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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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MIGUEL R., STACEY S., *Appellants,*

*v.*

DEPARTMENT OF CHILD SAFETY, J.R., D.R., M.P., T.P., *Appellees.*

No. 1 CA-JV 16-0294  
FILED 2-28-2017

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Appeal from the Superior Court in Maricopa County  
No. JD528615  
The Honorable Timothy J. Ryan, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Alison Stavris  
*Counsel for Appellant Miguel R.*

Vierling Law Offices, Phoenix  
By Thomas A. Vierling  
*Counsel for Appellant Stacey S.*

Arizona Attorney General's Office, Mesa  
By Amanda L. Adams  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

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**C A T T A N I**, Judge:

¶1 Miguel R. (“Father”) appeals from the superior court’s ruling severing his parental rights as to J.R., D.R., and M.P. Stacey S. (“Mother”) appeals from the court’s ruling terminating her parental rights as to M.P. and T.P.<sup>1</sup> For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother and Father are the biological parents of J.R. (born July 2001), D.R. (born January 2009), and M.P. (born October 2013), and Mother is the biological parent of T.S. (born March 2007) and T.P. (born May 2012).<sup>2</sup>

¶3 Father has a substantial criminal history. He was first incarcerated in 2000, before J.R.’s birth, for approximately one year. After release, he lived with Mother and J.R. while J.R. was an infant.

¶4 In 2003, Father was sentenced to 2.5-years’ imprisonment for misconduct involving weapons, to be served concurrently with a shorter term imposed on revocation of probation on a domestic violence offense earlier that year. While incarcerated, Father was sentenced to an additional 3-year term for attempted promoting prison contraband. Father had some contact with the children after his release in 2008, including a period in 2011 during which both Father and J.R. lived with Father’s mother (“Grandmother”).

¶5 Later in 2011, Father was sentenced to one year in prison for attempted aggravated assault on a law enforcement officer and criminal damage, to be followed by a term of probation for possession of drug paraphernalia. After his release in 2012, Father occasionally visited D.R. at

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<sup>1</sup> At Mother’s request, we have amended the caption in this matter to include T.P. All future filings shall reflect this change.

<sup>2</sup> Mother’s parental rights as to J.R., D.R., and T.S. were previously terminated and are not at issue in this case.

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Grandmother's house to play with him or to buy him clothes. And Father was present at the hospital in October 2013 when M.P. was born, although Mother told him he was not M.P.'s father.

¶6 Father has been in custody since November 2013 as a result of misconduct involving weapons and drug offenses. He is serving a 6-year prison sentence, to be followed by a 3-year period of probation. He may be released as early as October 25, 2018, or as late as January 10, 2019.

¶7 During this most recent period of incarceration, Father called Grandmother weekly, and she would put him on speakerphone with the children. J.R. and D.R. both have significant special needs and were largely nonverbal, but J.R. would recognize Father's voice and D.R. would generally yell into the phone and run off. Father also sends birthday cards to J.R. and D.R.

¶8 In the meantime, Mother had been having trouble caring for all of the children. In 2011, apparently after some contact from the Department of Child Safety ("DCS"), Mother decided that she needed help caring for the children, and she placed J.R. with Grandmother and T.S. with his maternal grandmother. Mother placed D.R. with Grandmother in 2014.

¶9 In March 2015, Mother twice left three-year-old T.P. unsupervised, and he wandered out of the home alone, once to a nearby playground and once to a major street. Responding police found the home to be dangerously unsanitary, and there was no food available for the children. DCS further discovered that Mother had substance abuse issues, particularly involving methamphetamine. DCS removed T.P. and M.P. and placed them, along with J.R. and D.R., with Grandmother. The superior court found the children dependent as to Mother and Father.

¶10 Because Father was incarcerated, DCS did not offer him any services directly. Father did, however, engage consistently in the classes available to him in prison, including cognitive restructuring, parenting, family dynamics, nonviolent communication, decision-making skills and stress reduction, and substance abuse. He also started to attend weekly AA meetings and completed college coursework that included technical mathematics and psychology.

¶11 Mother was absent for the first three months of the dependency, and DCS later discovered she had been incarcerated for a drug-related offense. Mother was released and began a term of probation, including drug court, in summer 2015. DCS coordinated with her probation officer to offer services, including drug testing and treatment, visitation

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with parent aide services, psychological evaluation, and transportation if needed, and the Probation Department provided domestic violence classes and parenting classes.

¶12 Mother thereafter engaged in probation services, but she delayed several months before completing a substance abuse treatment intake. Around January 2016, she reengaged with drug abuse treatment, and she finished intensive outpatient treatment, completed standard outpatient treatment, and was participating in a recovery maintenance program at the time of the July 2016 severance trial. Mother claimed at that time that she had not used drugs for 14 months, and she had consistently tested negative except for one positive test for opiates in April 2016.

¶13 Although Mother was referred for supervised visitation with the children and one-to-one parenting skills classes with a parent aide, that referral was closed for non-participation in January 2016, and the court granted DCS's request to suspended visitation in February 2016. At that time, Mother had not participated in any parenting skills sessions with the parent aide and had completed only a single visit. During that visit, she was unable to adequately supervise all of the children at once or manage their behaviors, instead focusing on one child at a time while ignoring or simply not noticing the others. DCS later reopened visitation with T.P. and M.P. in May 2016, but was unable to contact Mother for approximately one month, and consequently the newly referred visits did not begin until two weeks before the severance hearing. Overall, Mother completed only four or five visits over the 16-month duration of the dependency.

¶14 Mother also delayed participating in a psychological evaluation for over seven months. During the evaluation, she denied a history of methamphetamine use (even though she had reported in substance abuse treatment that methamphetamine was her drug of choice from 2006 through 2015), and the psychologist noted that Mother responded defensively to the testing, "portray[ing] herself in an overly favorable light" and showing a "pervasive pattern of denial of even minor faults and shortcomings." The psychologist opined that Mother lacked the knowledge and skills necessary to effectively parent the children at that time, lacked insight into the reasons for DCS involvement, and lacked insight into the severity of effects that her substance abuse, inadequate supervision, and inadequate home environment had on the children.

¶15 DCS moved to sever Mother's parental rights based on nine and 15 months' time in care, and Father's parental rights based on length of incarceration. In June 2016, Mother declined to contest severance as to J.R.,

D.R., and T.S., and after an evidentiary hearing, the superior court severed her parental rights to these three children.<sup>3</sup> After a severance trial in July 2016, the court found that severance of Mother’s parental rights as to M.P. and T.P. and of Father’s parental rights as to J.R., D.R., and M.P. was warranted based on all grounds alleged, and further found that severance would serve the children’s best interests.

¶16 Mother and Father timely appealed. We have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 8-235(A).<sup>4</sup>

## DISCUSSION

¶17 The superior court may terminate the parent–child relationship if clear and convincing evidence establishes at least one statutory ground for severance and a preponderance of the evidence shows severance to be in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review the court’s severance ruling for an abuse of discretion, deferring to its credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

### I. Termination of Mother’s Parental Rights to M.P. and T.P.

¶18 Mother argues the superior court erred by finding grounds for termination and by finding termination to be in the children’s best interests. Severance based on 15 months’ time in care under A.R.S. § 8-533(B)(8)(c) requires proof that: (1) the child has been in an out-of-home placement for at least 15 months, (2) “[DCS] has made a diligent effort to provide appropriate reunification services,” (3) “the parent has been unable to remedy the circumstances” necessitating the out-of-home placement, and (4) “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.” This ground focuses not just on a parent’s efforts to remedy the circumstances necessitating out-of-home placement, but rather on a “parent’s success in actually doing so.” *Marina P.*, 214 Ariz. 326, 329–30, ¶¶ 20–21 (App. 2007). The relevant circumstances are those existing at the time

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<sup>3</sup> Mother did not timely appeal that ruling.

<sup>4</sup> Absent material revisions after the relevant date, we cite a statute’s current version.

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of severance. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96 n.14, ¶ 31 (App. 2009).

¶19 Mother does not contest that M.P. and T.P. were in an out-of-home placement for at least 15 months. She argues, however, that she successfully remedied the circumstances that brought the children into care. The record reflects that Mother made significant progress in addressing her substance abuse issues. But Mother's participation in other services was not comparable. She completed only four or five supervised visits with the children over the course of the dependency. And although she completed a parenting class one week before trial, she had not engaged with parent aide services before that, and had not demonstrated an ability to effectively supervise the children.

¶20 Moreover, Mother's psychological evaluation raised concerns that she did not fully understand and was minimizing the severity of the parenting safety concerns cited by DCS. The evaluator observed that absent full participation in parenting services and increased insight into her role in safely and effectively managing the children's behavior, they would be at increased risk in her care. Even assuming Mother successfully remedied her substance abuse issues, the court nevertheless had a reasonable basis from which to conclude that Mother remained unable to provide adequate supervision for the children or a safe and appropriate home, and that she was unlikely to be able to do so in the near future.

¶21 Mother also argues that DCS failed to provide sufficient reunification services because she was not allowed enough time after she began participating in services. But Mother went almost a full year with only minimal, sporadic participation in services, and by the time of the severance trial had just begun parenting skills classes and visitation. Although she made substantial progress in addressing her substance abuse issues after beginning to participate, her late start does not render the provision of services inadequate.

¶22 Accordingly, the superior court did not err by finding severance to be warranted based on 15 months' time in care. And because the court properly found this ground for severance, we need not address the alternative nine months' time in care ground. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27 (2000).

¶23 Mother further argues that, because she has an existing relationship with M.P. and T.P., severance was not in the children's best interests. In assessing best interests, the superior court must determine

“how the child would benefit from a severance *or* be harmed by the continuation of the relationship” with the biological parent. *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Evidence that a child is adoptable or that there is a current adoptive plan may support a finding that termination is in the child’s best interests, as may evidence that the current placement is meeting the child’s needs. *Lawrence R. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 8 (App. 2008); *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Here, Mother had not developed or shown an ability to safely parent the children, and Grandmother – who was meeting all of the children’s needs – testified that she was willing to adopt them. Accordingly, the court did not abuse its discretion by finding severance to be in the children’s best interests.

## II. Termination of Father’s Parental Rights as to J.R., D.R., and M.P.

¶24 Father challenges the superior court’s determination that severance was warranted based on length of incarceration; he does not challenge the best interests determination. The statutory ground of severance due to length of felony sentence requires proof that an incarcerated parent’s felony sentence “is of such length that the child will be deprived of a normal home for a period of years.” A.R.S. § 8-533(B)(4). Length of sentence alone is not dispositive. *Jesus M.*, 203 Ariz. at 281, ¶ 9. Instead, the court must consider all relevant circumstances, including those set forth by the Arizona Supreme Court in *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. at 251–52, ¶ 29:

(1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child’s age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

¶25 Father argues that the *Michael J.* factors do not support severance. First, he claims that he had an existing relationship with all three children, but the record shows that these parent-child relationships were neither long nor strong. M.P. was only one month old when Father was incarcerated. Father estimated that he had lived with D.R. for only approximately six months, and otherwise just occasionally visited to play with him or buy him clothing. Father did live with J.R. during two periods

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of time (first when J.R. was an infant and then when he was around 10 years old), but he has been incarcerated for far more of J.R.'s life, first for four and a half years, then one year, and now a six-year term. All told, Father left himself little opportunity to develop a relationship with his sons. And although Father calls Grandmother periodically, he has been unable to develop his relationship with the children telephonically given J.R. and D.R.'s significant special needs and M.P.'s young age.

¶26 Father further argues that, based on his anticipated early release date in October 2018, he would still have several years to parent D.R. and M.P. before they reach the age of majority. But Father's six-year sentence leaves all three boys without a normal home for years. Even assuming an early release, Father will have been incarcerated for over 10.5 years of J.R.'s life, for over half of D.R.'s life, and almost the entirety of M.P.'s life. Although Father argues that denial of severance would have no practical effect (as the children would continue to reside with Grandmother), the children lack any parent to provide a normal home life given the termination of Mother's parental rights, and Father is unable to provide the safe and stable environment needed, particularly in light of M.P.'s age and the other boys' special needs. Under the circumstances, the superior court had a reasonable basis to conclude that severance was warranted based on the length of Father's felony sentence.

**CONCLUSION**

¶27 We affirm termination of Mother's parental rights to M.P. and T.P. and Father's parental rights to J.R., D.R., and M.P.



AMY M. WOOD • Clerk of the Court  
FILED: AA