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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MEGAN W., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and SUMMER W., Appellee.	2 CA-JV 2012-0057 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J194961

Honorable K. C. Stanford, Judge Pro Tempore

AFFIRMED

Jacqueline Rohr
Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff
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V Á S Q U E Z, Presiding Judge.

¶1 Megan W. appeals from the juvenile court's order terminating her parental rights to her daughter, Summer W., born June 16, 2006, on the grounds of chronic substance abuse pursuant to A.R.S. § 8-533(B)(3) and court-ordered time in care pursuant to § 8-533(B)(8)(c).[1] Megan argues there was insufficient evidence to support the court's finding that termination was warranted on "either of the grounds alleged" by the Arizona Department of Economic Security (ADES) in its motion to terminate her parental rights and the court erred in finding that termination was in Summer's best interests. 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) (citations 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

[1]The juvenile court also terminated the parental rights of Summer's father, who is not a party to this appeal.

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 Child Protective Services (CPS), a division of ADES, took custody of Summer in June 2010 following reports of domestic violence between Megan and Summer's father and the parents' failure to "work with [ADES] in addressing the significant safety concerns" arising from that domestic violence. Megan admitted the allegations in a dependency petition, including that she had abused methamphetamine in May and June 2010 and had a history of drug abuse and relapse. She began participating in services, albeit sporadically at first, including therapy for substance abuse and domestic violence. Megan's case plan prohibited her from using illegal drugs or alcohol. But, throughout 2010 and 2011, Megan tested positive for methamphetamine or amphetamine at least seven times and alcohol use at least three times. She failed to call in for random urinalysis testing on many occasions and provided several diluted specimens for testing. She admitted drinking alcohol in October and November 2011.

¶4 In a November 2011 status report, the case manager recommended that the juvenile court change the case plan to severance and adoption based on Megan's failure to comply with her case plan, citing her continued use of alcohol and a domestic violence incident with her boyfriend. In December 2011, the court ordered the case plan changed to severance and adoption, and ADES filed a motion to terminate Megan's parental rights on the grounds of mental illness and chronic substance abuse pursuant to § 8-533(B)(3)

and court-ordered, out-of-home placement of fifteen months or longer pursuant to § 8-533(B)(8)(c).

¶5 After a six-day severance hearing in February and March 2012, the juvenile court rejected severance on the ground of mental illness, but determined Megan's "long standing pattern of substance abuse" nonetheless supported termination of Megan's parental rights pursuant to both § 8-533(B)(3) and (B)(8)(c). The court further found severance was in Summer's best interests.

¶6 Although Megan argues the juvenile court erred in finding termination warranted on chronic substance abuse grounds pursuant to § 8-533(B)(3), she does not meaningfully address the court's finding that termination was warranted on a time-in-care ground pursuant to § 8-533(B)(8)(c). *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) (appellate court need not consider challenge on alternate grounds for severance if evidence supports any one ground); *see also Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 13, 995 P.2d 682, 685 (2000) (appellate court need not address unchallenged finding). But, to the extent Megan's arguments encompass the findings the court made regarding the time-in-care ground, we address the propriety of those findings.

¶7 Termination of parental rights is appropriate pursuant to § 8-533(B)(8)(c) if the child has been in an out-of-home, court-ordered placement for fifteen months or longer and "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will

not be capable of exercising proper and effective parental care and control in the near future." Section 8-533(B)(8) focuses on the circumstances that cause the child to remain in court-ordered, out-of-home care at the time of the severance hearing. *In re Maricopa Cnty. Juv. Action No. JS-8441*, 175 Ariz. 463, 467, 857 P.2d 1317, 1321 (App. 1993), *abrogated on other grounds by Kent K.*, 210 Ariz. 279, ¶¶ 12, 41, 110 P.3d at 1016, 1022.

¶8 As we noted above, the juvenile court found the primary circumstance causing Summer to be in out-of-home placement was Megan's "long standing pattern of substance abuse." Megan argues the court erred in concluding she was a chronic substance abuser because (1) at the time of the severance hearing she had not used drugs or alcohol for approximately four months, (2) her Alcoholics Anonymous sponsor had characterized her alcohol use in November 2011 as a "slip" rather than a "relapse," and (3) both her Alcoholics Anonymous sponsor and her therapist have opined that Megan has made significant progress in managing her addiction.

