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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

*v.*

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

No. 1 CA-JV 18-0183  
FILED 11-8-2018

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Appeal from the Superior Court in Mohave County  
No. L8015JD201607030  
The Honorable Derek C. Carlisle, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, P.L.L.C., Scottsdale  
By Alison Stavris  
*Counsel for Appellant*

Arizona Attorney General's Office, Phoenix  
By Sandra L. Nahigian  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Vice Chief Judge Peter B. Swann and Judge David D. Weinzwieg joined.

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**J O N E S**, Judge:

¶1 Renee W. (Mother) appeals the juvenile court’s order terminating her parental rights to J.T. and J.W. (the Children), arguing the Department of Child Safety (DCS) failed to prove the statutory grounds for severance by clear and convincing evidence and that severance was in the Children’s best interests by a preponderance of the evidence. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 In August 2016, DCS received a report that Mother was unable to care for the Children, then ages six and four.<sup>1</sup> Subsequent investigation revealed that Mother has a significant history of police contact, violent and erratic behaviors, and substance abuse. She had previously left the Children with their maternal grandparents for lengthy periods because she was not financially stable and “in over her head.” DCS removed the Children from Mother’s care, placed them with their grandparents, and filed a petition alleging the Children were dependent as to Mother on the grounds of neglect, mental illness, and substance abuse.<sup>2</sup> Thereafter, the juvenile court adjudicated the Children dependent and adopted a case plan of family reunification and a concurrent case plan of severance and adoption.

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<sup>1</sup> “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court’s decision.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citing *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13 (App. 2002)).

<sup>2</sup> DCS also alleged the Children were dependent as to their fathers. The juvenile court terminated the fathers’ rights in May 2018. Those orders were not challenged, and neither father is party to this appeal.

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¶3 Mother was immediately referred for a mental health assessment and treatment, substance abuse testing and treatment, supervised visitation, and parent aide services. At her intake, Mother reported a significant history of violence and physical abuse. She also reported using marijuana off and on since age nine and that she began using alcohol and methamphetamine at sixteen. Mother was diagnosed with severe cannabis use disorder, severe alcohol use disorder, and mild stimulant use disorder, which persisted despite severely disrupting her life.

¶4 Mother was partially compliant with substance abuse and individual counseling services. However, when her treatment provider recommended a psychiatric evaluation, Mother failed to appear in October 2016 and cancelled the rescheduled appointment because “she did not need to have an evaluation done.” Mother was then evicted from her residence in December “for drug activity.” Between January and July 2017, Mother completed only seventeen of twenty-nine scheduled urinalysis tests; seven samples were diluted and all returned positive for marijuana. Although Mother eventually obtained a medical marijuana card, she did not provide DCS with a safety plan regarding her use and storage of marijuana that would ensure the Children had a sober caregiver and could not gain access to the marijuana. A hair follicle test was not completed because Mother did not provide a sufficient sample on the first attempt and failed to submit a second sample as requested. She stopped testing altogether in August.

¶5 Meanwhile, DCS continued to express concern regarding Mother’s ability to obtain and maintain stable housing and control her anger – most recently directed at a parent aide and maternal grandmother (Grandmother) while in the Children’s presence. Indeed, by July 2017, Mother reported being homeless and “struggling to make ends meet.” Additionally, despite her participation in individual and substance abuse counseling, Mother remained largely unable to process her emotions or understand how her anger and insecurities affected her ability to parent. She blamed the Children’s removal on a false report and threatened to file a protective order against Grandmother, with whom the Children had a significant relationship, once reunification was complete. Nonetheless, DCS requested Mother be granted additional time to complete anger management classes and a psychiatric evaluation.

¶6 The juvenile court ordered Mother to cooperate with DCS “when it comes to all testing including the [psychiatric] evaluation.” Instead, Mother stopped participating in substance abuse testing, recovery maintenance, and counseling services, and the services were ultimately closed for lack of contact. She refused to participate in a scheduled

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psychological evaluation and began arriving late, under the influence, or not at all to visitation and scheduled meetings and services. Her hostility toward the service providers and maternal grandparents continued. In November, the juvenile court ordered the case plan changed, over Mother's objection, to severance and adoption. DCS then moved to terminate Mother's parental rights upon the grounds of neglect, mental illness, and substance abuse.

