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



DIVISION ONE  
FILED: 07/10/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

GRACE T., DANIEL A., ) 1 CA-JV 12-0022  
)  
Appellants, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, ANNAMARIE A., ALISIA ) Ct.; Rule 28 ARCAP)  
A., ROSALINDA A., VERONICA A., )  
ISABELLA A., SABRINA A., )  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD508501

The Honorable Helene F. Abrams, Judge

**AFFIRMED**

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O R O Z C O, Judge

¶1 Grace T. (Mother) and Daniel A. (Father) appeal the juvenile court's termination of their parental rights.<sup>1</sup> For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 At approximately 5:15 a.m. on April 1, 2010, officers from the Mesa Police Department found a small child walking alone near a busy intersection. The child was barefoot and dirty and her hair was unkempt. Officers approached the child and asked if she was lost, to which she responded, "My mommy's drunk and I'm scared." The child then directed the officers to her home.

¶3 As the officers approached the home, they smelled alcohol and noticed "a large number of beer cans and bottles in the yard intermixed with the children's toys." The officers knocked on the door and called out several times, but when no one responded they entered the home.

¶4 Inside, the officers found the children huddled together in the front room. One child was asleep under dirty clothes and another was asleep on a spilled ashtray. A child that appeared to be two or three years old was holding and

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<sup>1</sup> Mother and Father are the biological parents of Alisia, Rosalinda, Veronica, Isabella, and Sabrina. Mother is also the biological mother of Annamarie. Anthony A. is the biological father of Annamarie, but he did not contest severance of his parental rights.

rocking an infant and then checked the infant's diaper "as if she were her caretaker." The officers described the children as "dirty and appearing scared" and described the home as having "an overwhelming odor of alcohol." Empty and partially consumed beer cans and bottles were scattered on the floor and alcohol was spilled throughout the home. The officers found no fresh food accessible to the children. The officers also observed soiled diapers, old food, and a steak knife lying on the ground; cockroaches were on the kitchen counter and walls.

¶15 The officers discovered Mother asleep in her bed with a male companion. After "several minutes and multiple attempts" to awaken the adults, Mother woke up but "was slurring her words, had blood shot eyes, and had trouble walking and sitting in a chair without assistance." Mother told the officers that she had passed out and was not aware that her child had left the house. She later informed police that she took three Vicodin pills, drank beer, and fell asleep. Mother subsequently pleaded guilty to one count of child abuse, a class six undesignated felony and a domestic violence offense.

¶16 As a result of Mother's guilty plea, she was placed on fifteen years' probation, with the condition that she not have any contact with the children unless approved in writing by the Adult Probation Department and Child Protective Services, a division of the Arizona Department of Economic Security (ADES).

Mother's terms of probation also required that she participate in substance abuse services, cognitive skills classes, parenting classes, and obtain a GED. In addition, Mother was sentenced to nine months' imprisonment in the county jail, beginning July 19, 2010, with credit for fifty-four days served.

¶17 Father was incarcerated on drug charges at the time of the incident. Upon Father's release from prison in June 2010, he contacted ADES and was offered a variety of reunification services, including a substance abuse assessment with TERROS Families F.I.R.S.T., parent aide services, parenting classes, urinalysis testing, transportation, visitation, and domestic violence counseling.

¶18 Mother is an enrolled member in the Salt River Pima-Maricopa Indian Community (the Community), meaning this case is governed by the Indian Child Welfare Act. 25 U.S.C. §§ 1901-1963. Mother initially asked to, and was allowed to participate in services through the Community. Mother testified that she began parenting classes through the Community in May 2010 but was only able to complete two months of the five-month program due to her incarceration. Mother also testified that she was unable to begin the Community's substance abuse program because she was incarcerated.

¶19 As part of the reunification effort, in November 2010 ADES allowed Father to move in with his mother, the paternal

grandmother, with whom the two older children had already been placed.<sup>2</sup>

¶10 Mother was released from jail on February 23, 2011. She submitted to urinalysis testing six weeks later and the results were negative. Mother began participating in substance abuse and cognitive skills services in May 2011 and completed a parenting class through the Community in June 2011. However, Mother failed to maintain contact with the probation department and failed to provide information on her participation in required services. Consequently, on June 27, 2011, the probation department issued a petition to revoke Mother's probation. Mother was again incarcerated in November 2011 and was released on January 13, 2012.

