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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

*v.*

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

No. 1 CA-JV 17-0342  
FILED 12-26-2017

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Appeal from the Superior Court in Maricopa County  
No. JD27517  
The Honorable Connie Contes, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Christopher Stavris  
*Counsel for Appellant*

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

**MEMORANDUM DECISION**

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

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**H O W E**, Judge:

¶1 Latoya W. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her child, J.W., on the ground of time in an out-of-home placement for 15 months under A.R.S. § 8-533(B)(8)(c). For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 In May 2015, Mother gave birth to J.W., and they both tested positive for marijuana. Mother admitted that she used marijuana during her pregnancy and had not addressed mental health issues raised in a previous dependency. On May 30, the Department of Child Safety took custody of J.W. and petitioned for J.W.’s dependency because Mother had abused substances and was unable to parent due to her mental health issues. At the initial dependency hearing in June, the court ordered Mother to participate in the Department’s offered services and to pursue mental health services on her own. Mother was provided with a phone number to set up counseling through her insurance, and on one occasion a case manager personally assisted Mother in calling a service provider to help her set up counseling services.

¶3 In July, Mother completed a psychological evaluation in which she admitted to using marijuana for about 11 years. Mother received diagnoses of unspecified intellectual disability and cannabis-use disorder. The psychologist described Mother as “cognitively delayed” and further stated that Mother’s “current level of intellectual functioning will likely impact her ability to parent” and that a child in her care would be at risk for neglect. In August, the court found that J.W. was dependent and set concurrent case plans of family reunification and severance and adoption. In addition to the earlier psychological evaluation, the Department provided Mother with substance-abuse testing, substance-abuse treatment, family-time coaching, child-parent psychotherapy, a bonding assessment, parent-aide services, and visitation. In February 2016, the court reminded

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Mother to follow-up on mental health counseling services that she had been ordered to self-refer to in June 2015.

¶4 Mother followed through with her substance-abuse services, and substance abuse ceased to be an issue. But Mother did not make the behavioral changes required to safely and independently parent J.W. Mother participated in parent-aide services, but did not meet the program objectives. Consequently, Mother's referral closed unsuccessfully. During her visits with J.W., Mother displayed an inability or unwillingness to nurture or comfort him and to meet his social and emotional needs. In her family-time coaching sessions, Mother's participation was an issue; at times she left early because J.W.'s crying frustrated her. Mother's coach further reported that Mother was unable to read J.W.'s cues, which made her unable to meet J.W.'s basic needs. Mother's participation in child-parent psychotherapy was also poor, and she refused to complete the intake. By November 2016, Mother stopped attending family-time coaching, had her child-parent psychotherapy referral closed, and had stopped visiting J.W. for two months. Mother had also not self-referred for individual counseling. Therefore, the court changed the case plan to severance and adoption, and the Department moved to terminate Mother's parental rights.

¶5 In December 2016, Mother completed a bonding and best-interest assessment. The psychologist found that J.W. had a comfortable relationship with his placement mother and that J.W. considered his placement mother to be his mother. The psychologist also noted that J.W. feared Mother and that Mother was distant and appeared as more of an observer than J.W.'s mother. The psychologist concluded that severance and adoption would be in J.W.'s best interests. In March 2017, Mother attempted to obtain counseling for her mental health issues that she was originally ordered to self-refer to in June 2015, and she received services starting in April. By June, Mother had missed four out of seven sessions.

¶6 In June 2017, the court held a termination hearing. Mother's psychologist testified that during the bonding assessment J.W. feared Mother at times, and Mother had trouble focusing on J.W. and did not know how to relate to him. He further opined that Mother could not meet J.W.'s needs full-time because J.W. had some aggressive behavioral issues. After learning that Mother had already been provided parent-aide services and family-time coaching before the bonding assessment, the psychologist was concerned that Mother was not making behavioral changes.

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¶7 Similarly, Mother's family-time coach testified that Mother had difficulty meeting J.W.'s needs and cues for attention. The coach was concerned about Mother's tendency to negate or minimize any discussion about J.W.'s social and emotional needs. He further testified that while the coaching service was available for the length of the dependency, Mother left visits early and stopped attending at all by September 2016.

¶8 Mother's case manager opined that, notwithstanding services provided to address parenting issues, Mother was unlikely to be able to parent in the near future based on the case being two years old, her lack of participation in the services offered, and the lack of behavioral changes. The case manager also opined that terminating Mother's parental rights was in J.W.'s best interests because it would provide him with a stable home environment with appropriate parenting. Last, the case manager testified that J.W. was in an adoptive placement meeting his needs and that he was otherwise adoptable if that placement could not adopt him.

