother is able to have contact visitation in jail, [ADES] will arrange supervised visitation for the baby, Anthony. Upon [M]other's release, [ADES] will have discretion to modify the visitation arrangements."

¶4 In May, ADES placed Anthony in a foster-adoptive home and recommended that the case plan for Anthony be changed from reunification to severance and adoption. ADES case manager, J. Hogan, explained that "because of Anthony's young age[,] he requires permanency as soon as possible." Hogan opined that due to "concerns of [Mother's] long history of instability," it was "in [Anthony's] best interest to move forward to a more permanent plan of severance and adoption." Based on ADES's recommendation, the juvenile court approved the change in Anthony's case plan to

severance and adoption, noting concerns about Anthony's age and Mother's inability to parent.

¶15 In June, ADES filed a motion to terminate Mother's parent-child relationship with Anthony on the grounds that Mother: (1) neglected her children, pursuant to Arizona Revised Statutes (A.R.S.) section 8-533.B.2 (Supp. 2011); and (2) was unable to discharge her parental responsibilities because of chronic substance abuse, pursuant to A.R.S. § 8-533.B.3. ADES also alleged that termination of the relationship was in Anthony's best interest. Mother denied the allegations in the petition and the juvenile court held a contested termination hearing.

¶16 Following the hearing, the juvenile court entered a detailed under-advisement ruling in which it found that ADES established both of the alleged grounds for termination by clear and convincing evidence.<sup>2</sup> The court also found that ADES established by a preponderance of the evidence that termination of the parent-child relationship was in Anthony's best interest. The court subsequently entered a formal order terminating Mother's parental rights.

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<sup>2</sup> The court also terminated the parental rights of Anthony's father, Miguel B. The father did not challenge the termination order and is not a party to this appeal.

¶7 Mother timely appealed the termination order. We have jurisdiction pursuant to A.R.S §§ 8-235.A (2007), 12-120.21.A.1 (2003) and 12-2101.A.1 (Supp. 2011).

## DISCUSSION

### Standard of Review

¶8 On appeal, our review is limited to whether any reasonable theory of evidence could support the juvenile 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) (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" (citation omitted)). Accordingly, we do not reweigh the evidence and "will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citations omitted). Furthermore, we presume the court made every finding necessary to support the order of termination, and if the court "fail[ed] to expressly make a necessary finding, we may examine the record to determine whether the facts support that implicit finding." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 17, 83 P.3d 43, 50 (App. 2004).

Statutory Grounds for Termination

¶9 The juvenile court terminated Mother's parental rights on the grounds of neglect under A.R.S. § 8-533.B.2 and a history of chronic substance abuse under § 8-533.B.3. "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." *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 (citations omitted).

¶10 The court found that Mother neglected<sup>3</sup> the children because she failed to "protect and provide appropriate supervision" by allowing "Jaime to not only smoke marijuana, but to do so around the other children in the home." The court also found that Mother neglected the children "due to an unfit and unsafe home." The court reasoned that the home was found to have "dangerous weapons, including multiple guns and knives, drug paraphernalia, marijuana, and marijuana cultivating equipment, all within reach of the minor children" and that Mother was "exposing the children to risk due to the above items in the home and due to criminal activities occurring in the home." Finally, the court found that Mother "neglected the children due to her

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<sup>3</sup> The definition of "neglect" includes "[t]he inability or unwillingness . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201.22(a) (Supp. 2011).

own substance abuse" and that "she has a long history of arrests and convictions on substance abuse related charges, as well as reports to [ADES] regarding neglect of her children due to substance abuse issues." Based on the totality of the circumstances, the court found that ADES established by clear and convincing evidence that Mother "neglected the child or failed to protect the child from neglect, so as to cause a substantial risk of harm to the child's health or welfare."

¶11 The record contains substantial evidence to support the court's findings. ADES initially became involved in Anthony's case when ADES and police responded to Mother's residence to investigate a report of child abuse. At the residence, officers found marijuana, marijuana seeds, pipes, bongs, baggies, rolling papers, and other drug paraphernalia. Officers also found a shotgun, two rifles, a revolver and a knife. During interviews with officers, Mother admitted to smoking marijuana and knowledge of the firearms and drug paraphernalia in the residence. Mother also provided a urine sample that tested positive for marijuana and her probation officer later reported that Mother had recently tested positive for marijuana during separate urinalysis testing. Mother was subsequently arrested and incarcerated for production of marijuana, possession of marijuana, possession of drug paraphernalia and weapons misconduct, and she remained in police

custody for the remainder of the dependency and termination proceedings.

