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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

*v.*

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

No. 1 CA-JV 17-0454  
FILED 4-26-2018

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Appeal from the Superior Court in Maricopa County  
Nos. JD530094  
JS518512  
The Honorable Arthur T. Anderson, Judge

**AFFIRMED**

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COUNSEL

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

Arizona Attorney General's Office, Mesa  
By Ashlee N. Hoffmann  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

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

¶1 Willie J. (“Father”) appeals the superior court’s order terminating his parental rights to his child, C.J. For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 C.J. is the biological child of Willie J. and Celeste R. (“Mother”). C.J. tested positive for methamphetamine at birth, leaving her medically fragile and hospitalized.

¶3 The Department of Child Safety (“DCS”) contacted Father while C.J. was in the hospital to discuss her care and special needs once discharged from the hospital. Father claimed not to have any contact with Mother and stated that he would care for C.J. Given Father’s assurances, DCS placed C.J. with Father. About a week later, Father left C.J. with her paternal great-aunt. Father thereafter visited C.J. sporadically, but failed to attend her medical appointments or provide her basic support. The few visits Father had with C.J. were brief.

¶4 In July 2016, Father told DCS that Mother was residing in his home and actively using drugs there. As a result, DCS filed a dependency petition alleging C.J. was dependent as to Father because of neglect, substance abuse, and failure to protect her from Mother’s substance abuse.

¶5 For Father to reunify with C.J., he needed to demonstrate an ability to care for C.J.’s basic needs, provide a stable, drug-free home, and establish appropriate parenting skills. To assist Father in reunifying with C.J., DCS provided Father reunification services, including substance-abuse testing, substance-abuse assessment and treatment as necessary, parent-aide services, supervised visitation, services with Southwest Human Development, and parenting classes. Father was specifically warned that reunification could not occur if Mother remained in his home

WILLIE J. v. DCS, C.J.  
Decision of the Court

using drugs. Father participated in some services, but continued to allow Mother to reside in his home.

¶6 In October 2016, the superior court held a contested dependency hearing (“October 2016 Hearing”) and adjudicated C.J. dependent regarding Father. Father timely appealed that order. While his appeal was pending, DCS referred Father for parent-aide services. Father largely did not participate in these services, and his parent-aide referral closed for non-compliance in January 2017.

¶7 In April 2017, the superior court changed the case plan from family reunification to severance and adoption because of Father’s nonparticipation in services. Additionally, DCS moved to sever Father’s parental rights. The same month, the court issued a memorandum decision in Father’s appeal from the October 2016 Hearing and determined that the superior court’s dependency findings were, in part, inadequate or were, in part, unsupported by the record. *Willie J. v. DCS*, No. 1 CA-JV 16-0452, 2017 WL 1458767 (Ariz. App. Apr. 25, 2017) (mem. decision). The superior court was instructed on remand to determine whether C.J. was dependent regarding Father based on the existing circumstances. *Id.* at \*3, ¶ 11. Because of the decision, DCS withdrew its severance motion, and filed a new petition to sever Father’s parental rights, alleging abandonment, six-month out-of-home placement, and ninth-month out-of-home placement grounds.

¶8 The superior court held a combined severance and dependency hearing in September 2017. After the hearing, the superior court adjudicated C.J. dependent concerning Father and severed Father’s parental rights on the abandonment, six-month out-of-home placement, and nine-month out-of-home placement grounds. Father timely appealed from the court’s dependency and abandonment findings.<sup>1</sup> We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution;

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<sup>1</sup> The State contends Father’s appeal from the dependency order is moot because the court simultaneously severed Father’s parental rights. We disagree, if we were to reverse the dependency finding it would require the superior court to make new findings regarding both dependency and severance.

WILLIE J. v. DCS, C.J.  
Decision of the Court

Arizona Revised Statutes (“A.R.S.”) section 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).<sup>2</sup>

**DISCUSSION**

¶9 The right to custody of one’s child is fundamental, but not absolute. *Michael J. v. ADES*, 196 Ariz. 246, 248, ¶¶ 11–12 (2000). Arizona statutes governing the termination of a parent-child relationship require the superior court to make two findings prior to ordering severance of parental rights. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, ¶ 1 (2005). First, the court must find one or more of the statutory grounds for termination proven by clear and convincing evidence. A.R.S. § 8-537(B); *Shawanee S. v. ADES*, 234 Ariz. 174, 176–77, ¶ 9 (App. 2014). Then the court must determine by a preponderance of the evidence whether termination of the parent-child relationship is in the best interests of the child. *Shawanee S.*, 234 Ariz. at 177, ¶ 9. The court need only find one statutory ground to warrant severance. *Crystal E. v. DCS*, 241 Ariz. 576, 577, ¶ 5 (App. 2017).

¶10 Section 8-533(B)(8)(a) states that a parent-child relationship may be severed if “[t]he child has been in an out-of-home placement for a cumulative period of nine months or longer . . . and 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. The Superior Court Did Not Err by Evaluating All the Evidence Before the Combined Severance and Dependency Hearing.**

¶11 Father contends the superior court erred by evaluating evidence between the first hearing and the ultimate hearing adjudicating C.J. dependent.

¶12 Section 8-201(15) defines a dependent child as, “a child whose home *is* unfit by reason of abuse, neglect, cruelty or depravity by a parent . . . .” A.R.S. § 8-201(15)(a)(iii) (emphasis added). A court determines dependency based on the circumstances existing at the time of adjudication. *Shella H. v. DCS*, 239 Ariz. 47, 50, ¶ 12 (App. 2016). In *Shella H.*, the children were adjudicated dependent regarding their mother because of violence and endangerment. *See id.* at 49, ¶¶ 7–10. The mother argued that the

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<sup>2</sup> The State argues this court lacks jurisdiction over the superior court’s dependency findings because Father did not “designate” those findings in his notice of appeal. However, Father filed a separate notice of appeal regarding the dependency findings in addition to the severance findings.

WILLIE J. v. DCS, C.J.  
Decision of the Court

superior court erred by failing to determine dependency at the time of adjudication, rather than making the determination based on the conditions at the time the children were removed from the mother. *Id.* at 50, ¶ 12. We held that dependency must be determined at the time of adjudication. *See id.*

¶13 With respect to Father’s adjudication, nearly a year passed between the first hearing and the second dependency hearing. In determining whether to evaluate evidence that arose between the two adjudication hearings, the court examined and interpreted *Shella H.*, and correctly evaluated the circumstances up to and at the time of adjudication. *See Shella H.*, 239 Ariz. at 50, ¶ 12. Therefore, the superior court did not abuse its discretion by admitting evidence that arose between the first and second dependency adjudication hearings.

**B. We Need Not Reach the Sufficiency of Evidence on Abandonment Grounds.**

¶14 Father contends the superior court erred by terminating his parental rights on abandonment grounds under A.R.S. § 8-533(B)(1). However, because the superior court also terminated Father’s parental rights on out-of-home placement grounds under § 8-533(B)(8)(b) and -533(B)(8)(a), and Father failed to appeal the sufficiency of those findings, we need not reach the issue of whether sufficient evidence supported the court’s finding of abandonment. *See Crystal E.*, 241 Ariz. at 577, ¶ 5 (this court can affirm a severance on any one of the grounds found by the superior court); *Carrillo v. State*, 169 Ariz. 126, 132 (App. 1991) (“Issues not clearly raised and argued on appeal are waived.”).

**CONCLUSION**

¶15 Affirmed.



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