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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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JAVON T., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, J.W., O.W., *Appellees*.

No. 1 CA-JV 17-0196  
FILED 11-7-2017

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Appeal from the Superior Court in Maricopa County  
No. JD528729  
The Honorable Timothy J. Ryan, Judge

**AFFIRMED**

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COUNSEL

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

Arizona Attorney General's Office, Phoenix  
By JoAnn Falgout  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Peter B. Swann and Judge Patricia A. Orozco joined.<sup>1</sup>

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

¶1 Javon T. (“Father”) appeals the superior court’s order terminating his parental rights to J.W. and O.W. (the “Children”).<sup>2</sup> For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Father is the biological parent of J.W. and O.W., twins born July, 2014. Father was incarcerated when the Children were born and remained incarcerated until February 22, 2016, for an offense related to illegal drugs. In September 2015, the court found the Children dependent due to Father’s neglect and inability to parent, set a case plan of family reunification, and encouraged Father to “participate in services while incarcerated.”

¶3 After Father’s release from prison in February 2016, the Department of Child Safety (“DCS”) offered Father services such as case management, supervised visitations with the Children, and urine analysis testing through the Treatment Assessment Screening Center (“TASC”). In March 2016, Father tested positive for methamphetamine, despite having completed a substance abuse treatment in prison in 2014. DCS offered to refer Father to TERROS Family First drug treatment, but Father’s probation officer reported Father selected Potter House facility for his substance abuse treatment. Father did not sign a release for DCS to verify this information. Although Father’s urine analysis test was negative on April 6, 2016, Father tested positive for methamphetamine on June 9, 2016. In July 2016, Father was incarcerated again. At a subsequent hearing, Father reported he was

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<sup>1</sup> The Honorable Patricia A. Orozco, retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

<sup>2</sup> Mother is not a party to this appeal.

JAVON T. v. DCS, et al.  
Decision of the Court

participating in services offered in prison. On December 20, 2016, DCS moved to terminate Father's parental rights based on his inability to parent due to a history of chronic substance abuse, a court-ordered out-of-home placement for a cumulative period of nine months or longer, and fifteen months or longer. *See* Ariz. Rev. Stat. § 8-533(B)(3), (8)(a), (c).

¶4 On April 11, 2017, a severance hearing was held, but Father failed to appear despite having been released from prison several days earlier. The court found Father was aware of the consequences for being absent, but had nonetheless failed to appear without good cause shown. The hearing proceeded in his absence. First, the court admitted DCS's progress reports dated November 8, 2016, July 8, 2016, April 7, 2016, January 6, 2016, and October 8, 2015. Then, DCS case manager, Paige Szymkowski, testified Father had been incarcerated on drug charges multiple times throughout the case, had failed to demonstrate sobriety from illegal drugs through urine analysis testing, and failed to participate in a TERROS substance-abuse treatment program, although he completed the TERROS intake. Szymkowski testified DCS offered Father visitation services, transportation, and urine analysis testing, the majority of which Father failed to complete. Szymkowski also opined Father was unable to parent due to his history of illegal substance abuse because he failed to show sobriety, and that his condition was likely to continue for a prolonged indeterminate period. Father's attorney did not object to Szymkowski's testimony and did not conduct any cross-examination, although invited to do so.

¶5 The court terminated Father's parental rights on the three statutory grounds alleged, and Father timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 8-235(A), 12-120.21(A)(1) and -2101(A).

## DISCUSSION

¶6 A parent-child relationship may be terminated when a court finds at least one of the statutory grounds for severance and determines that severance is in the child's best interests. A.R.S. § 8-533(B); *Mary Lou C. v. ADES*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). We review a court's severance determination for an abuse of discretion, adopting its findings of fact unless clearly erroneous. *Id.* The superior court's decision "must be based on clear and convincing evidence [and] will be affirmed 'unless we must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.'" *Denise R. v. ADES*, 221 Ariz. 92, 94, ¶ 7 (App. 2009). We do

JAVON T. v. DCS, et al.  
Decision of the Court

not reweigh the evidence on appeal. *Jesus M. v. ADES*, 203 Ariz. 278, 282, ¶ 12 (App. 2002).

**A. Grounds for Severance.**

¶7 Father argues the evidence in the record does not clearly demonstrate that Father's "prior drug use prevents him from discharging the parental responsibilities at the present time or in the future" because (1) the record lacks detailed information about Father's drug related offenses; (2) Father did not use illegal drugs while in prison and in fact completed a prison-based substance abuse treatment; and (3) Father tested positive for methamphetamine only twice.

¶8 Under A.R.S. § 8-533(B)(3), a parent's rights can be terminated when the parent has a history of chronic drug abuse, resulting in an inability to discharge parental responsibilities. Severance on this basis is appropriate when the court also finds "there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period." *Raymond F. v. ADES*, 224 Ariz. 373, 377, ¶ 15 (App. 2010).

**1. A History of Chronic Drug Abuse.**

¶9 Although Father completed a substance abuse program in prison, Father subsequently relapsed during the pendency of this case and twice tested positive for methamphetamine. According to the DCS's case manager, Father failed to provide all requested urine samples for analysis. Despite having completed an intake interview with TERROS, Father failed to participate in the substance-abuse treatment program. Finally, Father was incarcerated on drug-related charges multiple times throughout the case.

¶10 After release from prison, Father failed to appear at the severance hearing without good cause to challenge the evidence against him. *See Brenda D. v. DCS*, 242 Ariz. 150, 156, ¶ 18 (App. 2017) ("[I]f a parent has failed to appear by the time both parties have fully presented their case, . . . the court [may] treat the parent's absence as a waiver of the parent's legal rights and deem the parent to have admitted the well-pled factual allegations of the petition."). Because we do not reweigh the evidence on appeal, *Jesus M.*, 203 Ariz. at 282, ¶ 12, and reasonable evidence supports the court's finding, we cannot say, as a matter of law, Father does not have a history of chronic substance abuse. *See Denise R.*, 221 Ariz. at 94, ¶ 7.

**2. Father Has Demonstrated an Inability to Discharge Parental Responsibilities.**

¶11 When determining whether a parent can discharge parental responsibilities in view of a history of chronic substance abuse, the court must consider how the substance abuse hinders the parent's ability to effectively parent. *Raymond F.*, 224 Ariz. at 377-78, ¶ 19. In making this finding, the court has flexibility to consider the circumstances of each case. *Id.* at 378, ¶ 20.

¶12 At the severance hearing, the DCS case manager confirmed Father was offered the following services by DCS: TASC urine analysis drug testing, a referral to TERROS Family First drug treatment, supervised visitations, case management, and transportation to services. However, Father failed to test consistently with TASC and provide negative results of the tests he completed. Father failed to stay sober after release from a prison-controlled environment, while the termination of his parental rights was pending. The DCS case manager also opined Father will be unable to parent in the foreseeable future because of his chronic substance abuse.

**3. There Is a Reasonable Basis to Believe the Chronic Substance Abuse Will Continue.**

¶13 Evidence sufficient to support a finding that Father's substance abuse will continue may include his history of use and failure to complete or engage in offered services. *Raymond F.*, 224 Ariz. at 378-79, ¶ 26. A parent's failure to abstain from substances despite a pending severance is "evidence [the parent] has not overcome his dependence on drugs." *Id.* at 379, ¶ 29.

¶14 Here, Father tested positive for methamphetamine, even after his completion of prison-offered substance abuse treatment. Father failed to consistently participate in drug testing, even after DCS filed the severance motion. Father was also re-incarcerated on drug related charges. The record provides reasonable evidence for the court's conclusion that "it is reasonable to believe [Father's] chronic substance abuse will continue," and that DCS "made reasonable efforts" to unify the family or showed such efforts would have been futile.

**B. Father Has Waived the Issue Regarding the Adequacy of Services Offered by DCS.**

¶15 Father argues the court's finding DCS has made a diligent efforts to provide Father with appropriate reunification services was clearly

JAVON T. v. DCS, et al.  
Decision of the Court

erroneous and contrary to the substantial evidence in the record because DCS (1) failed to provide Father with substance abuse treatment and domestic violence classes while Father was incarcerated; (2) never facilitated Father's participation in prison services; and (3) failed to provide Father with a list of prison-offered programs available to Father or a list of prison facilities offering similar programs.

¶16 When DCS seeks to terminate a parent's rights under § 8-533(B)(3), it has "statutory and constitutional obligations to make reasonable efforts to reunify [the] family." *Jordan C. v. ADES*, 223 Ariz. 86, 93, ¶ 19 (App. 2009); *Mary Ellen C.*, 193 Ariz. 185, 192, ¶ 33 ("Arizona courts have long required the State . . . to demonstrate that it has made a reasonable effort to preserve the family."); *see also* A.R.S. § 8-533(B)(3). Under subsection (B)(3), severance will be upheld if DCS proves "the condition either was not amenable to rehabilitative efforts or that such efforts had been provided but had proven unsuccessful." *James H. v. ADES*, 210 Ariz. 1, 2, ¶ 8 (App. 2005).

¶17 Although Father contends services provided by DCS were not adequate or tailored to his incarceration, he failed to object during any of the numerous hearings conducted by the superior court at the various stages of the case.<sup>3</sup> At the severance hearing, Father did not argue DCS failed to make reasonable efforts to provide appropriate reunification services. For these reasons, Father has waived this argument on appeal. *See State v. Georgeoff*, 163 Ariz. 434, 437 (1990) ("Even constitutional rights may, of course, be waived."); *Shawnee S. v. ADES*, 234 Ariz. 174, 179, ¶ 18 (App. 2014) (a parent's failure to object to DCS's provision of appropriate reunification services, despite having had numerous opportunities to do so, constituted waiver of that objection because the parent's failure to raise an objection prevented the superior court from ensuring DCS complied with its obligation); *see also* ARCAP 13(a)(7)(B) (appellate briefs must contain "references to the record on appeal where the particular issue was raised and ruled on"); *Hiatt v. Shah*, 238 Ariz. 579, 583, ¶ 14 (App. 2015) (issue not first raised in the superior court is waived on appeal).

¶18 When clear and convincing evidence supports at least one of the grounds for severance, we need not address the other reasons for severance. *Jesus M.*, 203 Ariz. at 280, ¶ 3. Because we accept the court's

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<sup>3</sup> Father could have requested services or objected to services offered in hearings conducted in September 2015, January 2016, April 2016, July 2016, November 2016, January 2017 (two hearings), and April 2017.

JAVON T. v. DCS, et al.  
Decision of the Court

findings of fact unless clearly erroneous, we find the court did not err by severing Father's rights to J.W. and O.W. *See Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994).<sup>4</sup>

**CONCLUSION**

¶19 For the foregoing reasons, we affirm the court's severance of Father's rights to J.W. and O.W.



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

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<sup>4</sup> Father did not contest the court's finding the severance was in the Children's best interests and thus waived this argument on appeal. *See Hiatt*, 238 Ariz. at 583, ¶ 14; ARCAP 13(a)(7)(B).