¶12 At the termination hearing, ADES produced reports documenting a history of allegations that Mother had neglected the children. In 2006, ADES received a report alleging that Mother was using methamphetamine, that Mother and the children were homeless, and that Ambrosia and Jaime were not attending school. In 2008, ADES received reports alleging that Mother physically assaulted Ambrosia and that Mother was using drugs and providing marijuana to Jaime and Ambrosia. In 2009, ADES received a report that Mother was charged with contributing to the delinquency of a minor after police found drug paraphernalia in Mother's residence. In 2010, ADES received another report alleging that Jaime and Ambrosia were smoking marijuana with Mother. Finally in 2011, ADES received a report that Ambrosia was arrested for violating her probation after she ran away from Mother's care following a physical altercation with Mother. The reports also document that Mother admitted she was aware that Jaime and Ambrosia used marijuana and Jaime and Ambrosia would miss school to take care of Anthony while Mother was at work.

¶13 In addition, ADES presented several witnesses who testified that Mother had neglected the children. Hogan testified that Mother neglected the children by living in an unsafe home, using drugs, and being unable to care for the



children due to her probation violation and incarceration. Likewise, ADES investigator L. Stell opined that "Mother was unable to parent due to incarceration, due to physical violence in the home, and due to drug paraphernalia and the condition of the home." Regarding the condition of the home on January 5, 2011, Stell testified that it was concerning that "[t]he children were able to reach the guns, the weed being in the home, being smoked in the home, being used by the child. The knife being in access to the oldest child [despite Mother's knowledge] that she has a tendency to cut [herself]."

¶14           Stell and Hogan each testified that Mother neglected Anthony because of Mother's substance abuse and because she allowed Jaime and Ambrosia to care for Anthony when she was aware they used marijuana. Similarly, infant mental health therapist R. Walden-Shea assessed Anthony and opined that Mother neglected Anthony by leaving him "in the care of people who were unfit to care for him" and by "using substances while he was in her presence."

¶15           Stell testified that Mother neglected Ambrosia because she failed to meet Ambrosia's educational needs and allowed Ambrosia to get into trouble at school and with police. Stell also opined that Mother neglected Jaime because she allowed Jaime to miss school in order to remain home to take care of Anthony. Walden-Shea testified that Mother neglected both Jaime and

Ambrosia "due to her inability to create a stable home for them by continuing to use substances . . . and having knowledge of them using drugs and having intercourse." Hogan also opined that Mother neglected Jaime and Ambrosia by allowing them to miss school and use marijuana. Hogan further testified that because of Mother's neglect, both Ambrosia and Jaime had issues with domestic violence, truancy, instability and homelessness.

¶16 Accordingly, we find ADES presented sufficient evidence to support the court's finding that Mother neglected Anthony. Furthermore, ADES also presented substantial evidence that Mother neglected Jaime and Ambrosia. This evidence was independently sufficient to allow the court to terminate Mother's parental rights to Anthony because the neglect of Jaime and Ambrosia occurred during the same time Anthony was in Mother's care and custody. See *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14, 117 P.3d 795, 798 (App. 2005) ("[P]arents who abuse or neglect their children . . . can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected."); *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 16, 257 P.3d 1162, 1165 (App. 2011) (Section 8-533.B.2 permits termination of parental rights to a child who has not been neglected if the parent neglected another child and there is a "constitutional

nexus" between the prior neglect and the risk of future neglect to a different child.).

¶17 Because substantial evidence supports the juvenile court's finding that Mother neglected her children, we affirm the court's ruling that ADES proved a statutory ground for termination pursuant to § 8-533.B.2 and we need not address the allegation of chronic substance abuse under § 8-533.B.3. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

Best Interest Determination

¶18 To determine that termination of the parent-child relationship is in the child's best interest, the juvenile court must find that the child will either benefit from termination or be harmed by continuation of the relationship. See *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors to be considered in determining a child's best interest include whether: (1) adoptive placement is immediately available; (2) any existing placement is meeting the needs of the child; and (3) the child is adoptable. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010).

¶19 The juvenile court found that ADES established by a preponderance of the evidence that Anthony's best interest would be served by terminating the parent-child relationship with Mother. Specifically, the court found that because Anthony is

adoptable and termination would further the plan of adoption, termination would be in his best interest because it would provide him with permanency and stability. The court further found that Anthony was in a stable placement that was willing to adopt him and that he would benefit from an opportunity to grow up in a household that does not encourage the use of marijuana. Finally, the court found that Anthony's current placement was the least restrictive placement available that could meet his needs.

¶20 After reviewing the record, we find ADES presented substantial evidence to support the court's findings. Hogan testified that Anthony is an adoptable child and opined that adoption was in Anthony's best interest. She testified that Anthony's current placement was stable and capable of meeting his needs and that the foster-adopt parents were available as potential adoptive parents. Hogan also testified that Anthony would benefit from termination because it would "provide him permanency and allow him to move forward in building bonds and attachments with his primary caregiver."

¶21 In addition, Walden-Shea opined that it would not be in Anthony's best interest to remain in a temporary placement pending Mother's release from prison. She reasoned that Anthony required immediate permanency due to his young age and the concern that multiple placements could lead him to develop anxiety, depression and attachment disorders. Walden-Shea

expressed concern regarding how quickly Mother would be capable of providing Anthony with permanency because Mother would be required to show a period of stability following her release due to her history of instability, homelessness and substance abuse. Consequently, Walden-Shea opined that termination and adoption were in Anthony's best interest because he was currently in a stable home, he had bonded and attached to his Foster-Adopt parents and he was available for permanent adoption.

