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



DIVISION ONE  
FILED: 09/18/2012  
RUTH A. WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHRISTOPHER C. ) No. 1 CA-JV 12-0068  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, SAVAHANNA C. ) 103(G) Ariz. R.P. Juv. Ct.;  
) Rule 28 ARCAP  
Appellees. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. JD508669

The Honorable Brian K. Ishikawa, Judge

**AFFIRMED**

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Attorney for Appellant

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Attorney for Arizona Department of Economic Security

Mesa

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G E M M I L L, Judge

¶1 Christopher C. ("Father") appeals the juvenile court's order terminating his parental relationship with his daughter, S.C. ("Daughter"), pursuant to Arizona Revised Statutes

("A.R.S.") section 8-533(B)(3) (Supp. 2011).<sup>1</sup> For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Father and Roshelle G. ("Mother")<sup>2</sup> are the biological parents of Daughter, born in 2003. Father began using methamphetamines ("meth") and marijuana when he was 16 years of age, and was arrested for marijuana possession at age 19. Although Father claims to have abstained at times, he has used meth and marijuana for the past eighteen years.

¶3 Child Protective Services ("CPS") first received a report against Father for neglect of Daughter in September 2004, stating that Daughter was residing in a dirty home and Father was using meth and marijuana. Father participated in and completed family preservation services, and CPS closed the case. On June 23, 2010, a second report to CPS stated that Father was using meth and selling drugs from the family home where Daughter resided. This report also alleged that the family home was dirty and a known child molester was allowed unlimited access there. During the CPS investigation, Daughter indicated that she felt unsafe due to the number of people in and out of the family home. Father denied selling drugs from the residence,

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<sup>1</sup> In this opinion, we cite the current version of statutes that have not materially changed since the events at issue.

<sup>2</sup> Mother's parental rights to Daughter were terminated on January 24, 2012, and are not subject to this appeal.

claimed the convicted child molester was later proven to be innocent, and explained that the smell of urine and feces in one room was due to a cat. Nevertheless, Daughter was removed from Father's physical custody on June 25, 2010. That same day, Father admitted that he had used meth within the preceding three weeks.

¶14 In July 2010, the ADES case plan goal was family reunification. To provide assistance to Father, ADES offered psychological consultation, parent-aide services, and supervised visitation. The case plan required Father to demonstrate his ability to meet Daughter's various needs, complete parenting classes, maintain employment and housing, participate in substance-abuse and anger-management classes through TERROS, and submit clean urinalysis samples on required days.

¶15 On August 19, 2010, Dr. Albrecht completed a psychological consultation with Father. He opined that Father minimized his responsibility in the CPS matter and blamed Daughter's removal on third parties, such as neighbors, CPS, his estranged wife, and his girlfriend. Dr. Albrecht recommended that if Father complied with the TERROS treatment plan, tested negative for drug usage, and demonstrated consistency in visitation, then a best interests evaluation should be completed. Father, however, tested positive for meth by oral swab on August 19, 2010 and by a urinalysis test on August 20,

2010.

¶16 Although Father completed the TERROS substance-abuse treatment and the anger-management classes in October 2010 and January 2011, respectively, Father admitted to drug use in November 2010. In addition, Father failed to submit to random urinalysis testing in 2011 on January 19, February 16 and 28, March 9, April 4 and 28, May 9, June 20, November 21, and December 1 and 5. Father tested positive for meth in 2011 on May 20, July 26, August 16, October 10 and 28, and December 12 and 28.

¶17 Dr. Thal, who completed a psychological evaluation of Father on March 31, 2011 and April 12, 2011, opined that Father had only a "marginal" and "tenuous" commitment to a clean and sober lifestyle and that his "commitment to providing a stable and secure home environment for [Daughter] is doubtful." Father maintained that his meth use did not interfere with his care of Daughter and that he could not think of any way in which he could improve as a parent. Dr. Thal reported that "[s]everance and adoption may be necessary unless this client can recognize and remedy his deficits as a parent, especially with regard to protecting his [Daughter] and permanently ceasing his drug use."

¶18 In May 2011, a CPS progress report noted that Father's parent aide and CPS case manager had ongoing concerns regarding Father's financial ability to care for Daughter. The report

identified that Father had not obtained employment and did not appear motivated to do so. The parent aide was further concerned by Father's physical appearance because he showed up to visits wearing dirty clothing, dirty hands, and uncombed hair.

¶9 In June 2011, ADES re-referred Father for substance-abuse treatment at TERROS based on his urinalysis test results in May indicating meth use. TERROS reported that Father "does not seem to understand that even weekend use of drugs poses risk factors in the home." Father was subsequently closed out of treatment in January 2012, due to his lack of participation.

¶10 In August 2011, ADES recommended changing the case plan to severance and adoption based upon Father's failure to maintain his sobriety, his failure to secure stable employment, and failure to make the necessary behavioral changes to show that he could effectively parent Daughter. ADES then filed a motion on August 24, 2011, to terminate Father's parental rights to Daughter due to "a history of chronic abuse of dangerous drugs, controlled substances and/or alcohol" and "reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." See A.R.S. § 8-533(B)(3).

¶11 On February 7, 2012, the juvenile court held a contested severance hearing. The juvenile court found by clear and convincing evidence the grounds set forth in A.R.S. § 8-

533(B)(3) existed and by a preponderance of the evidence that termination was in Daughter's best interest. On March 29, 2012, the juvenile court filed a signed order terminating Father's parental rights to Daughter.

¶12 Father timely appeals and we have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21 (2003), and 12-2101 (2003).

