

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

---

ELIZABETH O., *Appellant*,

*v.*

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

No. 1 CA-JV 16-0507  
FILED 5-16-17

---

Appeal from the Superior Court in Maricopa County  
No. JD23270  
The Honorable Christopher T. Whitten, Judge

**AFFIRMED**

---

COUNSEL

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

Arizona Attorney General's Office, Phoenix  
By Amber E. Pershon  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jon W. Thompson joined.

---

**M c M U R D I E**, Judge:

¶1 Elizabeth O. (“Mother”) appeals the superior court’s order terminating her parental rights to M.H., V.H., A.H., and R.H. (“the Children”). For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother and Father are the biological parents of M.H., born in 2000, V.H., born in 2002, A.H., born in 2003, and R.H., born in 2006.<sup>1</sup> On January 10, 2015, V.H. ran away from home after seeing a methamphetamine pipe and needle on Mother’s bed. Mother confronted V.H. two days later at her grandmother’s home, and engaged in a physical altercation with V.H., striking her, and causing her to bleed. V.H. placed a call to a child abuse hotline on January 15, 2015, alleging physical abuse by Mother.

¶3 The Department of Child Services (“DCS”) went to Mother’s home to further investigate V.H.’s allegations and found several safety hazards within the home, including a broken window with shreds of glass and overflowing garbage cans. There was no running water or gas because the utility bills had not been paid. M.H., A.H., and R.H. were taken into temporary custody due to an unstable and unsafe home environment and substance abuse.<sup>2</sup>

¶4 DCS filed a dependency petition in January 2015, alleging Mother abused V.H. and was unwilling or unable to provide effective

---

<sup>1</sup> Father’s rights were severed in a separate action. He is not a party to this appeal.

<sup>2</sup> Mother was involved in a previous dependency and severance matter concerning each of the four children in 2012. Mother regained custody of the four children and the matter was dismissed.

ELIZABETH O. v. DCS, et al.  
Decision of the Court

parental care in a stable, habitable home. The matter was set for mediation regarding Mother's dependency, and Mother failed to appear. Mother later contested the allegations in the dependency petition and the children were found dependent as to Mother in June 2015. Mother was referred to TERROS at PSI for substance abuse counseling, TASC, psychological evaluation, transportation, mental health services, visitation, and parent aide services. A case plan of family reunification concurrent with severance and adoption was implemented.

¶5 The Guardian ad Litem ("GAL") filed a motion to sever Mother's parent-child relationship with all four children in June 2016 based on chronic substance abuse, nine months out-of-home placement, 15 months out-of-home placement, and abuse. *See* Arizona Revised Statutes ("A.R.S.") sections 8-533(B)(3), (B)(8)(a), (B)(8)(c), (B)(2).<sup>3</sup> Mother contested the motion and the court conducted a severance hearing in November 2016.

¶6 A DCS case manager testified at the hearing as to the services offered to Mother and her lack of participation in those services. Mother testified on her own behalf as to the services offered and substance abuse allegations. The superior court granted the GAL's Motion to Sever as to all four children, and found severance was in the children's best interests. Mother timely appealed and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution; A.R.S. § 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).

## DISCUSSION

¶7 Mother argues there was insufficient evidence to support the superior court's finding as to the nine months' time-in-care, 15 months' time-in-care, and substance abuse grounds, claiming the finding is clearly erroneous and contrary to the substantial evidence in the record.

¶8 The right to custody of one's child is fundamental, but it is not absolute. *Michael J. v. ADES*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). To support termination of parental rights, one or more of the statutory grounds for termination must be proven by clear and convincing evidence. A.R.S. § 8-537(B); *Shawanee S. v. ADES*, 234 Ariz. 174, 176-77, ¶ 9 (App. 2014). In addition, the court must find by a preponderance of the evidence that the

---

<sup>3</sup> Absent material revision after the relevant date, we cite a statute's or rule's current version.

ELIZABETH O. v. DCS, et al.  
Decision of the Court

termination is in the best interests of the child. A.R.S. § 8-533(B); *Mario G. v. ADES*, 227 Ariz. 282, 285, ¶ 11 (App. 2011).

¶9 We view the evidence in the light most favorable to sustaining the superior court's findings. *Christina G. v. ADES*, 227 Ariz. 231, 234, ¶ 13 (App. 2011). As the trier of fact, the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and resolve disputed facts." *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). We will accept the superior court's findings of fact unless no reasonable evidence supports those findings. *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

**A. Reasonable Evidence Supports Termination of Parental Rights Under A.R.S. § 8-533(B)(3).**

¶10 To justify termination of parental rights under A.R.S. § 8-533(B)(3), the superior court must find that (1) a parent's "history of chronic abuse of dangerous drugs, controlled substances or alcohol" renders them unable to discharge their parental responsibilities, and (2) "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3). In addition, DCS has an obligation to make reasonable efforts to provide appropriate services to preserve the family. *Mary Ellen C. v. ADES*, 193 Ariz. 185, 191-92, ¶¶ 30-34 (App. 1999).

**1. DCS Made Reasonable Efforts to Provide Reunification Services.**

¶11 Mother challenges the superior court's ruling that DCS made reasonable reunification efforts. Specifically, Mother argues there was a lack of diligent services for reunification. She raised this issue for the first time at the severance hearing. While DCS is required to provide Mother with diligent services and the opportunity to participate in programs designed to help her become an effective parent, Mother did not raise a timely objection regarding services. *Shawnee S.*, 234 Ariz. at 179, ¶ 16; *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). As early as February 2015, Mother had the opportunity to challenge DCS's efforts to provide diligent reunification services and failed to do so. Mother has waived the right to raise this issue.

¶12 Nevertheless, the record supports the superior court's finding that DCS provided diligent services. Beginning in January 2015, Mother was offered substance abuse testing with TASC, substance abuse treatment through TERROS at PSI, parent aide services, a psychological evaluation,

ELIZABETH O. v. DCS, et al.  
Decision of the Court

and visitation. Mother's TASC testing was inconsistent, and she was closed out of services six different times due to missing three consecutive tests over the course of one year and nine months.

¶13 Mother testified she began using methamphetamines at the end of January 2015, and did not start testing until July 2015. Mother failed to appear for scheduled testing and frequently tested positive for methamphetamines, benzodiazepines, opiates, and amphetamines. Mother argues her prescription for Oxycodone resulted in a positive test for opiates, but did not provide recent documentation to support her contention. Though Mother provided a list of her prescriptions she was prescribed, the list was not verified by any physician. Finally, Mother did not cooperate or complete standard outpatient treatment through TERROS, and the service was discontinued four times for lack of contact.

¶14 DCS is not required to provide every conceivable service or undertake rehabilitative measures that are futile. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34 (App. 1999). Based on the amount of services provided by DCS to address Mother's substance abuse issue, together with Mother's own testimony and the testimony of the DCS case worker, there was sufficient evidence in the record for the superior court to conclude that DCS made reasonable efforts to provide reunification services. Therefore, the superior court did not err in finding DCS provided diligent services.

**2. Sufficient Evidence Supports a Finding That Mother Was Unable to Discharge Her Parental Responsibilities.**

¶15 Mother also contends there is insufficient evidence in the record to support the finding that Mother is using substances and unable to effectively parent. We disagree.

¶16 Mother testified at trial that she will always be an addict. Mother further testified that when she is using she is a functioning addict but unlikely to be an effective parent, and that it is probably not best to parent children when drugs are involved. Moreover, although Mother was gainfully employed, she was unable to provide stable housing with utility services. At the time of the severance hearing, Mother was living with her mother in an unapproved home according to DCS. [ ID p. 86] Therefore, the superior court did not err by finding Mother was unable to discharge her parental responsibilities due to substance abuse.

**3. Reasonable Grounds Support a Finding That Mother's Condition Would Continue for a Prolonged Indeterminate Period.**

ELIZABETH O. v. DCS, et al.  
Decision of the Court

¶17 Lastly, Mother argues the superior court erred by finding Mother's substance abuse would continue for a prolonged indeterminate period. The record reflects Mother began using methamphetamines at the age of 12, and again at the age of 20, including in 2012 when Mother had the Children removed for the first time due to substance abuse and neglect.<sup>4</sup> In the 2012 dependency matter, Mother successfully participated in all services recommended by DCS and was reunified with the Children in 2013. Mother acquired drug counseling and coping skills to prevent relapse. Nevertheless, Mother admitted to relapsing at the end of January 2015 during the pendency of this matter, testing positive for methamphetamines in July 2015, and missing 13 tests from January 2015 to June 2016. Furthermore, while Mother contends that she has prescriptions for the opiates she tested positive for, the record reflects the level of opiates tested for was consistently higher than the therapeutic levels for a prescription dosages.<sup>5</sup> Failure to abstain from substances despite a pending severance, is proof that a parent has not overcome or remedied the substance abuse that caused the Children to be removed from the parent's custody. *Raymond F. v. ADES*, 224 Ariz. 373, 379, ¶ 29 (App. 2010).

¶18 Additionally, Mother testified she is participating in individual counseling through CMA, Rocks, also known as methamphetamine users anonymous. While Mother's endeavor is commendable, Mother testified that she has been "stuck" on the fourth step, out of a total of 12 steps, for nearly a year and a half. Accordingly, reasonable grounds existed for the superior court to find that Mother's substance abuse would continue for a prolonged and indeterminate period of time. *See Marina P. v. ADES*, 214 Ariz. 326, 330, ¶ 22 (App. 2007) (we review the circumstances as they exist at the time of the severance hearing).

¶19 If this court recognizes that one ground for severance is supported by the evidence, "we need not consider whether the trial court's findings justified severance on the other grounds announced by the court." *Michael J.*, 196 Ariz. at 251, ¶ 27. Therefore, because we find that reasonable evidence supported the termination of Mother's parental rights on the grounds identified in § 8-533(B)(3), we need not address the superior court's

---

<sup>4</sup> Maricopa County Cause No. JD23270.

<sup>5</sup> Mother did not have a contract with the CORE institute or a primary care physician that would have prevented her from being able to obtain prescription medications from multiple pharmacies.

ELIZABETH O. v. DCS, et al.  
Decision of the Court

findings regarding § 8-533(B)(8)(a) and (c). *See Crystal E. v. DCS*, 241 Ariz. 576, 578, ¶ 5 (App. 2017).

**B. Reasonable Evidence Supports a Finding that Severance is in the Children’s Best Interests.**

¶20 Finally, Mother argues severance of her parental rights to the Children is not in their best interests. “A determination of the [children’s] best interest must include a finding as to how the [children] would benefit from a severance *or* be harmed by the continuation of the relationship.” *Raymond F.*, 224 Ariz. at 379, ¶ 30 (citing *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990)). The court may consider whether (1) an adoptive placement is immediately available; (2) the existing placement is meeting the needs of the child; and (3) the child is adoptable. *Id.*

¶21 The superior court found that severance is in the Children’s best interests, and the record supports this finding. The Children’s placements are meeting all their needs and have expressed an interest in adoption; the Children are otherwise adoptable. Furthermore, the Children would benefit from the stability and permanency that termination would provide.

CONCLUSION

¶22 Accordingly, we affirm.



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