¶22 Accordingly, we find reasonable evidence supports the juvenile court's finding that termination of Mother's parental rights was in Anthony's best interest.

Reasonable Reunification Services

¶23 Finally, Mother claims the juvenile court erred in terminating her parental rights because ADES failed to prove it made reasonable efforts to provide her with appropriate reunification services prior to filing the termination motion. The court found that ADES proved by clear and convincing evidence that "ADES has made reasonable efforts to provide [Mother] with rehabilitative services" but that Mother "is unable to participate in the services at this time due to her incarceration."

¶24 As an initial matter, we note it is unclear whether ADES had a duty to provide Mother with reunification services before it sought to terminate her parental rights pursuant to §

8-533.B.2. See *Mary Lou C.*, 207 Ariz. at 49, ¶ 15, 83 P.3d at 49 (noting that it is unsettled whether ADES has a duty to provide reunification services under some statutory grounds for termination). The cases to which Mother cites in support of her argument are not directly relevant because they deal with other statutory grounds for termination. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999) (discussing § 8-533.B.3, severance based on mental illness or substance abuse); *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 884 P.2d 234 (App. 1994) (discussing what is currently § 8-533.B.8, severance based on continuing out-of-home placement); *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 869 P.2d 1224 (App. 1994) (same). **[OB at 26]** Likewise, Mother's reliance on §§ 8-533.B.8 and 8-533.D<sup>4</sup> (both dealing with out of home placement) is similarly misplaced, as is her argument regarding § 8-846.A (Supp. 2011), which deals with reunification services during dependency.<sup>5</sup> **[OB at 26]**

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<sup>4</sup> Although Mother cites to § 8-533.C in her opening brief, we believe she actually intended to cite § 8-533.D as authority for the proposition that "[i]n considering the grounds for termination . . . the court shall consider the availability of reunification services to the parent."

<sup>5</sup> As ADES correctly points out, the juvenile court found that during the dependency, ADES made reasonable efforts to implement the permanency plan of family reunification, and Mother never objected to that finding.

¶25 In addition, Mother intermingles her argument that ADES failed to provide appropriate reunification services with her argument that ADES failed to provide rehabilitative services. Although ADES does have a duty to provide reunification services pursuant to § 8-533.B.3, see *Mary Ellen C*, 193 Ariz. at 191, ¶ 31, 971 P.2d at 1052, there is no corresponding duty to provide rehabilitative services based on an allegation of neglect under § 8-533.B.2.<sup>6</sup> More importantly, Mother cites no authority for the proposition that the duty to provide rehabilitative or reunification services pursuant to § 8-533.B.3 somehow translates into a duty to provide reunification services under § 8-533.B.2.

¶26 Assuming without deciding, however, that ADES did have a duty to provide reunification services under § 8-533.B.2, we find ADES made reasonable efforts to provide appropriate services, taking into account that Mother was incarcerated during the entirety of the dependency and termination proceedings.

¶27 ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. at 353, 884 P.2d at 239. Furthermore, ADES is only obliged to "undertake measures with a reasonable prospect of success" and is

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<sup>6</sup> Because we affirm the termination order regarding § 8-533.B.2, we do not address Mother's arguments regarding whether ADES provided appropriate rehabilitative services pursuant to § 8-533.B.3.

not required to provide futile services. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053. In determining whether efforts to provide certain reunification services would have been futile, the court may consider a parent's incarceration during the proceedings as well as the time it would take the incarcerated parent to show a period of stability following release. See *Mary Lou C.*, 207 Ariz. at 50, ¶ 18, 83 P.3d at 50.

¶28 Here, Mother could not participate in some of the services ADES could offer because of her incarceration. Furthermore, Walden-Shea opined that it was not in Anthony's best interest to visit Mother while she was incarcerated due to his young age. Nevertheless, ADES offered Mother visitation and she received four visits with Anthony. ADES also provided Mother with case-management services and "strongly encouraged her to participate in any and all services that [the Department of Corrections] had to offer." However, due to Mother's incarceration and the time it would take for Mother to show a period of stability following her release, Walden-Shea and Hogan each opined that it was not in Anthony's best interest for ADES to delay termination in an attempt to provide Mother with additional services because Anthony required immediate permanency and stability.

¶29 Accordingly, reasonable evidence supports the juvenile court's findings that: (1) Mother was unable to participate in



many of the services ADES could offer because of her incarceration; but (2) ADES made reasonable efforts, given the circumstances, to provide Mother with appropriate reunification services.

**CONCLUSION**

¶30 For the reasons set forth above, we affirm the juvenile court order terminating Mother's parent-child relationship with Anthony.

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PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

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PHILIP HALL, Judge

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JOHN C. GEMMILL, Judge