#### ANALYSIS

¶13 "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). Therefore, this court "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." *Id.* We view the evidence in the light most favorable to upholding the juvenile court's decision. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citation omitted). The juvenile court's interpretation of the statute, however, will be reviewed de novo. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 43, ¶ 13, 178 P.3d 511, 515 (App. 2008).

¶14 Although the right to have custody of one's child is fundamental, it is not absolute. See *Michael J.*, 196 Ariz. at 248, ¶¶ 11-12, 995 P.2d at 684. To terminate parental rights, the juvenile court decision must be supported by clear and convincing evidence that a statutory ground set forth in A.R.S. § 8-533 exists and by a preponderance of the evidence that severance is in the child's best interest. *Id.* at 249, ¶ 12, 995 P.2d 682 at 685; *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). On appeal, Father does not dispute that the severance was in Daughter's best interest, but solely argues that insufficient evidence supported the court's finding on substance abuse under A.R.S. § 8-533(B). Therefore, we limit our analysis to this issue.

¶15 To satisfy the statutory requirement for parental termination due to substance abuse, the juvenile court must find by clear and convincing evidence that: "1) [the] parent has a history of chronic abuse of controlled substances or alcohol; 2) [the] parent is unable to discharge parental responsibilities because of his chronic abuse of controlled substances or alcohol; and 3) there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010).

### **History of Chronic Drug Abuse**

¶16 The record supports the juvenile court's finding that Father's meth use was chronic. For substance-abuse to be considered chronic, constant use need not be proven. *Id.* at 377, ¶ 16, 231 P.3d at 381.

¶17 Father's history of meth abuse indicates an addiction that has continued for an extended period of time. Father began using meth at 16 years of age and has continued use for the past 18 years. Recently, Father has persisted in his meth use, notwithstanding the breadth of services provided him such as substance-abuse treatment, random urinalysis testing, parent-aide services, and psychological evaluations. Following his psychological evaluation, Father was determined to have a "tenuous" and "marginal" commitment to a clean and sober lifestyle.

¶18 In October 2010, Father completed his first substance-abuse treatment program. During 2011, however, Father missed approximately one randomly scheduled urinalysis test per month and tested positive for meth on seven occasions. Thus, reasonable evidence exists to support the juvenile court's finding that there was a history of chronic drug abuse.

### **Inability to Discharge Parental Responsibilities**

¶19 To support termination under A.R.S. § 8-533(B)(3), the juvenile court "must find that Father's drug abuse hinders his



ability to be an effective parent." *Raymond F.*, 224 Ariz. at 377, ¶ 19, 231 P.3d at 381. This statute, however, does not "require that the parent be found unable to discharge any parental responsibilities but rather that the parent be unable to discharge 'the parental responsibilities.'" *Maricopa Cnty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985) (emphasis in original). "[T]he term 'parental responsibilities' is capable of being understood by persons of ordinary intelligence as referring to those duties or obligations which a parent has with regard to his child." *Id.* at 408-09, 701 P.2d at 1216-17 (citation omitted). "The term is not intended to encompass any exclusive set of factors but rather to establish a standard which permits a [juvenile court] judge flexibility in considering the unique circumstances of each termination case . . . ." *Id.* at 409, 701 P.2d at 1217.

¶20 Father argues that his history of drug abuse, in itself, is not sufficient to satisfy this requirement. We understand, however, that the juvenile court's finding was within the court's discretion in considering whether Father was able to discharge his "parental responsibilities."

¶21 Father admittedly used meth while Daughter was residing with him, claiming later that it did not interfere with his care of Daughter. Further, Father minimized his responsibility for Daughter's removal, blaming various third

parties for the circumstance. Since Daughter was removed, he has continued to take actions inconsistent with the duties and obligations of a parent. He has failed to take responsibility for his drug use by missing prescribed drug tests, testing positive for meth, and failing to participate in his substance-abuse treatment program. Father has exhibited a lack of care for his own grooming and cleanliness during his supervision, and he has raised concerns regarding his financial stability considering his lack of motivation for employment. Therefore, the evidence was sufficient to support the juvenile court's finding that Father was unable to discharge parental responsibilities as required by statute.

**Reasonable Belief that Chronic Drug Use will Continue**

¶22 To satisfy the requirements of A.R.S. § 8-533(B)(3), "ADES must also prove there are reasonable grounds to believe that the condition causing an inability to parent will continue for a prolonged and indeterminate period." *Raymond F.*, 224 Ariz. at 378, ¶ 25, 231 P.3d at 382. Evidence of a father's "significant history of drug use, recent drug use, and failure to complete various reunification services [is] sufficient evidence to show that [his] drug abuse [will] continue for a prolonged, indeterminate period." *Id.* at 378-79, ¶ 26, 231 P.3d at 382-83 (citation omitted). Further, a father's failure to maintain sobriety at a time when doing so will result in the

termination of parental rights is "evidence he has not overcome his dependence on drugs and alcohol." *Id.* at 379, ¶ 29, 231 P.3d at 383.

¶23 The record supports the juvenile court's finding. Father has a substantial history of meth abuse covering 18 years. Although Father has been provided with substance-abuse treatment, he has failed to remain free of drugs for any extended period of time since the end of 2010. Even after Daughter's removal, Father has failed to fully comply with required urinalysis testing, missing 11 tests during 2011. Further, Father has tested positive for meth seven times during 2011 and was subsequently closed out of the substance abuse program due to lack of participation. Father has exhibited a marginal commitment to a clean and sober lifestyle. Thus, sufficient evidence exists to find Father's condition would continue for a prolonged and indefinite period of time.

#### CONCLUSION

¶24 For the foregoing reasons, we affirm the juvenile court's decision terminating Father's rights to Daughter.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
RANDALL M. HOWE, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge