

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

---

ELYSIA E., CASEY J., *Appellants,*

*v.*

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

No. 1 CA-JV 17-0346  
FILED 3-20-2018

---

Appeal from the Superior Court in Mohave County  
No. L8015JD201607017  
The Honorable Doug Camacho, Judge *Pro Tempore*

**AFFIRMED**

---

COUNSEL

Law Offices of Heather C. Wellborn, P.C., Lake Havasu City  
By Heather C. Wellborn  
*Counsel for Appellant Elysia E.*

Erika A. Arlington Esq., P.C., Flagstaff  
By Erika A. Arlington  
*Counsel for Appellant Casey J.*

Arizona Attorney General's Office, Tucson  
By Laura J. Huff  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer M. Perkins joined.

---

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

¶1 Elysia E. (“Mother”) and Casey J. (“Father”) (collectively, “Parents”) appeal the superior court’s order terminating their parental rights as to their biological child, C.J. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 When C.J. was born in June 2016, both she and Mother tested positive for methamphetamine. Mother admitted that she had used methamphetamine just days before C.J.’s birth, and later acknowledged that she had lost custody of two previous children due to her drug use. The Department of Child Safety (“DCS”) soon discovered that Mother, then 25 years old, had faced more than ten criminal charges for drug use or possession since reaching adulthood. Following C.J.’s birth, Father admitted recently using marijuana, and he made inconsistent statements regarding whether he suspected that Mother was using drugs during pregnancy.

¶3 DCS took C.J. into care directly from the hospital, and the superior court later found C.J. to be dependent as to both parents. DCS offered Mother and Father reunification services including parenting classes, parent aide, and visitation, as well as multiple services to address substance abuse: drug testing (an initial hair follicle and continuing random urinalysis), substance abuse assessment and treatment through Arizona Families F.I.R.S.T. (“AFF”), and counseling as recommended.

¶4 Over the next nine months, Mother engaged in all services except drug testing, completing a parenting class and participating successfully in visitation services. Although she declined to disclose her substance abuse history on intake to AFF’s substance abuse assessment and treatment program, she successfully completed the program—which included scheduled oral swabs to test for drugs or alcohol—after completing drug counseling in mid-March 2017.

ELYSIA E., CASEY J. v. DCS, C.J.  
Decision of the Court

¶5 Father completed a parenting class and attended scheduled visits with C.J., but otherwise did not engage in any services. He began an intake with AFF, but denied having a drug problem and declined to participate further in the substance abuse assessment and treatment program. Like Mother, he did not comply with required drug testing until nine months had passed.

¶6 The major issue was Parents' noncompliance with random drug testing. DCS opened a referral for testing at TASC, but neither Mother nor Father completed even a single test during this initial referral (despite each calling in on a required test day). After that referral closed for nonparticipation, DCS opened a referral for testing at a different provider, PSI, beginning at the end of August 2016. But neither Mother nor Father called in to PSI until early December, and on the only occasion Mother did call, she did not submit to testing even though she was scheduled to do so.

¶7 In January 2017, in response to Parents' asserted confusion about where they should be going for drug testing, the superior court expressly ordered them to submit to testing at TASC. Despite this directive, Parents called in to TASC only a few times over the following months, and did not submit to any testing. Parents began calling in to PSI regularly in late January, but they had been ordered to test at TASC and had no active referral with PSI.

¶8 Given Parents' continued noncompliance with drug testing, the superior court changed the case plan to severance and adoption in February 2017, again admonished Parents regarding the necessity of testing, and again directed Parents to call into TASC daily. In March, DCS filed a severance motion asserting grounds of chronic substance abuse as well as six months' time in care as to each parent. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (B)(8)(b).

¶9 Before the severance trial, DCS discovered that Parents had been calling in to PSI instead of TASC and opened a referral for them at PSI in mid-April 2017. On their first test day of the new referral, however, both Mother and Father refused the hair follicle drug screen, and Father refused the urinalysis test as well. Thereafter, each test Mother completed was negative, but she missed four, refused three, and provided a diluted sample on one of the 18 required test days. The tests Father completed were likewise negative for drugs, although he missed one and refused testing on another of his 18 test days.

¶10 After a severance trial, the superior court found grounds to sever Mother’s parental rights based on chronic substance abuse (but not time in care) and Father’s parental rights based on time in care (but not chronic substance abuse), and further found severance to be in C.J.’s best interests. Mother and Father timely appealed the resulting order terminating their parental rights, and we have jurisdiction under A.R.S. § 8-235(A).

## DISCUSSION

¶11 The superior court is authorized to terminate a 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 a severance ruling for an abuse of discretion, deferring to the superior court’s 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. Severance Grounds.

#### A. Chronic Substance Abuse (Mother Only).

¶12 The statutory ground of chronic substance abuse supports severance if “the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs [or] controlled substances . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” A.R.S. § 8-533(B)(3). A parent’s long-continued drug abuse need not be constant to be considered chronic. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 16 (App. 2010). Before severance may be justified on this basis, DCS must provide the parent with appropriate reunification services. *Jennifer G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 450, 453 & n.3, ¶ 12 (App. 2005).

¶13 Mother argues that the evidence presented did not support termination based on chronic substance abuse, urging that she proved sobriety by successfully completing her drug counseling and treatment program coordinated by AFF. She also asserts that her problems testing at TASC and PSI did not support an inference that her drug abuse continued and would continue into the future.

¶14 Mother notes that the drug tests she completed through AFF had been negative since September 2016. But she was tested for drugs as

ELYSIA E., CASEY J. v. DCS, C.J.  
Decision of the Court

part of her AFF treatment and support program only 16 times (including the one positive for methamphetamine); she missed over 70 scheduled tests at TASC and PSI during the same period. And although she asserts that her previous DCS case manager advised her that she did not need to participate in TASC/PSI testing while concurrently participating in AFF, the record does not substantiate her claim. From the beginning, Mother's case plan required participation in programs through AFF (which coordinated drug counseling as well as ancillary support services) and in separately-provided random urinalysis testing. Mother's AFF case manager in fact repeatedly urged her to complete the required hair follicle and urinalysis tests with TASC or PSI, and the court ordered her to do so on multiple occasions.

¶15 Mother also asserts that her failure to test for the first nine months of the proceeding was not due to continued drug use, but rather having the wrong phone number saved in her phone and confusion as to where to call. But she in fact called in to the correct testing center several times during that period and nevertheless failed to test when scheduled. And although the tests she completed since beginning to comply in April 2017 were negative, she missed, refused, or provided an invalid sample for over 40% of the required tests. Mother claims she missed the more recent tests because they were scheduled for the same day as visitation with C.J., but the DCS case manager testified that Mother could have complied with drug testing and visited C.J. on the same days.

¶16 Accordingly, notwithstanding Mother's participation in and completion of the AFF program, the record supports the court's finding that Mother remained and would remain unable to discharge parental responsibilities due to chronic substance abuse.

**B. Six Months' Time in Care (Father Only).<sup>1</sup>**

¶17 Severance is permitted based on six months' time in care if: (1) the child is under three years old, (2) the child has been in an out-of-home placement for at least six months, (3) DCS "has made a diligent effort to provide appropriate reunification services," and (4) "the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." A.R.S. § 8-533(B)(8)(b). The relevant circumstances are those existing at the time of

---

<sup>1</sup> Although Mother's brief addresses this ground as well, because the superior court based severance of Mother's rights on chronic substance abuse only, we need not address this ground as to Mother.

ELYSIA E., CASEY J. v. DCS, C.J.  
Decision of the Court

severance. See *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007).

¶18 This severance ground focuses on a parent's efforts to cure the circumstances preventing reunification. *Id.* at 329, ¶ 20. As such, "appreciable, good faith efforts to comply" with reunification services will preclude severance on this basis, whereas substantial noncompliance during the statutory time frame or making only "sporadic, aborted attempts to remedy" the circumstances (even if the parent later begins recovery efforts before the severance hearing) supports a finding of substantial neglect. See *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576-77 (App. 1994).

¶19 Father does not dispute C.J.'s age, time spent in care, adequacy of services, or even his failure to participate in most reunification services; rather, he argues that by the time of the severance hearing, his home was safe and appropriate for a child and any circumstances previously necessitating an out-of-home placement had been remedied. He contends that his previous failure to protect C.J. from Mother's methamphetamine use was no longer a concern because (1) he believed that Mother had stopped using methamphetamine and (2) even if she relapsed, he would protect C.J. from any further substance abuse.

¶20 But the record supports the superior court's finding to the contrary. As detailed above, Mother's failure to complete required drug tests over the course of the dependency (and even her more recent incomplete participation) supports the inference that—despite Father's belief in her sobriety—Mother continued to use methamphetamine. Father testified that he was unaware Mother was using methamphetamine while pregnant with C.J., and the court could reasonably conclude that Father remained unable to discern Mother's ongoing substance abuse and the risk it posed to C.J. And Father's denial that C.J.'s prenatal drug exposure caused her any ill effect called into question his willingness and ability to manage her health issues resulting from methamphetamine exposure.

¶21 Accordingly, the superior court did not abuse its discretion by finding that Father had substantially neglected or willfully refused to remedy the circumstances necessitating C.J.'s out-of-home placement, and thus finding grounds to terminate Father's parental rights based on six months' time in care.

ELYSIA E., CASEY J. v. DCS, C.J.  
Decision of the Court

**II. Best Interests.**

¶22 Mother (but not Father) contends that the superior court erred by concluding that severance would be in C.J.'s best interests. Termination is in a child's best interests if the child would benefit from severance or if a continued relationship with the parent would harm the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Evidence that a child is adoptable or that an existing placement is meeting the child's needs may support a best interests finding, as may evidence suggesting "some harm to the child if severance is denied." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶¶ 14-16 (2016).

¶23 Here, although Mother argues that she successfully complied with her case plan and was "ready, willing and able to parent the minor child," her noncompliance with required drug testing for the first nine months of the case and her incomplete participation thereafter support an inference of continued drug use, suggesting potential harm to C.J. absent severance. And even acknowledging that Mother shares a strong bond with her daughter, the evidence also showed that C.J. was happy and healthy with a placement meeting her special needs, and that she was otherwise adoptable. Accordingly, the record supports the superior court's conclusion that severance was in C.J.'s best interests.

**CONCLUSION**

¶24 The severance order is affirmed.



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