¶11 Meanwhile, Father was arrested for driving under the influence, with his four-year-old daughter in the vehicle, on April 6, 2011. Father told police he did not know his daughter was in the vehicle. Because of Father's arrest, the children were removed from the paternal grandmother's home.

¶12 In July 2011, ADES case manager Elmore recommended the case plan be changed to severance and adoption. Nonetheless, Father was again offered substance abuse services through TERROS in August 2011. Although Father initially participated in

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<sup>2</sup> The two middle children were also placed with the paternal grandmother in January 2011.

services, he repeatedly tested positive for marijuana. Services for Father were suspended in December 2011 when he had too many unexcused absences from the group sessions.

¶13 The case proceeded to a contested severance trial. On January 26, 2012, the juvenile court terminated both Mother's and Father's parental rights on the same ground: that each parent had been unable to remedy the circumstances that caused the children to be in an out-of-home placement for fifteen months or longer and that there was a substantial likelihood they would not be capable of exercising proper and effective parental control in the near future.

¶14 The parents appeal the severance. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235.A (2007), 12-120.21.A.1 (2003), and -2101.A.1 (Supp. 2011).

## DISCUSSION

### Standard of Review

¶15 The juvenile court is in the best position to weigh the evidence, observe the parties, and judge the credibility of witnesses. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). Accordingly, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't*

of *Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

Mother

¶16 Mother's sole argument on appeal is that ADES failed to make a diligent effort to provide her appropriate reunification services. Under A.R.S. § 8-533.B.8 (Supp. 2011), ADES is obligated to make a diligent effort to provide parents with appropriate reunification services. ADES fulfills its statutory duty when it provides the parent with the time and opportunity to participate in programs designed to help the parent's ability to care for her children. *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). However, "[ADES] is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.*

¶17 ADES mandated that Mother complete a substance abuse program, parenting classes, domestic violence counseling and urinalysis testing, find employment, and maintain a safe and stable home. Mother initially requested services through the Community but later contacted ADES for services. Subsequently, ADES offered Mother a substance abuse assessment through the TERROS Families F.I.R.S.T. Program, which she was unable to attend due to her incarceration. ADES also offered urinalysis testing, and Mother provided three samples before her initial

incarceration but only provided one sample after her release in February 2011.

¶18 Mother testified that she participated in parenting classes through the Community but was unable to complete the program due to her incarceration. Elmore testified that after Mother was released, Mother stated she intended to return to the Community's parenting classes in April 2011. In June 2011, Mother reported to ADES that she had completed the parenting classes, and the Community's social worker, Stuart, confirmed that Mother completed the classes through the Community. However, Elmore testified that Mother failed to provide the probation department with proof of her completion of the parenting classes. Furthermore, Mother failed to participate in services available while incarcerated.

¶19 Mother also claimed that she attempted to take substance abuse and cognitive classes through the Community after her release but was dropped from the classes because her conviction involved domestic violence. However, Stuart testified that Mother was "closed out" of the Community's substance abuse program due to "nonparticipation," not because Mother's conviction involved domestic violence. Both Stuart and Elmore testified that Mother never informed them she had been closed out of the program and that, had she done so, either one of them would have assisted Mother in enrolling in another program.



¶20 Mother contends that ADES denied her visits with the children while not incarcerated "despite the approval of [Mother's] probation officer." The terms of Mother's probation explicitly prohibited contact with the children unless she could obtain written approval from both ADES and the probation department. Elmore testified that Mother requested visits with the children but she did not have written approval from the probation department to have contact with the children. Accordingly, Elmore testified that visits were not possible.

¶21 The testimony and exhibits presented at trial provide sufficient support for a finding that ADES made a diligent effort to provide Mother with appropriate reunification services. We therefore reject Mother's claim to the contrary. See *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239.

Father

¶22 Father contends the juvenile court erred in terminating his parental rights pursuant to A.R.S. § 8-533.B.8(c). This section allows termination of the parent-child relationship when the child has been in an out-of-home placement for a cumulative total period of fifteen months or longer, and although ADES has made a diligent effort to provide appropriate reunification services, the parent is unable to remedy the circumstances that led to the out-of-home placement and there is a substantial likelihood the parent will not be able to exercise proper and

effective parental care and control in the near future. Father claims the court erred in terminating his parental rights because: (1) he participated in the required services and has demonstrated he is able to parent his children, and (2) ADES failed to timely communicate with Father regarding services and did not initiate services in a timely fashion.