¶9 This argument, however, essentially asks us to reweigh the evidence on appeal, which we will not do. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Although there is no evidence Megan has used alcohol since November 2011, she does not dispute the juvenile court's finding that she nonetheless abused alcohol or methamphetamine twelve times in the nearly two years between Summer's removal and the severance hearing. As we previously have observed, "drug abuse need not be constant to be considered chronic." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶ 16, 231 P.3d 377, 381 (App. 2010). And, despite Megan's

claim that her November 2011 alcohol use was merely a "slip" that did not indicate a continuing problem with controlling her substance abuse, her case plan prohibited her from using alcohol, a requirement she repeatedly has ignored. *See id.* ¶ 29 (fact that parent "has consistently failed to *abstain* from drugs and alcohol," rather than number of positive urinalysis results, may be "key" to finding of chronic drug abuse). Dr. Brenda Sparrold, a clinical psychologist who had evaluated Megan in 2010, testified at the severance hearing that Megan's recent alcohol use "jeopardize[d her] ability to remain sober" and indicated "a relapse problem." She further noted Megan's high risk of relapse due to her history. Even assuming Megan is capable of continuing her sobriety, it is not necessary to for ADES and the juvenile court to "[l]eav[e] the window of opportunity for remediation open indefinitely." *In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994). Accordingly, we find no error in the court's conclusion that Megan had not remedied the circumstances causing Summer to be in out-of-home care.

¶10 Megan further argues there was insufficient evidence that her substance addiction would cause her to be unable to discharge her parental responsibilities and that her condition would continue "for a prolonged and indeterminate period." She asserts she would be permitted unsupervised visits if not for the pending severance, and her therapist had opined that she was "currently able to parent" and "provide Summer with a safe and appropriate home." She further claims that, because the CPS case manager had suggested Summer could be transitioned to her care if she demonstrated six months of

sobriety, she was "less than two months away from a transition plan for Summer to be returned to her care."

¶11 Termination pursuant to § 8-533(B)(8)(c) requires a finding that the parent will "not be capable of exercising proper and effective parental care and control in the near future." Although there was some evidence Megan soon would be able to effectively parent Summer, there also was contrary evidence. Sparrold testified Megan's difficulties with substance abuse would continue for a prolonged and indefinite period of time and that those difficulties placed Summer at risk.[2] And, although it was possible Summer might have been returned to Megan's care if she maintained sobriety, Megan's failure to comply with her case plan had prevented Summer from being returned on two previous occasions. Particularly in light of Megan's repeated drug and alcohol use during the dependency, there was ample evidence she was unlikely to maintain her sobriety for any significant period of time. Thus, we find sufficient evidence supported the juvenile court's finding that Megan would be unable to exercise sufficient parental care and control in the near future.

¶12 Finally, Megan contends the juvenile court erred in concluding termination was in Summer's best interests. She asserts "[t]here is no reason to believe that

[2]Megan complains Sparrold's testimony was based on a hypothetical situation that her substance abuse would continue only if she did not benefit from services. Given Megan's repeated failures to comply with the requirements of her case plan, the juvenile court could have concluded that she, in fact, had not benefitted from services sufficiently to prevent relapse into substance abuse and that such abuse would continue.

[Summer's] relationship with [her] isn't beneficial to [Summer] and of far more importance than merely being adopted." "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship." *In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The court made that determination here, finding Summer was in need of the permanence adoption could provide. Megan cites nothing in the record suggesting that finding was improper; indeed, she provides no record citations whatsoever in support of her best interests argument. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (Rule 13, Ariz. R. Civ. App. P., applies to juvenile appeals).

¶13 The juvenile court further found Summer "is of an age where adoption is feasible, probable and most likely to succeed." In light of the court's finding that, despite nearly two years of services, Megan had not resolved the substance abuse issues causing Summer to be in out-of-home care, and given that Summer's parental grandparents were willing to adopt her and were meeting all of her needs and that she was otherwise adoptable, we find no error in the court's determination. *See In re Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994); *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998); *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶14 For the reasons stated, the juvenile court's order terminating Megan's parental rights to Summer is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge