

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



DIVISION ONE  
FILED: 09/16/10  
RUTH WILLINGHAM,  
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**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

ARLIEN A., ) 1 CA-JV 10-0045  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Ariz.R.P.Juv.Ct.  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G); ARCAP 28)  
SECURITY, JUAN H., RICARDO A., )  
XAVIER A., and ALFREDO A., )  
)  
Appellees. )

Appeal from the Superior Court in Maricopa County

Cause No. JD507127

The Honorable James H. Keppel, Judge

**AFFIRMED**

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Robert D. Rosanelli Phoenix  
Attorney for Appellant

Terry Goddard, Attorney General Phoenix  
by Michael F. Valenzuela, Assistant Attorney General  
Attorneys for Appellees

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**I R V I N E**, Presiding Judge

¶1 Arlien A. ("Mother") appeals the juvenile court's order terminating her parent-child relationship with J.H., R.A., X.A. and A.A. (collectively, the "Children") based on the ground of

out-of-home placement for fifteen months or longer.<sup>1</sup> See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8)(c) (Supp. 2009).<sup>2</sup> For the reasons that follow, we affirm the judgment of the juvenile court.

#### FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological mother of the Children, J.H., R.A., X.A. and A.A., who were born in 2002, 2004, 2005 and 2006, respectively. Mother has a history of Child Protective Services ("CPS") involvement dating back to 2005. CPS's prior involvement was due to Mother's unfit home, lack of supervision and neglect. As a result of a prior felony child abuse conviction, the Children were placed with their maternal grandmother. After serving a jail sentence, Mother was placed on probation.<sup>3</sup> The terms of Mother's probation were, in part, that she was not permitted to have the Children in her care without written permission, and she was not permitted to have alcohol in her home or presence.

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<sup>1</sup> The Children's Fathers' rights were also terminated. They are not parties to this appeal.

<sup>2</sup> Unless otherwise specified, we cite to the current versions of the applicable statutes when no revisions material to this decision have since occurred.

<sup>3</sup> Mother's child abuse conviction resulted from a situation where she left J.H., R.A. and X.A. unsupervised in an apartment complex parking lot; X.A. was sitting on top of broken glass. Mother's apartment was littered with broken glass, trash, vomit and used diapers. Each child was covered in dirt and none of them were wearing shoes.

¶13 CPS's involvement in the current case began when it received a report that the Children were again unsupervised, neglected and in an unfit home. Mother had the Children without written permission, in violation of her probation. The Children's bedrooms were littered with trash; there were open beer containers within the reach of the Children; the kitchen had both open and unopened alcohol containers; and there were tampons and used maxi pads scattered throughout the home.

¶14 The Children were taken into custody on January 29, 2008, and they were subsequently found dependent as to Mother. A case plan of family reunification was developed, and the Arizona Department of Economic Security ("ADES") offered urinalysis ("UA") testing, parent-aide services, substance-abuse treatment, a psychological evaluation and visitation. Mother was compliant with some services, but not with others. Mother participated in substance-abuse treatment, counseling and parent-aide services. She did not consistently provide UAs when required. The caseworker indicated Mother needed to attend Alcoholics Anonymous ("AA") meetings. Mother did not attend until approximately one year after the caseworker's request. Mother stopped going to AA meetings after attending only four or five.

¶15 In May 2009, Mother, who did not have a valid driver's license, drove the Children to daycare instead of using the transportation company provided by ADES. CPS scheduled a meeting

with Mother to express its concerns over the incident, but Mother did not show up. Mother came to the CPS office nearly six weeks later and explained her absence by stating she was looking for a job. Due in part to this incident, ADES filed a motion to terminate Mother's parent-child relationship with the Children.

¶16 In February 2010, the juvenile court held a contested severance hearing on ADES's motion to terminate. After taking the matter under advisement, the court granted ADES's motion to terminate Mother's parental rights. The juvenile court found that grounds for severance existed pursuant to A.R.S. § 8-533(B)(8)(c) because there was clear and convincing evidence that Mother had not remedied the circumstances causing the children to be placed in out-of-home placements. Specifically, she had "not made significant progress or demonstrated the behavioral changes needed to show that she can effectively parent." The juvenile court also found by a preponderance of the evidence that termination would be in the Children's best interests.

¶17 Mother filed a timely notice of appeal.

#### **DISCUSSION**

¶18 The right to custody of one's children is fundamental, but is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). In Arizona, to justify the termination of parental rights, a juvenile court must find, by clear and convincing evidence, the existence of at

least one statutory basis for termination pursuant to A.R.S. § 8-533. *Id.* at ¶ 12. The court must also find by a preponderance of the evidence that the termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶19 In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[T]he juvenile court was in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). Accordingly, we do not reweigh the evidence but determine only whether there is evidence to sustain the juvenile court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "[W]e will affirm a severance order unless it is clearly erroneous," and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

***Mother's failure to remedy circumstances***

¶10 Pursuant to A.R.S. § 8-533(B)(8)(c), the court could properly sever Mother's rights if: (1) the Children had been in

out-of-home placement for fifteen months or longer; (2) Mother had been unable to remedy the circumstances causing the Children to be in out-of-home placement; and (3) a substantial likelihood existed that she would not be able to properly care for the Children in the near future. We consider the circumstances existing at the time of the severance proceedings "that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶11 Mother does not dispute the court's findings that severance was in the Children's best interests or that ADES made a diligent effort to provide Mother with reunification services. Rather, she disputes the court's finding that she failed to remedy the circumstances that caused the Children to be in out-of-home placement. We find no error.