¶7 In February 2018, Mother submitted to a psychological evaluation with G. Joseph Bluth, Ph.D. Dr. Bluth diagnosed her with unspecified anxiety disorder and personality disorder with both borderline and dependent traits. He suggested Mother's ongoing use of marijuana – legal or not – could be compounding symptoms of her mental illness, including paranoia and impulsivity, and interfering with her ability to complete the case plan. At the time, Mother continued to minimize her role in the Children's removal from her care. Indeed, her responses indicated she did not see "much need for major changes in her behavior" and was simply "going through the motions" without really addressing the underlying problem, subjecting children in her care to continued risk. Dr. Bluth recommended Mother complete individual counseling "to address issues related to past family dysfunction" and "learn[] coping, problem-solving, stress management, . . . anger management [and] emotional expression skills." He also suggested Mother complete a psychiatric evaluation to determine whether medication was warranted. At trial, Dr. Bluth testified Mother was unable to parent, in large part because she lacked both insight into her problems and the skills necessary to deal with them. He described her ability to become a minimally adequate parent as "guarded" particularly if she continued to eschew appropriate treatment.

¶8 By May 2018, Mother had yet to provide DCS with proof of employment and was reportedly living with a new boyfriend, whose identity had not been reported to DCS.

¶9 The DCS investigator testified that children exposed to erratic and violent behavior learn those behaviors. The DCS caseworker acknowledged Mother had completed some services but at the same time denied observing any behavioral changes indicating Mother was able to parent or even understood why any behavioral changes were necessary. Importantly, Mother had not acknowledged, let alone addressed, DCS's concerns regarding her mental health or shown she could parent the Children beyond four hours of supervised visitation per week. The caseworker also testified the Children were happy with and bonded to their grandparents, with whom they had lived off and on since birth.

Additionally, the grandparents were meeting the Children's needs and willing to adopt them.

¶10 After taking the matter under advisement, the juvenile court found DCS had proven by clear and convincing evidence that DCS made diligent efforts to provide appropriate reunification services, but termination of Mother's parental rights was warranted because her mental illness and substance abuse rendered her unable to discharge her parental responsibilities and there were reasonable grounds to believe those conditions would continue for a prolonged indeterminate period. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3).<sup>3</sup> The court also found severance was in the Children's best interests and entered an order terminating Mother's parental rights. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

## DISCUSSION

¶11 A parent's rights may be terminated if the juvenile court finds by clear and convincing evidence that DCS made diligent efforts to provide appropriate reunification services to the parent but "the parent is unable to discharge parental responsibilities because of mental illness . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3); *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 177-78, ¶ 12 (App. 2014) (citing *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 32-34 (App. 1999)). The court must also find by a preponderance of the evidence that termination of the parent-child relationship is in the children's best interests. Ariz. R.P. Juv. Ct. 66(C); *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004) (citing *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000)). We will affirm a termination order "unless there is no reasonable evidence to support" the court's factual findings. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2 (App. 1998) (citing *Maricopa Cty. Juv. Action No. JS-4374*, 137 Ariz. 19, 21 (App. 1983), and *Maricopa Cty. Juv. Action No. JS-378*, 21 Ariz. App. 202, 204 (1974)).

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<sup>3</sup> Absent material changes from the relevant date, we cite a statute's current version.

**I. DCS Proved Severance was Warranted by Clear and Convincing Evidence.**

¶12 Mother first argues DCS failed to prove it was diligent in providing reunification services because it did not refer her for a fourth psychiatric evaluation in the final two weeks before trial. But DCS “is not required to provide every conceivable service or to ensure that a parent participates in each service it offers,” *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994) (citing *Maricopa Cty. Juv. Action No. JS-5209 and No. JS-4963*, 143 Ariz. 178, 189 (App. 1984)); nor must DCS provide services that would be futile, *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34 (citing *JS-5209*, 143 Ariz. at 189). Rather, DCS must only undertake measures “with a reasonable prospect of success.” *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34.

¶13 The record reflects that Mother was referred for three psychiatric evaluations in 2016 and 2017 but attended none. Moreover, Dr. Bluth’s psychological evaluation indicates Mother has poor insight into her mental illness and does not appreciate the need for behavioral change. These facts indicate that Mother was unlikely to either participate in or benefit from a fourth referral for a psychiatric evaluation.

¶14 Mother also suggests insufficient evidence supports the finding that she is unable to discharge her parental responsibilities as a result of her mental illness. Mother effectively argues Dr. Bluth’s assessment is unreliable because he was not provided complete information regarding her prior participation in services. But we do not reweigh evidence on appeal; as the trier of fact, the juvenile 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.*, 203 Ariz. at 280, ¶ 4).

¶15 Here, the juvenile court considered Mother’s arguments regarding the purported deficiencies in Dr. Bluth’s assessment but nonetheless found his conclusions regarding Mother’s ability to parent persuasive. *See Cockrill v. Cockrill*, 139 Ariz. 72, 74 (App. 1983) (“It is well settled . . . that a reviewing court must assume from any judgment the findings necessary to sustain it if such findings do not conflict with express findings and are reasonably supported by the evidence.”) (citing *Hueg v. Sunburst Farms (Glendale) Mut. Water & Agric. Co.*, 122 Ariz. 283, 289 (App. 1979)). We will not second-guess the court’s acceptance of Dr. Bluth’s opinions, which, coupled with evidence that Mother failed to fully engage in services or make behavioral changes during the eighteen months the Children were in out-of-home care, provide sufficient evidence to support

the court's findings that Mother suffers from a mental illness that prevents her from discharging her parental responsibilities. Accordingly, we find no error in the court's conclusion that DCS proved severance was warranted based upon Mother's uncontrolled mental illness.<sup>4</sup>

## II. DCS Proved Termination of the Parent-Child Relationship is in the Children's Best Interests.

¶16 Mother argues the juvenile court abused its discretion in finding termination of her parental rights was in the Children's best interests. To establish best interests, it must be shown that a child "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Oscar O.*, 209 Ariz. at 334, ¶ 6; *accord Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016). The inquiry is a fact-specific, case-by-case determination, in which the court balances "the unfit parent's 'diluted' interest 'against the independent and often adverse interests of the child in a safe and stable home life.'" *Demetrius L.*, 239 Ariz. at 4, ¶¶ 13, 15 (quoting *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005)).

¶17 Mother argues the Children would neither benefit from severance nor suffer from continuing the relationship with her because the Children wanted to be with her, did not suffer any tangible harm in her care, and were subject to inappropriate discipline in Grandmother's care. But the juvenile court found otherwise. Specifically, the court found the Children had already learned aggressive behavior from Mother and were subject to further trauma should Mother follow through with her threat to alienate them from their grandparents upon reunification. Moreover, the record reflects Mother had an ample opportunity to make the changes necessary to parent the Children but failed to convince the court she could provide a safe, stable home given her refusal to even acknowledge the limitations presented by her mental illness. *See Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, 350, ¶ 23 (App. 2013) (noting that "in most cases, the presence of a statutory ground will have a negative effect on the children") (quoting *Maricopa Cty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559

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<sup>4</sup> Because we conclude severance was warranted upon the grounds of mental illness, we do not reach Mother's argument that insufficient evidence supports severance upon the additional grounds of substance abuse. *See Jesus M.*, 203 Ariz. at 280, ¶ 3 (citing *Michael J.*, 196 Ariz. at 251, ¶ 27, and *Maricopa Cty. Juv. Action No. JS-6520*, 157 Ariz. 238, 242 (App. 1988)).

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(App. 1988)). Meanwhile, the Children were adoptable and in an adoptive relative placement but languished in limbo.

¶18 Upon the evidence presented, we cannot say the juvenile court abused its discretion in balancing the evidence in favor of the Children's interest in permanency. This is particularly true given Mother's failure to complete necessary services, secure stable housing, or otherwise prove she could manage her mental illness. Accordingly, we find no error.

**CONCLUSION**

¶19 The juvenile court's order terminating Mother's parental rights to the Children is affirmed.



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