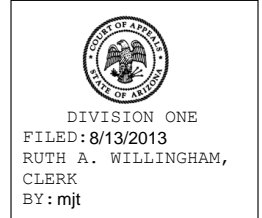


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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



BETHANY Y., ) 1 CA-JV 13-0065  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, A.M., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD20610

The Honorable Joan M. Sinclair, Commissioner

**AFFIRMED**

Thomas C. Horne, Attorney General Tucson  
By Cathleen E. Fuller, Assistant Attorney General  
Attorneys for Appellees

Christina Phillis, Maricopa County Public Advocate Mesa  
By Suzanne W. Sanchez, Deputy Public Advocate  
Attorneys for Appellant

**G O U L D**, Judge

¶1 Bethany Y. ("Mother") appeals the superior court's order terminating her parental rights to A.M. ("Child") due to

substance abuse under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3), arguing that Arizona Department of Economic Security ("ADES") failed to prove that her condition would continue for a prolonged and indeterminate period. For the following reasons, we affirm.

### ***Facts and Procedural Background<sup>1</sup>***

¶2 In January 2011, Child was born exposed to alcohol, cocaine, and methamphetamine due to Mother's drug use during pregnancy. Mother used drugs throughout the pregnancy; her drug use included using crack cocaine the night before she went into labor. Child was born with special needs. Due to Child's prenatal drug exposure, Child Protective Services ("CPS") has been involved with Child since birth. During the first few months of Child's life, CPS offered services to address Mother's substance abuse issues.

¶3 Mother was responsible for Child's care until August 2011, when CPS removed Child due to domestic violence between Mother and Robert M. ("Father") and further drug use by Mother. Following that incident, ADES filed a petition for dependency, and the court found Child dependent as to Mother in August 2011.

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<sup>1</sup> "We view the evidence in a severance case in the light most favorable to sustaining the juvenile court's findings." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234, ¶ 13, 256 P.3d 628, 631 (App. 2011).

¶4 Mother began an inpatient substance abuse treatment program, and then progressed to an outpatient stage at a halfway house. After leaving the halfway house, Mother obtained housing and was working to support herself while continuing her treatment. In February 2012, the case manager recommended that Child be returned to Mother because she had stopped using drugs. On March 5, 2012, Child was returned to Mother's care.

¶5 However, Mother later admitted that she had consumed alcohol and obtained and used methamphetamine the night before the child was to be returned to her care, and that when she appeared in court on March 5, she was still under the influence of methamphetamine. Mother's case worker testified that Mother had told her that she had been back in contact and involved with Father during the two months prior to March 4, and that Mother said he was a "trigger" for Mother's behavior. He was not participating in treatment. Mother's urinalysis testing results were positive for methamphetamine on both March 6 and 14, 2012. At about this time, Mother also quit going to work. Child was in Mother's care until April 1, 2012, when a CPS "after hours" team was able to locate them and remove Child once again. While Child was in Mother's care, Mother was using methamphetamine, and was in only very sporadic contact with CPS. Mother also failed to take Child to daycare (other than one day), or to Child's necessary therapy appointments consistently.

¶6 After Child was removed, Mother continued to use methamphetamine; she tested positive for methamphetamine again on April 17, 2012. Mother was arrested for driving under the influence ("DUI") on April 29, 2012. She then subsequently failed to appear and was picked up and spent the night in jail on June 9, 2012 before ultimately pleading guilty to the DUI on July 2, 2012.

¶7 Mother testified that she had last consumed alcohol in July 2012. Her urinalysis results were negative for alcohol and methamphetamine from July 2012 until the time of trial in December of that year. She reentered substance abuse treatment in July 2012 following her earlier period of substance abuse. Mother was not employed at the time of trial.

¶8 Dr. G. Joseph Bluth completed a psychological evaluation on Mother on August 27, 2012. Dr. Bluth found both amphetamine and alcohol dependence. Additionally, he found both depressive and personality disorders. Dr. Bluth also testified that he believed that Mother's struggle with substance abuse was likely to continue into the indefinite future, and that the steps Mother had taken were just a beginning.

¶9 At trial, there was testimony that Mother had been involved with drugs and alcohol since her late teens, including using methamphetamine beginning around that time. There was further evidence that she also had periods of regular cocaine use

since her late teens. Prior to late 2011, substance abuse of one form or another had been nearly constant for a period of approximately twenty years.

¶10 The court granted ADES' petition to terminate Mother's parental rights.<sup>2</sup> The court found grounds to sever under A.R.S. § 8-533(B)(3) (2013) (chronic substance abuse). The court found by clear and convincing evidence that Mother could not "discharge her parental responsibilities because of her substantial history of chronic substance abuse and that there are reasonable grounds to believe that this will continue for a prolonged indeterminate period." The court also found by a preponderance of the evidence that it would be in Child's best interests to terminate Mother's parental rights because the Child was adoptable and deserved permanence and stability. Mother timely appeals. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) and 12-120.21(A)(1).

#### ***Discussion***

¶11 Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, we will reject the court's findings only if no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

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<sup>2</sup> Father had his parental rights terminated prior to trial in this case.

¶12 While there is a fundamental right to custody of one's own children, it is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in [A.R.S.] [§] 8-533, and also that termination is in the best interest of the child." *Id.* at 249, ¶ 12.

¶13 Specifically, to terminate parental rights due to substance abuse under A.R.S. § 8-533(B)(3), there must be clear and convincing evidence that: "1) parent has a history of chronic abuse of controlled substances or alcohol; 2) 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).

¶14 On appeal, Mother challenges the sufficiency of the evidence supporting the grounds for terminating her parental rights. She argues there was not enough evidence to establish a reasonable belief that her chronic substance abuse problem would continue for a prolonged and indefinite period. She does not challenge the court's findings that termination is in the best

interest of the child, that she has a history of chronic substance abuse, or that she cannot discharge her parental responsibilities due to chronic substance abuse. Her sole argument is that there was insufficient evidence to support a finding that her chronic drug use would continue because the court found that she had been substance abuse free for eight months prior to the ruling. However, this is only one factor of many to be considered.

¶15 At trial, Dr. Bluth testified that there were risk factors that increased the likelihood of relapse, including Mother's psychological condition and stress, which would increase with potential reintroduction of a special needs child into her life. He also testified that Mother would need years of therapy to address her psychological issues and that Mother's struggle with substance abuse would continue for a prolonged and indeterminate period of time. The eight months of sobriety that Mother had achieved at the time of trial was also relatively short when compared with the nearly two decades of substance abuse that occurred prior to that period of sobriety. Finally, Mother testified that she would need six more months of drug treatment, at a minimum. Mother has also been in various treatment programs, including programs prior to the birth of Child, for some time and managed to do well for periods of time, as here, but has nevertheless returned to drug use.

¶16 Mother has not been able to stay free of substance abuse in the type of noncustodial setting where she would be expected to raise a child. See *id.* at 379, ¶ 29. Temporary abstinence does not outweigh the many years of prior drug abuse. *Id.* “It is not the number of times that [Mother] has tested positive or negative for drug abuse that is key, but rather, it is the fact that [s]he has consistently failed to *abstain* from drugs and alcohol.” *Id.* (emphasis in original). While remaining sober for eight months is commendable, that fact alone is not enough to outweigh the other evidence that was presented in this case. There is sufficient evidence in the record to support the court’s finding that Mother’s chronic drug use justifies severance. Accordingly, we affirm.

**Conclusion**

¶17 For the reasons above, we affirm the juvenile court’s order severing Mother’s parental rights to Child.

/S/  
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ANDREW W. GOULD, Presiding Judge

CONCURRING:

/S/  
\_\_\_\_\_  
KENT E. CATTANI, Judge

/S/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Judge