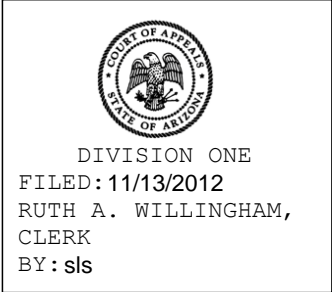


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



CHRISTOPHER A., ) 1 CA-JV 12-0043  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication-  
ARIZONA DEPARTMENT OF ECONOMIC ) Ariz. R.P. Juv. Ct.  
SECURITY, GENAVIEVE A., ) 88(G); ARCAP 28)  
)  
Appellees. )  
)  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court of Maricopa County

Cause No. JD17627

The Honorable Aimee L. Anderson, Judge

**AFFIRMED**

Jeffrey M. Zurbriggen, P.C. Phoenix  
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix  
By Nicholas Chapman-Hushek, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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

¶1 Christopher A. (Christopher) appeals from the juvenile court's order severing his parental rights to his daughter Genavieve. For the following reasons, we affirm.

## FACTUAL AND PROCEDURAL HISTORY

¶2 Genavieve was born in April 2007. Genavieve first came to the attention of Child Protective Services (CPS) in October 2009 after her brother, Ethan, was born drug-exposed.<sup>1</sup> Christopher was in jail at the time of Ethan's birth, but was subsequently released. He met with CPS and admitted to using drugs. The Arizona Department of Economic Security (ADES) filed a dependency petition as to both children, requesting an in-home dependency with Christopher for Genavieve. Christopher was living with his mother at that time. CPS put services in place for Christopher, including a referral to TERROS Families F.I.R.S.T. for substance abuse assessment and treatment, parent aide services, a psychological consultation, and drug testing at TASC. The juvenile court found that Genavieve was a dependent child.

¶3 In December 2010, Christopher was arrested and charged with possession and solicitation of methamphetamine and was incarcerated. He also was not compliant with the caseplan prior to being incarcerated because he failed to participate in urinalysis testing and failed to complete any services at TERROS. ADES requested a change of physical custody to

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<sup>1</sup> Ethan is not a party to this appeal; Christopher's parental rights to Ethan were previously severed. Genavieve's mother's parental rights to both children were also previously severed.

Genavieve's paternal grandmother due to Christopher's incarceration; however, the grandmother subsequently could not care for Genavieve, so the child was moved to foster care.

¶4 Christopher was convicted of the drug charges in May 2010 and was incarcerated until September 2011. Initially, the caseplan for Genavieve remained family reunification with Christopher, with a concurrent caseplan of severance and adoption. CPS requested that Christopher complete the services available to him in prison, including parenting classes, anger management classes, and substance abuse classes. In July 2010, however, CPS requested the court to change the caseplan to severance and adoption and the court did so. Subsequently, ADES filed a motion to terminate Christopher's parental rights.

¶5 The juvenile court held a contested severance hearing between August 26, 2011 and September 1, 2011. In the middle of the severance hearing, Christopher was released from prison, and on September 9, 2011, the juvenile court denied the motion to terminate Christopher's parental rights and changed the caseplan back to family reunification with a concurrent caseplan of severance and adoption, finding that Christopher had participated in services in prison and that ADES had not met its burden of proof by clear and convincing evidence.

¶6 Services were again put into place, including supervised visitation, a psychological consultation and evaluation, TERROS Families F.I.R.S.T. substance abuse services, transportation services, a parent aide referral, and drug screening. Christopher participated in the psychological consultation but did not attend the psychological evaluation. Christopher set up an assessment with TERROS but failed to attend the assessment. He attended two of the visits with Genavieve scheduled in early September 2011, but by September 21, 2011 he had disappeared; a warrant was issued for his arrest on his parole violation. Also in September 2011, Christopher was required to call TASC on a daily basis to find out if he would be required to submit to urinalysis testing, but he made just nine out of thirty mandatory phone calls. Two of the five urine tests Christopher completed in September were positive for opiates, and he had an additional five missed urine tests. He admitted to his parole officer that he used methamphetamines in September. After September 20, 2011 CPS was unable to locate Christopher; his mother also did not know his whereabouts and filed a missing persons report.

¶7 In November 2011, Christopher failed to appear in juvenile court for Genavieve's report and review hearing. At ADES's request, the juvenile court changed the caseplan back to

severance and adoption. In November 2011, ADES filed a motion to terminate Christopher's parental rights pursuant to Arizona Revised Statutes (A.R.S.) § 8-533(B)(1) (2008) (abandonment), (B)(3) (Christopher's history of chronic abuse of dangerous drugs), and (B)(8)(c) (fifteen months' time in care). Christopher did not attend the severance hearing. At the close of the hearing, the juvenile court granted severance based on the grounds of fifteen months' time in care and Christopher's chronic abuse of dangerous drugs. The court declined to find abandonment, stating:

The Court does find that termination of parental rights is appropriate, and based upon the grounds of substance abuse and time in care. The Court is aware that the Department has alleged the ground of abandonment. It is absolutely, positively clear to this Court that [Christopher] has cut off all contact with his daughter and [ADES], the legal guardian to his child, since September 20<sup>th</sup> of 2011, just days after he walked out of this court when I denied the Motion for Termination and told him this was his time to do what he needed to do to be the father to this child he needed to be. And he has let everyone in this room down, but most importantly, he let down his own biological child who had any chance of having a relationship with him . . . Genavieve. And I will tell you that only because of the litigious nature of [Christopher]'s case . . . will I not make a finding by clear and convincing evidence on abandonment . . . It's not [been] six months. It's [been since] September 20<sup>th</sup> [that Christopher last had contact with ADES].

Christopher timely appealed. This court has jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1) (2003), and -2101(B) (2011).

#### DISCUSSION

¶8 Christopher first argues that the juvenile court erred in finding that ADES made diligent efforts to provide him with appropriate reunification services. "We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. ADES*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[A]lthough the State is not obliged to undertake futile rehabilitative measures, it is obliged to undertake those which offer a reasonable possibility of success." *Mary Ellen C. v. ADES*, 193 Ariz. 185, 187, ¶ 1, 971 P.2d 1046, 1048 (App. 1999). In this case, reasonable evidence supports the juvenile court's finding that ADES made a diligent effort to provide appropriate reunification services to Christopher. After he was released from prison, ADES provided Christopher with a referral to TERROS for substance abuse assessment and treatment, supervised visitation, transportation, a parent aide, drug screening, and a psychological consultation and evaluation. He did not follow through with most of those services. When he was

in prison, CPS asked Christopher to participate in drug treatment and other programs and he did so. The record indicates that Christopher had every chance to rehabilitate himself but was inconsistent with services and unable to remain drug free when not in prison. We find no error.

¶9 Christopher next argues that the juvenile court erred in granting a severance based on A.R.S. § 8-533(B)(3). The statute provides for severance when a parent "is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." *Id.*

¶10 Christopher argues that the court erred in concluding that he had a chronic substance abuse problem and that the abuse would continue for a prolonged indeterminate period. The record supports the juvenile court's conclusion, however. In 2010, Christopher told the best interests evaluator that he had been using methamphetamine regularly since he was sixteen years old until he was most recently imprisoned. The best interests evaluator noted in her October 12, 2010 report:

[Christopher]'s major limitations include a history of criminal behavior that involves stealing, using counterfeit money, and illegal drug use. [Christopher] admitted he

has been using methamphetamine for the past 34 years. He has been in prison during other occasions and upon release continues to use the substance. To his credit, he is currently involved in various substance abuse treatments including groups and individual therapy. However, records reveal that his performance on probation has been poor, he has failed to complete drug treatment on multiple occasions, and has continued with his criminal behavior in the past even when he has assured treatment providers and law enforcement that he would not.

Given this information there is a significant chance that [Christopher] will relapse upon his release from prison when faced with external stressors in his environment that are outside of a structured setting such as prison. In 2003, he mentioned he should get probation "because I've changed my life around and quit drugs . . . Unfortunately, [Christopher] returned to the same criminal behaviors and it appears his condition will continue for a prolonged period of time.

The evaluator's prediction became reality. Within several weeks of his release in 2011 Christopher was using methamphetamine again and then disappeared, despite being warned by the juvenile court when the court declined to grant the first severance motion that he would lose his chance to parent Genavieve if he relapsed. We find no error in the juvenile court's determination that Christopher's parental rights should be severed pursuant to A.R.S. § 8-533(B)(3). Because we conclude that the severance should be affirmed on this ground, we decline



to address Christopher's argument with regard to A.R.S. § 8-533(B)(8)(c) (fifteen months' time in care.) See *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d at 203, 205 (App. 2002) (citations omitted).

**CONCLUSION**

¶11 For the foregoing reasons, the juvenile court's severance order is affirmed.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Presiding Judge

/s/  
\_\_\_\_\_  
DIANE M. JOHNSEN, Judge

