

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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HOLLY S., *Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY A.S., B.S., *Appellees.*

No. 1 CA-JV 17-0278  
FILED 11-28-2017

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Appeal from the Superior Court in Maricopa County  
No. JD30540  
The Honorable Cari A. Harrison, Judge

**AFFIRMED**

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COUNSEL

John L. Popilek, PC, Scottsdale  
By John L. Popilek  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Michelle R. Nimmo  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Thomas C. Kleinschmidt<sup>1</sup> delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

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**KLEINSCHMIDT**, Judge:

¶1 Holly S. (“Mother”) appeals the superior court’s order terminating her parental rights to A.S. and B.S. (“the Children”). For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 The Department of Child Safety (“DCS”) became involved with Mother and the Children in May 2015 after it received a report that the Children were living in an environment of frequent drug use, including use of methamphetamine by Mother, and that Mother had threatened to kill herself and the Children. In July 2015, the superior court found the Children dependent as to Mother for, *inter alia*, neglect due to substance abuse.

¶3 In May 2017, DCS filed a motion seeking the termination of Mother’s parental rights to the Children on grounds that Mother has a history of chronic substance abuse that rendered her unable to discharge parental responsibilities, and that she had substantially neglected or willfully refused to remedy the circumstances that caused the Children to remain in an out-of-home placement for at least nine months. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3), (8)(a).<sup>2</sup> DCS later amended its motion to add an additional ground—that Mother had been unable to remedy the circumstances causing the children to remain in an out-of-home placement for at least fifteen months, and that there was a substantial likelihood that

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<sup>1</sup> The Honorable Thomas C. Kleinschmidt, 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> Absent material revisions, we cite to the current version of statutes and rules unless otherwise indicated.

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she would not be capable of exercising proper and effective parental care and control in the near future. *See* A.R.S. § 8-533(B)(8)(c).

¶4 Following a severance hearing in May 2017, the superior court found that DCS had proven all three of the grounds alleged for termination of Mother’s parental rights and that termination was in the Children’s best interests. Mother timely appealed, and this Court has jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rules of Procedure for the Juvenile Court 103(A).

**DISCUSSION**

¶5 The right to custody of one’s children is fundamental, but it is not absolute. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 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. *Id.* at 248-49, ¶ 12; *see also* A.R.S. § 8-533(B). In addition, the superior court must find by a preponderance of the evidence that termination is in the best interests of the children. *Mario G. v. Ariz. Dep’t. of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 11 (App. 2011) (citing *Michael J.*, 196 Ariz. at 249, ¶ 12); *see also* A.R.S. § 8-533(B).

¶6 As the trier of fact, the superior court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004) (citing *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002)). Accordingly, we will accept the court’s findings of fact “unless no reasonable evidence supports those findings.” *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555 (App. 1997) (citing *Pima Cty. Juv. Severance Action No. S-113432*, 178 Ariz. 288, 292 (App. 1993)). We view the facts in the light most favorable to affirming the trial court’s findings. *Michael J.*, 196 Ariz. at 250, ¶20 (citing *In re Maricopa County Juvenile Action No. JS-8490*, 179 Ariz. 102, 106 (1994)).

¶7 Under A.R.S. § 8-533(B)(3), the superior court may terminate parental rights to a child if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” Chronic substance abuse is long-lasting but not necessarily constant. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 16 (App. 2010) (citing *The Compact Edition of the Oxford English Dictionary* 409, 529, 1478 (1971)). Generally, a parent’s temporary abstinence from

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drugs and alcohol does not outweigh a significant history of abuse or consistent inability to abstain during the case. *Id.* at 379, ¶ 29. And, a child's interest in permanency must prevail over a parent's uncertain battle with drugs. *Id.* (quoting *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998)).

¶8 Mother contends that reasonable evidence does not support the superior court's order terminating her parental rights. Mother does not challenge the court's legal conclusion that she has a history of chronic drug abuse; rather, she asserts that DCS failed to establish that her condition will continue for a "prolonged indeterminate period" as required by A.R.S. § 8-533(B)(3).

¶9 The superior court may properly consider the evidence of Mother's prior substance abuse when evaluating whether reasonable grounds exist to conclude she would be unable to discharge parental responsibilities for a prolonged and indeterminate period. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 287, ¶ 20 (App. 2016). That evidence may include "the length and frequency of Mother's substance abuse, the types of substances abused, prior efforts to maintain sobriety, and prior relapses." *Id.*

¶10 At the severance hearing, there was evidence that Mother had stable employment and an established residence; however, Mother acknowledged a decades-long history of substance abuse dating from her teen years and continuing through much of the dependency proceedings. Mother testified that although she had been "clean and sober" for almost twelve months, in March 2017, she "inadvertently" ingested methamphetamine. Her explanation for a positive test for methamphetamine was that she, at the invitation of a friend, had smoked what she believed was flavored tobacco from a vape pen. As the superior court noted in its termination order, consistent with her testimony about her prior relapses, the March 2017 positive drug test was "the third time Mother had relapsed after testing negative for an extended period of time" during the course of the dependency. The court was not compelled to accept Mother's self-serving and implausible explanation that her methamphetamine use was inadvertent. *See Graham v. Vegetable Oil Prods. Co.*, 1 Ariz. App. 237, 241 (1965).

¶11 The superior court also noted that even with the completion of substance abuse services, "Mother has been unable to avoid the repeating of the cycle of drug use and she has not been able to maintain long term sobriety." Mother's temporary abstinence from drugs, as suggested by twelve months' of clean drug tests, does not outweigh her significant

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history of abuse or her inability to abstain during this case. *See Raymond F.*, 224 Ariz. at 379, ¶ 29 (explaining “[a parent]’s failure to remedy his drug abuse; despite knowing the loss of his children was imminent, is evidence he has not overcome his dependence on drugs”).

¶12 The evidence in this record is sufficient to support the superior court’s findings that Mother is unable to discharge her parental responsibilities due to chronic substance abuse and that there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period. Because we conclude that reasonable evidence supports termination for chronic substance abuse, we need not address the out-of-home placement grounds. *See Jesus M.*, 203 Ariz. at 280, ¶ 3 (citing *Michael J.*, 196 Ariz. at 251, ¶ 27; *Maricopa Cty. Juv. Action No. JS-6520*, 157 Ariz. 238, 243-44 (App. 1988)) (stating if sufficient evidence supports any one of the statutory grounds on which the court ordered severance, it is unnecessary to address arguments relating to the other grounds).

¶13 Mother also argues there is insufficient evidence to support the superior court’s best interests finding. As applicable here, “[t]o support a finding that termination is in the child[ren]’s best interests, [DCS] must prove that the child[ren] will affirmatively benefit from the termination.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (citing *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 6 (1990)). The best interests requirement may be met if, for example, DCS proves that a current adoptive plan exists for the child, or even that the child is adoptable. *JS-500274*, 167 Ariz. at 6.

¶14 Here, a DCS caseworker testified that Mother “hasn’t been able to see that her substance abuse is an issue, and with that, she is unable to provide [the Children] with their special needs.” The caseworker further testified that the Children’s current placement was meeting all of the Children’s needs, and that “if [the placement is] able to know all of the [C]hildren’s diagnoses and that services would remain in place,” the placement was willing to provide permanency. She also testified that the Children were both adoptable and, even if the current placement were unable or unwilling to adopt, DCS was confident it could find an adoptive home for the Children.

¶15 Consistent with the testimony, the superior court found that the Children were adoptable and that there was at least a possibility that their current placement would adopt them if additional services were provided to help address their special needs. The court further noted that Mother could not provide the permanency and stability the Children

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deserve and that adoption after severance of Mother's rights would allow for a permanent, stable environment where "there are no issues relating to drug abuse and domestic violence or unhealthy relationships." As such, there is sufficient evidence supporting the court's finding that termination of Mother's parental rights is in the Children's best interests, and Mother has failed to show error.

**CONCLUSION**

¶16 Based on the foregoing, the superior court's order terminating Mother's parental rights to the Children is affirmed.