

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE  
LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

ERIKA R., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, A.H., M.H., L.R., *Appellees*.

No. 1 CA-JV 14-0015  
FILED 07-15-2014

---

Appeal from the Superior Court in Maricopa County  
No. JD508910  
The Honorable James P. Beene, Judge

**AFFIRMED**

---

COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix  
By Robert D. Rosanelli  
*Counsel for Appellant*

Arizona Attorney General's Office, Mesa  
By Eric Knobloch  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Chief Judge Diane M. Johnsen joined.

---

**NORRIS**, Judge:

¶1 Erika R.<sup>1</sup> appeals from the juvenile court’s order terminating her parental rights to three of her children, A.H., M.H., and L.R., arguing the Arizona Department of Economic Safety (“ADES”)<sup>2</sup> did not present clear and convincing evidence to terminate her parental rights under Arizona Revised Statutes (“A.R.S.”) § 8-533(B)(8)(c) (2014) (15 months out-of-home placement).<sup>3</sup> Based on our review of the record, we disagree and affirm the termination order.

¶2 As relevant here, a juvenile court may terminate parental rights under A.R.S. § 8-533(B)(8)(c) if it finds ADES presented clear and convincing evidence a child has been in an out-of-home placement for a total period of at least 15 months, ADES made a “diligent effort” to provide the parent with appropriate reunification services, and “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

---

<sup>1</sup>On this court’s own motion, we amended the caption to reflect the correct spelling of Appellant’s name.

<sup>2</sup>Pursuant to Senate Bill 1001, § 157, 51st Leg., 2d Spec. Sess. (Ariz. 2014) (enacted), we substituted the Department of Child Safety for ADES as the Appellee in this matter. *See* ARCAP 27. For ease of reference and consistency with the record, however, we refer to ADES in the text of this decision.

<sup>3</sup>Erika also challenges the court’s finding that ADES had presented clear and convincing evidence to terminate her parental rights under A.R.S. § 8-533(B)(3) (mental illness). We do not need to address this ground for termination because clear and convincing evidence supports termination under A.R.S. § 8-533(B)(8)(c). *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002).

ERIKA R. v. DCS, et al.  
Decision of the Court

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) (2014); *see also* A.R.S. § 8-537(B) (2014); *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). We review a juvenile court’s decision to terminate parental rights for an abuse of discretion and will disturb its decision only if there is no evidence to support it. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶3 Here, ADES removed the children from Erika’s home on October 28, 2010 following an investigation into child abuse allegations. On March 11, 2011, the juvenile court found the children dependent as to Erika based on evidence she was unable to properly parent the children due to abuse and mental health issues. On March 20, 2012, the court changed the case plan of family reunification to severance and adoption. ADES subsequently moved to terminate Erika’s parental rights as to the children.

¶4 By the time of the termination hearing on October 24, 2012, the children had been in an out-of-home placement for approximately 24 months. ADES presented testimony, through the children’s caseworker, that although Erika had “participated fully” in the reunification services made available to her, she had been unable to remedy the circumstances that caused the children to be removed from her home. Specifically, the caseworker testified Erika had not exhibited “a behavior change” or “an acceptance of the situation that brought the children into care” and it appeared “her attitude towards the children, and her attitude towards parenting[,] has remained the same.” ADES also introduced psychological and psychiatric evaluation reports diagnosing Erika with multiple mental disorders -- including bipolar disorder, post-traumatic stress disorder, and borderline personality disorder -- and concluding that those conditions were chronic and likely to continue for the foreseeable future.

¶5 The juvenile court continued the termination hearing, and on June 5, 2013, ADES introduced an updated psychological evaluation report in which the authoring psychologist acknowledged Erika “likely has shown some improvement in her symptoms” but also noted “[i]t was difficult to get a clear picture of her present functioning as she was attempting to portray herself in a very favorable light.” The report concluded Erika’s “overall prognosis would be guarded to poor” because of the longstanding nature of her mental health problems, financial instability, and lack of a stable residence and “the therapy she has

ERIKA R. v. DCS, et al.  
Decision of the Court

received will need to continue several years into the future before consideration could be given to parenting her children.”

¶6 Although we recognize Erika presented evidence -- through the testimony of her treating psychiatrist -- that conflicted with the psychological and psychiatric evaluation reports introduced by ADES, the juvenile court stated in its termination order that it gave “very little weight” to the psychiatrist’s testimony because he had only “marginal knowledge of the facts surrounding the circumstances that caused the children to be placed in an out-of-home placement.” Further, Erika’s psychiatrist acknowledged during cross-examination that he was not in a position to render a professional opinion as to whether Erika could properly parent her children. 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,” *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citing *Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)), and because ADES presented substantial evidence in support of its motion to terminate Erika’s parental rights, the juvenile court did not abuse its discretion in finding ADES had proven by clear and convincing evidence Erika would not be capable of exercising proper and effective parental care and control of her children in the near future.

¶7 We therefore affirm the juvenile court's order terminating Erika’s parental rights under A.R.S. § 8-533(B)(8)(c).



Ruth A. Willingham · Clerk of the Court  
FILED : gsh