¶9 The court terminated Mother's parental rights to J.W. on the ground of time in out-of-home placement for 15 months. The court found that the Department had made reasonable efforts to provide appropriate services for family reunification and that a substantial likelihood existed that Mother would not be capable of exercising proper and effective parental care and control in the near future. The court also found that terminating Mother's parental rights was in J.W.'s best interests. Mother timely appealed.

## DISCUSSION

¶10 Mother argues that the court erred by terminating her parental rights because the Department did not make diligent efforts to provide her with appropriate reunification services and thus did not prove by clear and convincing evidence that Mother was unable to remedy the circumstances that caused J.W. to be in an out-of-home placement. Mother also argues that termination was not in J.W.'s best interests. Because sufficient evidence supports the finding that the Department provided appropriate services for reunification and termination was in J.W.'s best interests, the court did not abuse its discretion.

¶11 A juvenile court's termination order is reviewed for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz.*

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*Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002). This Court will accept the juvenile court's factual findings unless no reasonable evidence supports them and will affirm a termination order unless it is clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1 (App. 2008).

¶12 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one of the statutory grounds for termination and find by a preponderance of the evidence that termination is in the child's best interests. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 283, 286 ¶ 15 (App. 2016). As pertinent here, the juvenile court may terminate parental rights when: (1) the Department made a diligent effort to provide appropriate reunification services, (2) the child has been in an out-of-home placement for a cumulative total period of 15 months or longer pursuant to court order, (3) the parent has been unable to remedy the circumstances that caused the child to be in an out-of-home placement, and (4) a substantial likelihood exists that the parent will be incapable of exercising proper and effective parental care and control in the near future. A.R.S. § 8-533(B)(8)(c). The Department is not required to provide a parent with every conceivable service or to ensure that the parent participates in each service it offers, but it must provide the parent with the time and opportunity to participate in programs designed to help promote effective parenting. *Tanya K. v. Dep't of Child Safety*, 240 Ariz. 154, 157 ¶ 11 (App. 2016).

**1. Statutory Ground for Termination**

¶13 The court did not err by finding that the Department proved the 15 months' out-of-home placement ground as a basis for termination. By the time of the termination hearing, J.W. had been in an out-of-home placement for about 24 months. Additionally, the record shows that the Department made a diligent effort to provide Mother with appropriate reunification services, including substance-abuse testing, substance-abuse treatment, family-time coaching, child-parent psychotherapy, a bonding assessment, parent-aide services, a psychological evaluation, and visitation. Although Mother did well with her substance-abuse issues, she had poor participation in her family-time coaching sessions, child-parent psychotherapy, and her visits with J.W. Moreover, Mother was unable to successfully complete her parent-aide services. Despite receiving services for over two years, Mother still lacked the parenting skills to safely parent J.W. Consequently, the record reflected a substantial likelihood that Mother would be incapable of exercising proper and effective parental care and control in the near future.

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¶14 Mother argues that the Department denied her appropriate reunification services by not ensuring that she received counseling services. Mother's argument fails, however, because the record shows that Mother knew or should have known that she needed to self-refer for individual counseling. Moreover, on one occasion Mother's case manager personally assisted her in contacting the counseling service provider to set up an intake, but Mother failed to follow through. The juvenile court ordered Mother to self-refer for counseling in June 2015, yet she waited until March 2017 to pursue counseling. Furthermore, after beginning services in April 2017, Mother missed four out of seven sessions before the termination hearing. Thus, the Department provided Mother with the time and opportunity to participate in counseling, but she failed to do so.

## 2. Best Interests

¶15 Mother also argues that terminating her parental rights was not in J.W.'s best interests because she believed that J.W. would be safe in her care and that they had a good relationship. Terminating parental rights is in the child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20 (App. 2014). In determining whether the child will benefit from termination, relevant factors to consider include whether the current placement is meeting the child's needs, an adoption plan is in place, and if the child is adoptable. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3-4 ¶ 12 (2016).

¶16 Here, the case manager testified that J.W. was in an adoptive placement meeting his needs and was otherwise adoptable if that placement could not adopt him. She also stated that termination would provide J.W. with a stable home environment with appropriate parenting. Thus, the juvenile court did not abuse its discretion by finding termination to be in J.W.'s best interests.

## CONCLUSION

¶17 For the foregoing reasons, we affirm.



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