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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

*v.*

DEPARTMENT OF CHILD SAFETY, R.G., *Appellees*.

No. 1 CA-JV 20-0163

FILED 10-1-2020

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Appeal from the Superior Court in Maricopa County

No. JD 530284

The Honorable David K. Udall, Judge

**AFFIRMED**

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COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix  
*Counsel for Appellant*

Arizona Attorney General's Office, Mesa  
By Eric Devany  
*Counsel for Appellee, Department of Child Safety*

**MEMORANDUM DECISION**

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judges Lawrence F. Winthrop and Maurice Portley<sup>1</sup> joined.

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**CAMPBELL**, Judge:

¶1 Natasha K. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her child, Thomas.<sup>2</sup> Mother argues the juvenile court erred by finding the Department of Child Safety (“DCS”) provided reasonable reunification services. For the following reasons, we affirm.

**BACKGROUND**

¶2 Thomas has special needs, having been diagnosed with an autistic disorder, expressive language disorder, unspecified intellectual disability, and dietary restrictions.

¶3 Mother and Thomas have a history of DCS involvement beginning at his birth. Mother reportedly tested positive for THC and admitted to smoking marijuana during pregnancy. After investigation, DCS terminated its involvement finding the report was “[u]nsubstantiated.” In February 2015, DCS was contacted when Mother accidentally hit Thomas’ head with a door. DCS’ record of the incident indicates that Mother’s description was consistent with the injuries Thomas sustained and DCS terminated its involvement again, finding the abuse claim unsubstantiated.

¶4 About a year later, DCS received a report that for the prior three weeks Thomas had come to school with a rash and swollen face. Upon investigation, DCS determined that Mother had taken Thomas to the emergency room when these symptoms first developed, and it was determined that he was having an allergic reaction. Mother was instructed to follow up with a doctor. She did not follow up with a doctor and Thomas

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<sup>1</sup> The Honorable Maurice Portley, 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> A pseudonym has been used throughout to protect the child’s identity.

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still had the rash about three weeks after the initial emergency room visit. Upon further investigation, DCS discovered that Mother had not enrolled Thomas with necessary mental health services through the Department of Developmental Disabilities as directed. It also appeared that Mother was suffering from depression.

¶5 As a preventive measure, DCS began offering Mother services. These services included family preservation services and mental health assistance for Mother. However, Mother did not actively engage in services, did not comply with recommendations, and chose not to seek any treatment.

¶6 Four months later, Mother got into a physical altercation with Thomas' maternal grandmother. At the time, Mother and Thomas were living with the grandmother even though grandmother had an active order of protection prohibiting Mother from any contact with grandmother. When police responded to a report of domestic violence, Mother was arrested for violating the order of protection, and Thomas was taken to the hospital for observation because he appeared lethargic and was vomiting. Upon release from the hospital, Thomas was taken into DCS custody.

¶7 Shortly thereafter, DCS filed a dependency petition with the juvenile court, asserting that Mother had mental health issues, a history of domestic violence, and a history of neglecting Thomas' special needs. The juvenile court adjudicated Thomas dependent in October 2016.

¶8 After Thomas' removal, DCS continued to offer a variety of services with the goal of family reunification including family preservation, a housing reference, psychological evaluation, drug testing, substance-abuse treatment through Terros, parent aide services, supervised visitation, and transportation. However, Mother demonstrated poor engagement in services and ultimately was terminated from family preservation services and parent aide services. Mother continued to test positive for methamphetamine, amphetamine, and THC.

¶9 Mother missed her scheduled psychological evaluation with Dr. James Thal in December 2016, was four hours late for her rescheduled appointment, and missed the next appointment. Mother eventually completed the evaluation in March 2017. Dr. Thal diagnosed Mother with rule-out generalized anxiety disorder, rule-out dependent personality disorder, rule-out cannabis-use disorder, and rule-out child neglect. He recommended, among other things, that Mother participate in a psychiatric

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evaluation, master's-level therapy, domestic-violence classes, and parent-aide services.

¶10 Mother's engagement in reunification services improved. She participated in a psychiatric evaluation. The provider recommended psychotherapy to treat her for any underlying personality disorder. Mother also participated in master's-level therapy. After 15 sessions, the therapist described Mother's progress as excellent and recommended that services be discontinued.

¶11 DCS again offered parent aide services, which Mother successfully completed. Mother earned four certificates from community-based parenting classes and completed domestic-violence counseling. Mother consistently engaged in intensive outpatient substance abuse services and graduated to standard outpatient services. Due to this success, DCS planned to transition Mother to fully unsupervised visits in preparation for Thomas' return home.

¶12 However, DCS had lingering concerns about Mother's sobriety. Although Mother had consistently tested negative for substances, she missed seven scheduled tests in the proceeding ten months. In April 2018, DCS asked mother to submit to a hair follicle test. However, mother shaved her head and entire body and was unable to give a sample. Mother was instructed not to shave in order to complete a follow-up hair follicle test. In May 2018 she informed DCS that she had again shaved her body and would not be able to give a sample for hair follicle testing. Mother claimed that she regularly shaved her body hair and shaved her head because her hair was damaged, and she was now wearing wigs.

¶13 Mother continued to miss scheduled drug tests and in June 2018, she admitted to Terros and her case aide that she had recently used marijuana. In July Mother stopped testing altogether and did not resume until December when required to by court order. Mother was not consistently participating in visitation services with Thomas either.

¶14 In July 2018, DCS scheduled a bonding and best-interests assessment and Mother failed to attend. DCS provided transportation to the rescheduled appointment in October 2018, but Mother refused to get in the vehicle and attempted to reschedule. When Dr. Capps-Conkle explained that Thomas was already at the office, Mother acquiesced and agreed to attend the assessment. However, by the time Mother arrived, Thomas had already left the office. Dr. Capps-Conkle conducted the clinical interview of

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Mother. She did not show up for a follow up appointment later that October.

¶15 Dr. Capps-Conkle opined that while “Mother had achieved some level of independence and stability,” Mother was unable to maintain that stability over time. Dr. Capps-Conkle recommended doctoral-level therapy if reunification was still the case plan. Doctoral-level therapy was offered to Mother under the condition that she provide a negative hair follicle sample or show 30 days of demonstrated sobriety. Mother provided a hair follicle sample the same day that was positive for methamphetamine, THC and cocaine. Between December 2018 and February 2019, mother repeatedly failed to test, and regularly tested positive for THC when she did test. In February 2019, Mother was referred again to Terros. Mother was terminated from Terros in July 2019 after being non-compliant. Mother later re-engaged and in October 2019, the provider reported that Mother was struggling to apply the concepts and skills she had learned and with regulating her emotions.

¶16 In March 2019, DCS moved to terminate Mother’s parental rights on the statutory grounds of substance-abuse and fifteen-month out-of-home-placement. DCS continued to offer Mother reunification services, but Mother struggled to demonstrate her sobriety by testing positive for methamphetamine and THC. Mother refused to give a hair follicle in July and early August. Additionally, Mother consistently tested positive for THC between June 2019 and February 2020. However, Mother had a valid medical marijuana card during this time.<sup>3</sup> Additionally, Mother’s participation with Terros suffered.

¶17 In November 2019, DCS asked Mother to self-refer for doctoral-level counseling, to use her health insurance and identify an in-network provider. DCS offered to help her in this process. Mother did not

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<sup>3</sup> Mother was issued a medical marijuana card in March 2019 that was valid through March of 2020. Mother claimed that marijuana helped with her colitis symptoms. DCS case manager Kristen Ostrander testified that she considered Mother to have had a six month period of sobriety between June 2019 and January 2020, given that mother was consistently testing, was only testing positive for THC, and had a valid medical marijuana card. However, Dr. Capps-Conkle opined that Mother uses marijuana to “numb-out” in times of stress, that this was a misuse of medical marijuana, and that Mother should not be considered sober when using marijuana for this purpose.

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follow through. In January 2020, Thomas' biological father died. Around this time, Mother disengaged from all services.

¶18 In February 2020, Dr. Capps-Conkle conducted a second bonding and best-interests assessment. Mother told Dr. Capps-Conkle that she used marijuana to numb herself in times of stress, including the time she was close to reunification with Thomas, and after the death of Thomas' father. Dr. Capps-Conkle explained "Mother has displayed a maladaptive pattern of withdrawing from services, and relapsing or using medical marijuana inappropriately under times of duress, stress, or when she feels overwhelmed" and that this pattern was "highly likely" to continue. Dr. Capps-Conkle concluded that additional services were unlikely to be successful, and it appeared that "service opportunities have been exhausted."

¶19 On April 14, 2020, the juvenile court held a contested termination hearing. During this hearing, Dr. Capps-Conkle described doctoral-level therapy as a "higher level of care," and explained that it was possible such therapy could have helped with Mother's cyclical pattern of dropping out. However, Dr. Capps-Conkle also testified that the services DCS provided Mother were appropriate, and that allowing Mother more time to address the circumstances causing Thomas to be taken into care would not be productive.

¶20 The juvenile court subsequently terminated Mother's parental rights on the substance-abuse and fifteen-month out-of-home-placement grounds. A.R.S. § 8-533(B)(3) and § 8-533(B)(8)(c). The court also found that termination was in Thomas' best interests. Mother timely appealed.

## DISCUSSION

¶21 We view the evidence and reasonable inferences in the light most favorable to sustaining the juvenile court's termination order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009). 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." *Id.* (citation omitted). This court will not, therefore, reweigh the evidence. *Id.* We will affirm a termination order supported by reasonable evidence. *Id.*

¶22 "Parents possess a fundamental liberty interest in the care, custody, and management of their children." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24 (2005). But even fundamental rights are not absolute. *Id.* To

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terminate a parent's parental rights, the juvenile court must find at least one statutory ground under A.R.S. § 8-533 by clear and convincing evidence, A.R.S. § 8-537(B), and by a preponderance of evidence that termination is in the child's best interests. *Kent K.*, 210 Ariz. at 288, ¶ 41.<sup>4</sup>

¶23 Mother argues that insufficient evidence supported the juvenile court's finding that severance was warranted pursuant to A.R.S. § 8-533(B)(8)(c). Under this statute, the juvenile court may terminate parental rights if it finds that: (1) "[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer," (2) "the parent has been unable to remedy the circumstances" that caused the out-of-home placement, and (3) "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." A.R.S. § 8-533(B)(8)(c). Additionally, DCS is required to prove that it made diligent efforts to provide appropriate reunification services. A.R.S. § 8-533(B)(8). The court must also consider the availability of the reunification services offered and the parent's participation in services. A.R.S. § 8-533(D).<sup>5</sup>

¶24 Mother challenges only the juvenile court's finding that DCS made diligent efforts to provide appropriate reunification services. She argues that the reunification efforts were inadequate because DCS failed to provide Mother doctoral-level individualized counseling.

¶25 To support her argument, Mother points to her diagnoses of generalized anxiety disorder and dependent personality disorder, and Dr. Capps-Conkle's testimony regarding how these disorders impact her behavior. Mother claims her generalized anxiety disorder leads her to respond to stressful situations by "numbing out," often by using marijuana.

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<sup>4</sup> Mother does not challenge the juvenile court's finding that severance was in the child's best interests.

<sup>5</sup> Because sufficient evidence in the record supports termination based on time-in-care, we need not address Mother's contentions as to the substance-abuse grounds. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) (if evidence supports termination on any one statutory ground, this court need not consider challenges to the other grounds). However, it should be noted that termination under the substance abuse grounds also requires a showing of reasonable efforts to reunify the family. *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12 (App. 2005) (citation omitted).

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Mother appears to argue that her pattern of engaging and then disengaging from services is related to her mental health. Because DCS was aware of Mother's diagnoses, the services provided should have been tailored to meet her particular mental health needs. Relying on *Mary Ellen C. v. Arizona Department of Economic Security*, Mother seems to argue that DCS was obligated to provide the services recommended by its own expert. 193 Ariz. 185, 192 (App. 1999) ("The State does not provide such opportunity or make a concerted effort to preserve the parent-child relationship when it neglects to offer the very services that its consulting expert recommends.") (quotation omitted).

¶26 Severance of parental rights is usually conceived as a measure of last resort, used "only in the most extraordinary circumstances, when all other efforts to preserve the relationship have failed." *Maricopa Cnty. Juv. Action No. JA 33794*, 171 Ariz. 90, 91-92 (App. 1991). Consequently, the State is obligated to "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34.

¶27 However, DCS is not required to "undertake rehabilitative measures that are futile." *Id.* As early as 2018 DCS offered Mother doctoral-level therapy if Mother could demonstrate sobriety – she could not. DCS then offered Mother assistance in locating a doctoral-level therapist who would be covered by her health insurance. Mother did not follow through with the offer of assistance. At the time of the first bonding assessment, Dr. Capps-Conkle expressed uncertainty about whether additional services would be helpful to Mother and recommended doctoral-level counseling only "[i]f" DCS recommended continued reunification. By the second bonding assessment, Dr. Capps-Conkle was of the opinion that "service[] opportunities ha[d] been exhausted," and later testified at the severance hearing that giving Mother more time would not be productive. Given Dr. Capps-Conkle's consistent assessment, it is reasonable to conclude that further reunification efforts would be futile. This is especially true given the wide variety of services DCS already provided over the last three and a half years.

¶28 Accordingly, on this record, reasonable evidence supports the juvenile court's findings that DCS made reasonable and diligent reunification efforts.



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**CONCLUSION**

¶29 For the foregoing reasons, we affirm the termination of the parental relationship.



AMY M. WOOD • Clerk of the Court  
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