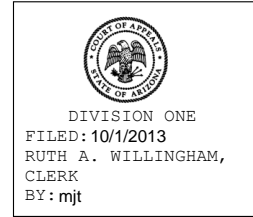


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KRISTY R., ) No. 1 CA-JV 13-0104  
Appellant, )  
 ) DEPARTMENT C  
v. )  
 ) **MEMORANDUM DECISION**  
ARIZONA DEPARTMENT OF ECONOMIC, ) (Not for Publication -  
SECURITY, K.R., ) 103(G) Ariz. R.P. Juv.  
 ) Ct.; Rule 28 ARCAP)  
Appellees. )  
 )  
 )  
 )

Appeal from the Superior Court in Maricopa County

Cause No. JD12036

The Honorable Colleen McNally, Judge

**AFFIRMED**

Denise Lynn Carroll  
Attorney for Appellant

Scottsdale

Thomas C. Horne, Arizona Attorney General  
By Laura J. Huff, Assistant Attorney General  
Attorneys for Appellees.

Tucson

J O H N S E N, Judge

¶1 Kristy R. ("Mother") appeals the superior court's order terminating her parental rights to her daughter ("Child"). For the following reasons, we affirm.

## FACTS AND PROCEDURAL BACKGROUND

¶12 Child was born in July` 2002, and Mother and Child's father ("Father") were married the following December. Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("Department"), filed 19 reports during the course of Mother's relationship with Father that detailed Father's physical and sexual violence and Mother's failure to protect children in the home from that violence. In 2002, CPS filed reports stating that Father physically abused all four children in the household, sexually abused two of the children and engaged in domestic violence against Mother in the children's presence.

¶13 Throughout 2003 and 2004, one of the children reported multiple incidents of physical violence - he stated Father "kicks him all the time," held him under water in the bathtub, and threatened to forego feeding him if he disclosed the abuse to anyone. In 2005, another child was taken to the hospital because Father put his foot on her face with so much force that marks were left. The girl told police that Father also left bruises on her brother and that he hit Child so hard that she fell on her knees.

¶14 In June 2009, Mother obtained a restraining order against Father and filed a petition to commit him to a mental-health facility. In her petition, Mother wrote that Father had

threatened to kill her and that she feared for her and her children's safety. Father was committed to a mental-health clinic, but returned home in early 2011.

¶15 In late February 2011, CPS received a report that one of the children urinated blood because Father "beats [him] really bad." Child and her brother reported regular ongoing physical abuse by Father and reported that Mother did nothing to prevent the abuse, even when it occurred in her presence. The Department took temporary custody of Child and her brother and filed a petition alleging they were dependent as to Mother due to her failure to protect them from physical abuse.<sup>1</sup> The superior court found the children dependent as to Mother, and Child was placed in foster care.

¶16 The Department offered Mother reunification services, but she participated only sporadically. In May, June and July of 2011, Mother and Father refused to participate in one-on-one skills sessions with a parent aide. In August, both parents participated in parental skills sessions but refused to join some modules, saying they were not needed. In September, Mother began individual counseling, but denied that any domestic violence occurred in the home. From January to May 2012, Mother

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<sup>1</sup> This appeal concerns only Child and not her brother.

failed to attend any individual counseling sessions. Mother and Father separated and obtained a divorce in early 2012.

¶17 At a report and review hearing in April 2012, the Department asked that Child's case plan be changed from reunification to severance and adoption on the grounds of abuse, based on Mother's failure to protect the children, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2)(2013), and mental illness, pursuant to A.R.S. § 8-533(B)(3).<sup>2</sup> The Department later added the ground of 15 months time-in-care under A.R.S. § 8-533(B)(8)(c).

¶18 In May 2012, Mother restarted individual counseling, but again, participated only sporadically. While she attended all scheduled appointments between July and October 2012, she missed nearly all appointments between October and December of that year. Thereafter, Mother's individual counseling was cancelled.

¶19 Trial was held in February and March of 2013. At trial, Mother admitted that Father could be physically abusive, but she continued to deny the full extent of the abuse. For example, she denied that a previous dependency with another child was related to Father's physical and sexual abuse of that child. She denied having any knowledge of her son's allegations

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<sup>2</sup> Absent material revision after the date of an alleged offense, we cite a statute's current version.

of physical abuse at the hands of Father, and she denied seeing Father hit or kick the boy. Further, she denied that Child would be harmed if she were placed in Father's care.

¶10 Mother also admitted that even though she and Father were divorced, they continued to maintain a relationship. She testified they exchanged text messages and that she passed along information about Child to Father. She admitted to having sexual relations with Father in November 2012, several months after their divorce. Additionally, Father testified that he and Mother arranged to keep in touch if Child were returned to her.

¶11 Dr. John DiBaccio, who performed a psychological evaluation of Mother during August and November of 2011, testified that Mother continued to "minimize or otherwise ignore" the accusations of physical abuse that led to two prior dependencies. DiBaccio also noted that Mother paradoxically described men as "protectors" and did not understand the reasons for CPS involvement in her life.

¶12 DiBaccio diagnosed Mother with dependent personality disorder in the "critical range." This condition, he stated, causes her to pursue intimate relationships with men who are violent and to forsake the welfare of her children. DiBaccio testified Mother probably had a "repetition compulsion in consistently seeking out abusive and predatory men." He observed that her emotional dependence caused her to place

Father's interests ahead of her children's interests. Further, he noted that Mother's unwillingness or inability to protect her children suggested a "characterological problem," making her a "high-risk parent." DiBaccio noted that Mother's pattern of entering into violent relationships with men was likely to continue, meaning there was a significant risk that her children would be abused or neglected in the future. Finally, he concluded that the likelihood that Mother would learn how to protect her children within a reasonable time remained "guarded to poor," especially without "intense long-term treatment" for "years rather than months."

¶13 Dr. Glen Moe, a psychologist who assessed Child, testified that Child told him Father periodically hit her with his hand and his belt and that one time, he hit her so hard that "she could not breathe" because she was crying so intensely. Child also told Moe she had witnessed domestic violence between Mother and Father and between Father and her brother.

¶14 Moe concluded that severance and adoption were in Child's best interests:

[Child] . . . needs permanency in her life. She's highly anxious about the prospect of what's going to be happening or who she will be relating to in terms of her biological parents and environment[;] she's not going to be able to settle down emotionally and behaviorally until such a time that she has a clear message that that part of her life

is behind her and she can begin to move forward. So emotionally, she needs that.

¶15 After hearing the evidence, the superior court terminated Mother's parental rights on the grounds of failure to protect Child under A.R.S. § 8-533(B)(2), mental illness under A.R.S. § 8-533(B)(3) and 15 months time-in-care under A.R.S. § 8-533(B)(8)(c). This court has jurisdiction of Mother's timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. § 8-235(A) (West 2013).

#### DISCUSSION

##### A. Legal Principles.

¶16 The superior court may terminate a parent-child relationship if it finds by clear and convincing evidence at least one of the statutory grounds set out in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Additionally, the court must find by a preponderance of the evidence that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). On appeal, this court will affirm a severance order unless it is clearly erroneous and will accept the superior court's findings unless no reasonable evidence supports it. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

**B. Time-in-Care.**

¶17 As relevant here, parental rights may be terminated on time-in-care grounds if:

[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

A.R.S. § 8-533(B)(8)(c).

¶18 The circumstances that cause the child's out-of-home placement are "those circumstances existing at the time of the severance rather than at the time of the initial dependency petition." *Maricopa County Juvenile Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993), *abrogated on other grounds by Kent K.*, 210 Ariz. at 282, ¶ 12, 110 P.3d at 1016.

