

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

FILED BY CLERK

JUL 12 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

STEPHANIE M.,	)	2 CA-JV 2012-0006
	)	DEPARTMENT A
	)	
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF	)	Appellate Procedure
ECONOMIC SECURITY and	)	
ALIZEAH M.,	)	
	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J14929900

Honorable Leslie Miller, Judge

AFFIRMED

Nuccio & Shirly, P.C.  
By Salvatore Nuccio

Tucson  
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General  
By Laura J. Huff

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

H O W A R D, Chief Judge.

¶1 Stephanie M. appeals from the juvenile court’s order terminating her parental rights to her daughter, Alizeah M., born January 2002, based on Stephanie’s mental illness and chronic substance abuse.<sup>1</sup> See A.R.S. § 8-533(B)(3). Stephanie argues insufficient evidence supported the court’s finding that she was unable to discharge her parental duties due to mental illness or substance abuse. We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. See *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In September 2010, Arizona Department of Economic Security (ADES) filed a dependency petition alleging Alizeah was dependent as to Stephanie because she had left Alizeah home alone and Alizeah reported being left alone often, Stephanie had a history of domestic violence and substance abuse, and her former live-in boyfriend also had a history of substance abuse and a prior dependency regarding his own children.

---

<sup>1</sup>The juvenile court also terminated the parental rights of Alizeah’s father, who is not a party to this appeal.

Alizeah was placed in a foster home. Stephanie admitted the allegations in the dependency petition, and the juvenile court set a case plan of family reunification.

¶4 As part of that case plan, Stephanie was provided with a variety of services including drug and alcohol testing, parenting classes, and substance abuse counseling. She also was required to participate in a mental health evaluation, to maintain housing and a legal source of income, and to avoid contact with her former boyfriend. Urinalysis testing in September 2010 showed diluted results on two tests, and Stephanie failed to test as required on another. A hair follicle test was positive for cocaine. Through January 2011, she generally complied with her case plan until testing positive for alcohol once in January and twice in February, with two additional diluted tests in February. And, although Stephanie was required to avoid contact with her ex-boyfriend, Alizeah stated she heard his voice in the background during telephone calls with Stephanie in February. Stephanie admitted in March that she had maintained a sexual relationship with her ex-boyfriend but claimed the relationship had ended the previous month.

¶5 Dr. Michael German evaluated Stephanie and concluded she had not been forthcoming about her substance abuse and noted he suspected she abused cocaine and alcohol “more frequently, more severely, and more recently than she [was] willing to admit.” He diagnosed her with cocaine abuse, possible alcohol abuse, mixed personality disorder with histrionic and dependent features, and moderate deficits in overall functioning due to her lack of psychological maturity, dysfunctional relationships, and substance abuse. He concluded the risk was “pretty high” she would continue to be irresponsible concerning her child, have dysfunctional relationships, and be “psychologically unavailable” to Alizeah, noting Stephanie had a long-term pattern of negative behavior.

¶6 Stephanie did not obtain employment and was dishonest about her drug and alcohol use. She missed urinalysis tests in April and May, and in May tested positive once for alcohol and twice for cocaine, including a day where she attended a Child and Family Team Meeting, which ended early because she was incoherent and unable to participate. In June, Stephanie did not participate consistently in services and tested positive for alcohol. In July, she admitted she continued to have contact with her ex-boyfriend and had stopped taking prescribed anxiety and depression medications without consulting her doctor. Her case manager reported that Stephanie was not benefitting from services and had failed to take responsibility for her positive tests for cocaine. Thus, he informed the court there was a substantial risk she would continue her substance abuse and would neglect Alizeah.

¶7 In late August, ADES filed a motion to terminate Stephanie's parental rights to Alizeah on the grounds of mental illness and chronic substance abuse. While that motion was pending, Stephanie continued to miss appointments and urinalysis, and again tested positive for cocaine. She eventually stopped participating in most services. After a four-day severance hearing in December 2011 and January 2012, the juvenile court terminated her parental rights to Alizeah. This appeal followed.

¶8 Stephanie argues on appeal that, despite her continuing struggles with substance abuse, there was insufficient evidence that abuse resulted in her being unable to parent Alizeah effectively and that her "sporadic substance abuse should not substitute for actual evidence showing in what ways [she] can[]not discharge her parental duties." Pursuant to § 8-533(B)(3), the juvenile court may terminate a parent's rights if that parent "is unable to discharge [his or her] parental responsibilities" due to mental illness or chronic substance abuse, "and there are reasonable grounds to believe that condition will

continue for a prolonged indeterminate period.” Termination under § 8-533(B)(3) “does not require that the parent be found unable to discharge *any* parental responsibilities,” but rather “establish[es] a standard which permits a trial judge flexibility in considering the unique circumstances of each termination case before determining the parent’s ability to discharge his or her parental responsibilities.” *In re Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408-09, 701 P.2d 1213, 1216-17 (App. 1985). Parental responsibilities include providing adequate food, shelter, and medical care, as well as emotional security and parental guidance and control. *Denise R.*, 221 Ariz. 92, ¶ 19, 210 P.3d at 1268.

¶9 First, Stephanie’s substance abuse cannot reasonably be described as “sporadic.” She tested positive for cocaine and alcohol several times during the dependency and while the motion to terminate her rights was pending, she provided a diluted sample tested positive for cocaine, and missed several urinalysis tests. Her substance abuse clearly was chronic as contemplated by § 8-533(B)(3). *See Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, ¶ 16, 231 P.3d 377, 381 (App. 2010) (“[D]rug abuse need not be constant to be considered chronic.”).

¶10 Although Stephanie argues that German’s testimony that her substance abuse placed her at risk of being “psychologically unavailable to her child” is not clear and convincing evidence that she is unable to parent effectively, she ignores the remainder of his opinions—specifically that she was unable to control her substance abuse, which would cause her to continue to be irresponsible, and would be unable to recognize and avoid dysfunctional relationships. Stephanie also ignores other evidence in the record that her chronic substance abuse prevents her from being an adequate parent, including the opinion of her case manager, and, most notably, that she was unable to

comply meaningfully or consistently with her case plan or maintain sobriety despite being required to do so before she could be reunited with her daughter. The evidence, as described above, amply supported the juvenile court's conclusion that Stephanie's chronic substance abuse prevented her from adequately parenting Alizeah.

¶11 For the reasons stated, we affirm the juvenile court's order terminating Stephanie's parental rights to Alizeah.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge