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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHRISTOPHER L., ) No. 1 CA-JV 09-0239  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, A.L., E.L., I.L.<sup>1</sup> ) Ariz. R.P. Juv. Ct. 103(G);  
) ARCAP 28)  
Appellees. )  
)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. JD16216

The Honorable Cathy M. Holt, Judge

**AFFIRMED**

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The Stavris Law Firm, PLLC  
By Alison Stavris  
Attorney for Appellant

Scottsdale

Terry Goddard, Arizona Attorney General  
By Kathleen Skinner, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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<sup>1</sup> The caption in this appeal is amended to refer to the children by their initials.

J O H N S E N, Judge

¶1 Christopher L. ("Father") appeals from the superior court's order terminating his parental rights to his three children. For the reasons stated below, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 Child Protective Services ("CPS") took custody of Father's three children on November 7, 2007.<sup>2</sup> After the children were found dependent as to both parents, CPS provided the parents services that included counseling, psychological evaluations, Arizona Families First, substance abuse assessments, random urinalysis, couples counseling and parent aide visitation. Father participated in many services, but he stopped participating fully in visitation in about May 2009, and he never fully participated in counseling. Father's psychological evaluation resulted in a determination that his mental deficiency made it unlikely that he would be able to parent the children in the near future.

¶3 The superior court changed the case plan from reunification to severance and adoption in September 2009. In open court, Father was provided a copy of the Form III, which advised him of his rights and the consequences of a failure to

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<sup>2</sup> We view the evidence in the light most favorable to sustaining the superior court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 206, ¶ 2, 181 P.3d 1126, 1127 (App. 2008).

appear. Father failed to appear at mediation; nor did he appear at the Initial Severance Hearing. The court found Father did not have good cause for failing to appear and proceeded to hear testimony from the CPS case manager. The court terminated Father's parental rights to all three children pursuant to the 15-month time-in-care ground under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2009). Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235 (2007).

#### DISCUSSION

¶4 The superior court must find by clear and convincing evidence that one of the statutory grounds for termination exists and by a preponderance of the evidence that termination is in the child's best interests. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). "We will review a juvenile court's termination order in the light most favorable to sustaining the court's decision and will affirm it unless we must say as a matter of law that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (internal quotation omitted).

¶5 The court may terminate parental rights if "[t]he child has been in an out-of-home placement for a cumulative

total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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). Prior to termination, ADES must make "a diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8). We have held that "although futile efforts are not required, ADES must 'undertake measures with a reasonable prospect of success' in reuniting the family." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 94, ¶ 20, 219 P.3d 296, 304 (App. 2009) (quoting *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34, 971 P.2d 1046, 1053 (App. 1999)).

¶16 Father argues the superior court erred in finding he was unable to remedy the circumstances that caused the children to be in out-of-home placement. The relevant "circumstances" are those that exist at the time of severance, not the circumstances that existed when the children were first removed. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶17 At the time of severance, Father had not been visiting the children consistently, and when he did visit, he failed to provide food appropriate for two of the children's special

dietary needs. Additionally, the case manager testified that the parents "participated in some" of the counseling offered, "but they didn't complete all the counseling sessions that were available for them." Three of the children have chronic health conditions that require constant monitoring, and each of the children was reported to have behavioral problems. According to the case manager, Father had "not shown that [he] would be capable of following the services that the children need" and would "not be able to meet the level of needs that the children require." The court also received a report that as of September 2009 (three months prior to trial), Father lacked stable housing and that it would "be very overwhelming for" him if the children were returned to his care and that in that event, the children would be put "at risk." Together, this evidence constituted a sufficient basis on which the superior court could conclude by clear and convincing evidence that Father was unable to remedy the circumstances that caused the children to be in out-of-home placement.

¶18 Father argues in general fashion that the State failed to provide him services recommended by a pair of psychological evaluations. The opening brief states that one evaluator recommended Father be provided with individual psychotherapy, but that the State failed to provide that service. The brief provides no record citation for its assertion that psychotherapy

was recommended, however, and we are unable to locate a copy of the referenced psychological evaluation in the record. Moreover, although Father argues the State did not show it would have been futile to provide him with psychotherapy services, we note that evidence supported the court's finding that Father failed to fully participate in all of the counseling services that CPS did provide.

**CONCLUSION**

¶9 Based on this record, we cannot say that "no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing." *Denise R.*, 221 Ariz. at 95, ¶ 10, 210 P.3d at 1266. Accordingly, we affirm the superior court's order terminating Father's parental rights to his three children.

/S/\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/S/\_\_\_\_\_  
PHILIP HALL, Judge

/S/\_\_\_\_\_  
PATRICIA K. NORRIS, Judge