

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



DIVISION ONE  
FILED: 08/02/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHARLES E., ) 1 CA-JV 12-0008  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Ariz. R.P. Juv. Ct. 88(G);  
ARIZONA DEPARTMENT OF ECONOMIC ) ARCAP 28)  
SECURITY, CHARLES E. and KIESA )  
E., )  
)  
Appellees. )

Appeal from the Superior Court of Mohave County

Cause No. S8015JD201100003

The Honorable Richard Weiss, Judge

**AFFIRMED**

Thomas C. Horne, Attorney General Tucson  
By Laura J. Huff, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

Mohave County Appellate Defender's Office Kingman  
By Diane S. McCoy, Deputy Appellate Defender  
Attorneys for Appellant Natural Father Charles E.

**T H O M P S O N**, Judge

¶1 Charles E. (father) appeals the juvenile court's order severing his parental rights to children Charles E. and Kiesa E. Father asserts on appeal that the juvenile court erred in finding that he suffered from a mental illness that would continue for a

prolonged indeterminate amount of time, he had a chronic substance abuse problem that would continue for a prolonged indeterminate amount of time, he substantially neglected or willfully refused to remedy the circumstances causing the children both under the age of three to be in an out-of-home placement for six months or longer, and that severance was in the best interests of the children. We affirm.

¶2 An order terminating parental rights must be supported by clear and convincing evidence showing one or more of the statutory grounds enumerated in Arizona Revised Statutes (A.R.S.) § 8-533(B) (2007). See *Michael J. v. Ariz. Dept of Econ. Sec.*, 196 Ariz. 246, 249, 995 P.2d 682, 685 (2000). The juvenile court must also find by a preponderance of the evidence that the 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). The juvenile court made findings of fact that supported three statutory bases for father's severance: mental illness, substance abuse, and out-of-home placement of children under the age of three for more than six months. See A.R.S. § 8-533(B) (3) and (8) (b).

¶3 We need only find proper evidentiary support for one of the statutory grounds to affirm. We will examine whether there is support for the juvenile court's findings as to the children's out-of-home placement in excess of six months. See A.R.S. § 8-533(B) (8) (b). The statutory time limits of A.R.S. § 8-533(B) serve

the dual purpose of expediting the possibility of adoption and of providing an incentive to parents to overcome obstacles to assuming their parental responsibilities. *See Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (discussing time limits of A.R.S. § 8-533(B)(6)). On appeal, we accept the findings of the juvenile court unless clearly erroneous; we do not reweigh the evidence. *See Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 465, 857 P.2d 1317, 1319 (App. 1993) (citation omitted).

¶4 Keisha was taken into custody on January 18, 2011, at just over two months of age after being admitted to the hospital for failure to thrive. Charles was taken into custody two days later; he was just over a year old. Both children had health issues. Father does not challenge the calculation of time for the out-of-home placement of children under the age of three being in excess of six months pursuant to A.R.S. § 8-533(B)(8)(b).

¶5 The department established a case plan of family reunification which required father to participate in individual and family counseling, parenting classes, anger management and domestic violence counseling, substance abuse counseling and urinalysis and supervised visitations. Father successfully completed parenting classes and active visitation with the children; he asserts he was unable to comply with domestic violence counseling or to continue anger management counseling after it was

terminated by the first provider because the services were not available free. He further states he would not have been able to comply with ADES's time table of being off drugs for one year even if he had "fully participated."

¶6 The evidence fully supports the juvenile court's determination that the children have been out of the home in excess of the time outlined by A.R.S. § 8-533(B)(8)(b). The children had been out of the home for nearly a year by the time of trial. The juvenile court found that father was unable to remedy the circumstances which caused the children to be in an out-of-home placement and that there was a substantial likelihood that he would not be capable of exercising proper and effective parental care and control in the near future. This, too, is supported by the record. The caseworker testified to father's inability to satisfy the domestic violence, anger management and substance abuse counseling requirements or to remain drug-free. The juvenile court found:

Father has had numerous positive (drug) tests since he began testing. His last positive was July 18, 2011. Father has refused to participate in substance abuse treatment . . . and denies any substance abuse . . . Father has shown up to visitation under the influence of methamphetamines and has at least 2 drug convictions starting in 2000.

We do not believe that the juvenile court erred in reaching this conclusion. The testimony and exhibits presented at trial provide sufficient support for a finding that ADES made a diligent effort to provide father with appropriate reunification services. The

statutory ground of A.R.S. § 8-533(B) (8) (b) has been satisfied.

¶7 Finally, father argues that it was not in the children's best interests to have his parental rights severed. The juvenile court made a finding of fact that severance was in the best interests of the children so that they would be available for adoption in "a safe and stable home free of substance abuse and with parents present in their lives." We agree. See *JS-8441*, 175 Ariz. at 469, 857 P.2d at 1323 (citation omitted) ("The benefit of severance to the child . . . [is the] freedom to be adopted into a stable and nurturing home.") (citation omitted).

¶8 For the above stated reasons, we affirm.

/S/

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JON W. THOMPSON, Judge

CONCURRING:

/S/

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PATRICIA A. OROZCO, Presiding Judge

/S/

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SAMUEL A. THUMMA, Judge