¶12 The circumstances that caused the Children to be in an out-of-home placement were Mother's inability to provide a safe, stable and fit living environment due, in part, to her alcohol abuse. The caseworker testified that she told Mother each month she needed to obtain stable housing. Mother testified, however, that she had lived in five different homes in the nine months prior to the severance hearing. Mother lived at an apartment she was evicted from, an apartment with her brother, a house with four other adults and a house that she rented, which was

foreclosed on by the owners. Mother's residence at the time of the hearing was a rented home. Despite the caseworker's requests, Mother did not provide any documentation to show she was on the lease at her residence at the time of the severance trial.

¶13 Mother testified that she worked at a gas station until November 2008, but that she was unemployed from November 2008 until February 2009. Mother then worked at a fast food restaurant for only one month until she became pregnant. She was then unemployed from March 2009 until November 2009 when she began work at a remodeling company. Mother left that job in December 2009, and she had been working at a fast food restaurant for approximately three months as of the time of the severance hearing. Mother testified that she earned approximately \$1000 per month and that she did not have medical benefits. Mother also testified that her current boyfriend was a primary source of her income, and he did not have legal status in the United States. He had been deported once before and had an active warrant out for his arrest. Mother testified that if her boyfriend was not able to provide financial assistance to her, "[i]t would probably put me in a tight spot, but I think I would be able to get by."

¶14 Dr. J. conducted two psychological evaluations of Mother that were admitted as exhibits at the severance hearing. In the first evaluation, Dr. J. expressed concern as to whether Mother would be able to properly care for all of her children. He

noted that Mother tended "to focus more on her relationships with men than her responsibilities with her children." At a second psychological evaluation completed over a year later, Dr. J. opined Mother had "made little progress and continues to have difficulty with focus and maintaining adherence to CPS protocol." Dr. J. observed that Mother had "made limited progress with stable employment, stable housing, and stable [] compliance with case plan goals." He remarked that Mother "just does not seem to show the focus and the ability to move forward in these areas." Dr. J. noted that despite Mother's extensive involvement with CPS, she showed "no improvement in her vocational training, no stability with respect to relationships, and with an absence of stable housing or financial resources."

¶15 Mother showed limited improvement at the time of the severance hearing. Prior to the severance hearing, Mother had allegedly obtained housing and employment, but she was unable to provide adequate proof of either. Mother's housing remained unstable as she moved several times during the nine month period prior to the severance trial. Mother's employment history was inconsistent. Mother only provided evidence of employment for one position, which she was no longer employed at, despite CPS's repeated requests. We conclude that although Mother made efforts to remedy the circumstances that led to the removal of the Children from her care, her inability to remedy such



circumstances over an extended period of time supports the court's conclusion. See *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989) (finding unchanged circumstances over three year period sufficient to support severance).

***Mother will be incapable of exercising proper care in the future***

¶16 Mother does not specifically address this issue, but we understand that by arguing she remedied the circumstances that caused the Children to be in an out-of-home placement, she also contends she is able to exercise proper and effective parental care and control over the Children. See A.R.S. § 8-533(B)(8)(c). While Mother concedes she has had numerous residences and periods of unemployment, she asserts the "situation appears to be stable now." Additionally, Mother seems to suggest that because she was permitted to keep N.A., born during the pendency of these proceedings, "she is now a capable parent." Because a parent is able to meet the needs of one child does not establish that she is able to appropriately care for her other children. See *Maricopa County Juv. Action No. JS-5209 and No. JS-4963*, 143 Ariz. 178, 187, 692 P.2d 1027, 1036 (App. 1984) (stating that "the fact that appellant is able to minimally act as an adequate parent for one child does not mean that she would be able to care for [her] other four children.").

¶17 The juvenile court found that each of the elements required by the statute had been proven, including length of time in out-of-home placement, diligent efforts at reunification, Mother was unable to remedy the circumstances, and there was a substantial likelihood that Mother would not be capable of exercising proper and effective parental care and control in the near future. The record supports the juvenile court's findings. Therefore, we find no error.

**CONCLUSION**

¶18 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights as to the Children.

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/s/  
PATRICK IRVINE, Presiding Judge

CONCURRING:

\_\_\_\_\_  
/s/  
ANN A. SCOTT TIMMER, Judge

\_\_\_\_\_  
/s/  
JOHN C. GEMMILL, Judge