¶19 Reasonable evidence supports the superior court's finding that Mother failed to remedy the circumstances that caused Child's out-of-home placement. DiBaccio testified that Mother suffered from dependent personality disorder in the "critical range." As a result, he opined that Mother likely would continue to engage in relationships with abusive men, exposing Child to a significant risk of abuse. Although he



acknowledged that Mother eventually could learn how to protect her children, he said such a breakthrough only would come with intensive long-term therapy and counseling. The evidence shows that, while Mother participated in some individual counseling sessions, she failed to do so regularly.

¶20 Mother argues she remedied the circumstances that led to Child's out-of-home placement by divorcing Father and beginning to perform background checks on potential boyfriends. Even at trial, however, Mother continued to deny the full extent of the physical abuse to which her children were exposed. Importantly, Mother admitted that she continued to maintain an intimate relationship with Father. Based on this record, sufficient evidence supported the superior court's finding that Mother was unable to remedy the circumstances that led to Child's out-of-home placement.

¶21 Mother argues the Department failed to demonstrate that it had satisfied its obligation to make a diligent effort to provide her with appropriate reunification services. See A.R.S. § 8-533(B)(8)(c); *Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). In support of that contention, however, she argues only that the Department failed to have DiBaccio reevaluate her a second time. But the Department is not required to provide every conceivable service to show that it has made diligent reunification efforts.

*Id.* Moreover, ample evidence showed that the Department offered Mother numerous services, including parent-aide sessions, psychological consultations, counseling and domestic violence services. From this record, sufficient evidence supported the superior court's finding that the Department made a diligent effort to provide appropriate reunification services to Mother.<sup>3</sup>

**C. Best Interests.**

¶22 Mother also argues the superior court erred by finding that termination was in Child's best interests.

¶23 The court announced its best-interests findings at the conclusion of the termination proceeding:

[Child] needs to have parents who are willing to put her needs first and who will not physically harm her or allow others to harm her. She is a sweet girl . . . . Although the potential adoptive placement that was previously identified did not work out, [Child] is an adoptable child. It is likely that the certainty of her situation after the termination is final will allow her to focus on her own future and thus assist her in transitioning to an adoptive home.

It would be detrimental to [Child] to continue the parent-child relationship with a father who is likely to continue to be physically and emotionally abusive and a mother who is unlikely to protect her.

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<sup>3</sup> We may affirm the order of termination on any one of the statutory grounds on which the superior court ordered severance. *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

¶124 "[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 County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Evidence that will support a finding that a child would benefit from termination includes evidence of an adoption plan or that the child is adoptable or if the "existing placement is meeting the needs of the child." *Jesus M.*, 203 Ariz. at 282, ¶ 14, 53 P.3d at 207 (quotation omitted); see also *JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶125 Reasonable evidence supports the superior court's finding that termination of Mother's parental rights was in Child's best interests. Moe testified that severance and adoption would provide Child with much-needed permanency, allowing her to move forward emotionally. He also noted that her placement was meeting her emotional needs. He stated that during her year in foster care, Child did well "in terms of her emotional behavioral adjustment." He also noted that her school grades improved dramatically over the course of her foster care, due in large part to her increased sense of security.

¶126 Mother argues that at the time of trial, Child was staying in a shelter without an adoptive placement. An adoption plan, however, is not a necessary prerequisite to termination. See *No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238. In fact,

a best-interests finding may be based only on a showing that a child is adoptable. *Id.* And multiple witnesses testified that Child is adoptable.

¶27 Because there was ample evidence that termination of Mother's parental rights would benefit Child by providing her with much needed stability and because Child is adoptable, we affirm the superior court's finding that termination was in Child's best interests.

**CONCLUSION**

¶28 For the foregoing reasons, we affirm the superior court's order severing Mother's parental relationship with Child.

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

CONCURRING:

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

\_\_\_\_\_/s/\_\_\_\_\_  
SAMUEL A. THUMMA, Judge