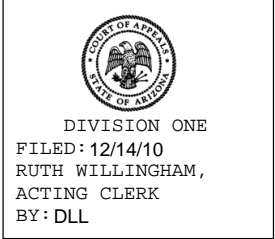


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DALE L., ) No. 1 CA-JV 10-0147  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R. P. Juv  
SECURITY, YULI V., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD-15982

The Honorable Roger E. Brodman, Judge

**AFFIRMED**

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The Stavris Law Firm, P.L.L.C.

By Alison Stavris  
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Scottsdale

Terry Goddard, Arizona Attorney General

By Kathleen E. Skinner, Assistant Attorney General  
Attorneys for Appellee Arizona Department of  
Economic Security

Mesa

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**D O W N I E**, Judge

¶1 Dale L. ("Father") appeals from an order terminating his parental rights to daughter Y. For the following reasons, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father are parents of son E., born in December 2005, and Y., born in June 2008.<sup>1</sup> Before Y.'s birth, Mother, Father, and E. lived for a time with Mother's parents. On August 13, 2007, a call was placed to the Child Abuse Hotline, alleging: (1) the residents were smoking methamphetamine and blowing smoke in E.'s face, (2) E. was handling methamphetamine and drug paraphernalia, (3) Mother and Father beat E. with sticks and called him names, (4) E.'s diapers were filled "to the point of overflowing," and (5) the home was infested with cockroaches and covered with feces.

¶3 The following day, E. was removed from the home. The house was in disrepair, including a broken toilet, a shower using a garden hose for water, and holes in the floors that had been patched where people had fallen through. At least thirty cats roamed freely, "do[ing] their duties . . . [w]herever they wanted to." The home was also infested with cockroaches, and methamphetamine was present.<sup>2</sup>

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<sup>1</sup> The children's mother has not appealed. References to her are included because facts and issues relating to the parents are intertwined.

<sup>2</sup> Mother testified that her parents used drugs and intimated that the methamphetamine in the home belonged to them. In August 2007, Mother and Father tested positive for cocaine and marijuana.

¶14 The Arizona Department of Economic Security ("ADES") initiated dependency proceedings as to E. Father participated in a psychological evaluation in November 2007. The psychologist found that Father had a history of "dysthymic disorder,"<sup>3</sup> cannabis abuse, and features of antisocial disorder." She also concluded that Father exhibited "irresponsible behaviors" that were consistent with antisocial disorder, including a history of substance abuse, a sense of entitlement, and unstable employment and housing.<sup>4</sup> She opined that Father's sense of entitlement could make him resistant to reunification services, which he might view "as a waste of [his] time." She also concluded Father would have difficulty "recognizing the needs of someone else, [or] recognizing the emotions of someone else."

¶15 After E. was removed from the home, Mother and Father lived at a church for a time, then stayed with a series of friends and a relative.<sup>5</sup> After Y.'s birth, they moved to an apartment.

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<sup>3</sup> Dysthymic disorder is a depressive disorder, lasting two years or longer.

<sup>4</sup> The psychologist determined that Father had "features" of the personality disorder, but did not "meet full criteria" for such a diagnosis. Later, a counselor who worked with Father opined that he did not have a personality disorder.

<sup>5</sup> Mother testified that, at times, the couple lived on the streets. Father testified they occasionally stayed in shelters.

¶16 Thereafter, Mother was charged with child abuse arising from the circumstances that led to E.'s removal from the home. While she was in custody, Y. remained in Father's care. On July 8, 2008, Y. was removed, and ADES initiated dependency proceedings as to her. It alleged, *inter alia*, that Father was unable to parent Y. due to neglect and mental illness.

¶17 Father was also criminally charged based on the circumstances relating to E. On October 27, 2008, he pled guilty to child abuse, a class four felony. He received four years' probation. In November or December 2008, the parents were evicted from their apartment. They stayed with friends for a few weeks before securing a new apartment.

¶18 Beginning in November 2008, the court held a joint severance hearing as to E. and dependency hearing as to Y. The hearing extended over nine days. Evidence established that Father participated in numerous services, including the aforementioned psychological evaluation, parent aide services, drug testing and counseling, and later, family counseling. Because the parents had used nearly eighteen months of parent aide services,<sup>6</sup> CPS cut those sessions and, instead, scheduled visitations at a center. On February 25, 2009, counsel advised the court that Father had not seen his children since January 20

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<sup>6</sup> Y. was not born until after this service had been in place for several months.

because the visitation center had closed. CPS caseworker Brown responded as follows:

[T]he parent aide service ended. I put in a request for a case aide and also a request that the visits be done at the Visitation center. The case aides have been furloughed and the Visitation center's been closed so they're currently on a wait list for a case aide to do the visits. If there is a family member or anyone from the community that's willing to supervise, I can -- I can get a background check on them and any volunteer can do it, but right now in the Department, we just don't have the resources.

The court asked the parties to confer about a possible volunteer to supervise visits. The parties agreed to a former babysitter, who had previously been approved by CPS after a background check.<sup>7</sup>

¶19 Ms. Brown testified that Father had not fully participated in services. She said both parents participated more readily in in-home services versus those requiring "more effort." Ms. Brown testified Father had not established the required six months of "pro-social behavior," which included stable employment with ascertainable income. She opined that Father was not capable of parenting Y. Her concerns about his progress persisted because "there hasn't been an observable

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<sup>7</sup> Apparently, this solution did not work, as Father testified on April 30, 2009, that he had not visited Y. since January 20, 2009. Father approached Ms. Brown about having the foster parent supervise visits, but CPS determined the foster parent was not licensed to do so.

behavioral change in the parents. . . . the goals that have been identified haven't been reached."

¶10 On July 14, 2009, the court found Y. dependent. It noted ongoing issues with Father's employment, housing, and participation in services. On September 22, 2009, ADES filed a motion to terminate Father's parental rights to Y. As a statutory basis, it alleged that Father had had his parental rights to another child terminated within two years. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(10) (Supp. 2010).<sup>8</sup>

¶11 On June 2, 2010, the court held a contested severance hearing regarding Y. Ms. Brown testified that Father could not provide a safe environment for an infant. Additionally, his ongoing incarceration was an impediment. She testified that the services provided to Father with respect to Y. were identical to those offered in regard to E. She stated that at the conclusion of Y.'s dependency hearing, CPS maintained an open referral for counseling.<sup>9</sup> Father, however, did not continue participating in services and did not communicate with CPS after that hearing. Nor did Father request visits with Y. As we discuss *infra*, ADES

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<sup>8</sup> We cite to the current version of the applicable statute because no revisions material to this decision have since been made.

<sup>9</sup> Eventually, the counseling services were "closed out" for lack of contact after the counselor unsuccessfully attempted to contact Father.

also presented evidence that Y.'s best interests would be served by terminating Father's rights.

¶12 The juvenile court terminated Father's parental rights pursuant to A.R.S. § 8-533(B)(10). It recognized that Father had never abused Y., but found a sufficient nexus between the abuse of E. and the potential for abuse of Y. The court further found that ADES had made reasonable efforts to provide services, but Father elected not to participate. Moreover, the court found additional services would be futile, as Father had been incarcerated since November 2009.<sup>10</sup> Additionally, it noted the parents' unstable housing, employment issues, and "historic difficulty in complying with services."

¶13 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(B) (2003).

#### DISCUSSION

¶14 Father argues the juvenile court erred by finding: (1) ADES made reasonable efforts to reunify the family, and (2) termination was in Y.'s best interests.

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<sup>10</sup> On June 23, 2010, Father pled guilty to attempted sale of narcotic drugs, a class three felony. He was sentenced to 7.5 years' imprisonment. The court also found that Father violated terms of his probation and sentenced him to 2.5 years, to be served concurrent with the sentence for the drug-related offense.

¶15 We view the evidence in the light most favorable to sustaining the juvenile court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We will not reverse a court's order terminating parental rights unless its factual findings are clearly erroneous. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). A finding is clearly erroneous when there is no reasonable evidence to support its findings. *Id.*

¶16 "In Arizona, '[t]ermination of parental rights is governed solely by A.R.S. § 8-533.'" *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶ 12, 995 P.2d 682, 684-85 (2000) (alteration in original) (citation omitted). The trial court must find by clear and convincing evidence at least one of the grounds for termination enumerated in A.R.S. § 8-533, and it must find by a preponderance of the evidence that termination is in the best interest of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, 284, ¶¶ 1, 22, 110 P.3d 1013, 1014, 1018 (2005).

#### **A. Reunification Services**

¶17 Generally, before severing a parent-child relationship, ADES is required to provide reunification services, except when to do so would be futile. See *James H. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 1, 2, ¶ 8, 106 P.3d 327, 328 (App. 2005); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193



Ariz. 185, 192, ¶ 34, 971 P.2d 1046, 1053 (App. 1999). We assume, without deciding, that ADES was required to provide services before terminating Father's rights under A.R.S. § 8-533(B)(10). We further assume, without deciding, that ADES offered inadequate services after the dependency hearing concluded in June 2009. Notwithstanding these assumptions, we find no error.

¶18 With the exception of a few days, Father was incarcerated as of October 26, 2009. He is serving a 7.5 year term of imprisonment. Thus, at most, there was a four-month window between the end of the dependency hearing and his incarceration when Father might have participated in services. But even if ADES had offered services during this period, they would have been futile in terms of reunification based on the lengthy prison term. See *James H.*, 210 Ariz. at 3, ¶ 9, 106 P.3d at 329 (holding that when a parent is sentenced to prison for a prolonged period, reunification efforts would be futile). Such efforts are not required "because prolonged incarceration is something neither the Department nor the parent could ameliorate through reunification services." *Id.*

#### **B. Best Interests**

¶19 Father also argues the juvenile court erred by concluding severance was in Y.'s best interests. We disagree.

¶120 To adequately protect a parent's constitutional right to the custody and control of his child, "a determination of [Y.'s] best interest must include a finding as to how [she] would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa County Juvenile Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors that support a finding that a child will benefit from severance include the "immediate availability of an adoptive placement," *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291, "whether an existing placement is meeting the needs of the child," *id.*, or whether the child is adoptable. *Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶121 Ms. Brown testified that Y. is placed with her brother, with whom she has a strong bond, in an adoptive placement. Evidence established that Y. is adoptable and has flourished since being placed with her brother. Further, the record reflects that Y.'s placement is meeting all of her needs. Substantial evidence supports the best interests finding.

**CONCLUSION**

¶22 For the foregoing reasons, we affirm.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
MAURICE PORTLEY, Presiding Judge

/s/  
PATRICIA A. OROZCO, Judge