¶23 The juvenile court found that the circumstances Father was unable to remedy that caused his children's out-of-home placement included "maintaining sobriety and providing a safe and appropriate home." After Father's release from prison, ADES required Father to "demonstrate he can remain sober and be able to care for his children by having employment and suitable housing." ADES provided the following services to Father: substance abuse classes, urinalysis testing, parent aide services, supervised visitation with his children, parenting classes, transportation, and domestic violence counseling. ADES caseworker Hernandez testified that Father "was compliant with all services" prior to the time the case was transferred to another ADES unit.

¶24 However, in April 2011, Father was arrested for driving under the influence with his four-year-old daughter in the vehicle, which resulted in the children being removed from his and the paternal grandmother's care. From that time until the termination hearing in January 2012, Father either failed to

submit to urinalysis tests or tested positive for THC. He also tested positive for THC in oral-swab tests performed from September 2011 to November 2011. Consequently, TERROS recommended that Father be moved to a higher level of care because he had not once tested negative for THC since he began testing with TERROS. TERROS recommended an intensive outpatient treatment program, but Father missed the initial group session. TERROS later recommended that Father participate in a residential substance abuse program, but Father declined.

¶25 In December 2011, Father admitted to TERROS staff that he had been using Spice<sup>3</sup> the entire time he had been receiving services and was not willing to stop using Spice. After Father had more than two unexcused absences, TERROS suspended Father's treatment.

¶26 Although Father argues that ADES did not provide services in a timely manner, as stated above, ADES need only provide the parent with the time and opportunity to participate in services. *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239.

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<sup>3</sup> "Spice" refers to synthetic marijuana, which produces psychological effects similar to those of marijuana. Drug Enforcement Administration Drug Fact Sheet, available at [http://www.justice.gov/dea/pubs/abuse/drug\\_data\\_sheets/K2\\_Spice.pdf](http://www.justice.gov/dea/pubs/abuse/drug_data_sheets/K2_Spice.pdf) (last visited June 29, 2012). Effective February 18, 2011, Arizona outlawed Spice by designating it a Dangerous Drug and a Schedule I controlled substance. 2011 Ariz. Sess. Laws, ch. 6, § 1 (1st Reg. Sess.) (amending A.R.S. § 13-3401).

Father was given several months to prove his sobriety, but he failed to do so and indicated an unwillingness to try.

¶27 Reasonable evidence supports the juvenile court's finding that Father has been unable to remedy the circumstances that caused the children to be in an out-of-home placement, including maintaining sobriety and providing a safe and appropriate home, and there is a substantial likelihood Father will not be capable of parenting in the near future.

¶28 Father also argues that termination of his parental rights was not in the best interest of the children. The juvenile court must find by a preponderance of the evidence that termination of the parent-child relationship is in the best interest of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, 288, ¶¶ 22, 41, 110 P.3d 1013, 1018, 1022 (2005). "[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." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The best interest requirement may be met if ADES proves that a current adoptive plan exists for the children or that the children are adoptable. *Mary Lou C. v. Ariz. Dep't Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004). The juvenile court may also consider whether the children's needs are being

met by their current placement. *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994).

¶129 In this case, Elmore testified that all six children had been placed together and the placement was meeting their needs and was willing to adopt them. She also testified that the children's current placement was the least restrictive placement, given the children's needs. Elmore opined that the children would benefit from severance because they "would be able to have the permanency that they've been looking for, the nourishment, the stability, the consistency."

¶130 Stuart testified that the Community was in agreement with the case plan of severance and adoption and opined that severance of parental rights was in the children's best interest because the children needed stability and permanency and the opportunity to flourish in a stable home. In addition, Stuart testified that the Community supported a deviation from the Indian Child Welfare Act placement preferences because "[i]t's very rare that you would find one family who would take those many kids and keep them all together . . . [and] it's in their best interest to stay together."

¶131 Father asserts the State failed to prove severance is in the children's best interest because he loves his children and is willing to make the necessary behavioral changes to get his children back. However, the testimony of Elmore and Stuart

support the court's best interest finding. "The resolution of such conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review." *Jesus M.*, 203 Ariz. at 282, ¶ 12, 53 P.3d at 207.

**CONCLUSION**

¶32 For the reasons stated above, we affirm the severance of Mother's and Father's parental rights.

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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JON W. THOMPSON, Judge

/S/

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SAMUEL A. THUMMA, Judge