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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 01/11/2011  
RUTH WILLINGHAM,  
ACTING CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KELLIE B., ) 1 CA-JV 10-0151  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, EMILY B., BRADLEY B., ) Ct.; Rule 28, ARCAP)  
TRISTEN B., )  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD16539

The Honorable Shellie F. Smith, Judge Pro Tempore

**AFFIRMED**

Thomas C. Horn, Attorney General Phoenix  
By Michael Valenzuela, Assistant Attorney General  
Attorneys for Appellee

Denise L. Carroll Scottsdale  
Attorney for Appellant

**O R O Z C O**, Judge

¶1 Kellie B. (Mother) appeals the juvenile court's decision to sever her parental rights. For the following reasons we affirm the termination order.

## FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological mother of Bradley, Tristen, and Emily (collectively the Children).<sup>1</sup>

¶3 Mother began using methamphetamine at the age of fourteen and continued until she smoked "two bowls every two days." While living in California from 2000 to 2005, the Del Norte County Department of Health and Human Services, Child Welfare Services (CWS) received fifteen reports concerning Mother's substance abuse problems. CWS requested Bradley and Tristen to be removed in 2003, but the court denied this request and allowed Mother to place the children with their grandfather. During this time, Mother was in the mid to late stages of her pregnancy with Emily and stayed sober for six months. CWS continued to provide Mother services until 2005 when it dismissed the case. Mother then moved to Arizona and resumed using methamphetamine.

¶4 In March 2008, Mother's four-year old daughter, Emily, dialed 911 because Mother was having trouble breathing. The paramedics who came to Mother's assistance suspected she was under the influence of drugs and asked her questions regarding her use. A detective who investigated the home noted the apartment was a mess, there was garbage on the floor, and propane

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<sup>1</sup> Mother has two other children, who live with their father and are not the subject of this appeal.

tanks were connected to the water heater. The detective reported these observations to the county attorney's office, and charges were brought against Mother for child neglect and possession of drug paraphernalia.

¶15 Arizona's Child Protective Services took the Children into temporary physical custody. The Arizona Department of Economic Security (ADES) filed a dependency action and the juvenile court found the Children dependent as to Mother. Mother was referred to a substance-abuse treatment program in March 2008. In April 2008, Mother tested positive for methamphetamine. She completed an intensive outpatient substance abuse program from April 2008 until August 2008, but failed to consistently undergo urinalysis testing. Between August 2008 and January 2009, Mother admitted to using methamphetamine.

¶16 ADES provided Mother parent-aide services starting in approximately May 2008. Mother did not complete the goals that were set for her during these services including setting boundaries for the Children, disciplining the Children and budgeting her money. ADES attempted to provide Mother with a second set of parent-aide services starting in October 2008. A psychological evaluation was performed and Mother was diagnosed with amphetamine abuse and anxiety disorder. The psychologist testified that Mother's substance abuse negatively impacted her ability to parent and the children would be at risk if Mother

continued abusing substances. The psychologist believed Mother needed to be sober for one full year to demonstrate an ability to parent the Children.

¶17 Mother began attending counseling sessions, but eventually stopped, at which point the counseling services were closed. Mother became pregnant in February 2009, yet continued using methamphetamine and alcohol on a daily basis.

¶18 In July 2009 ADES changed the case plan to severance and adoption. After the change in the case plan, Mother began to engage in services including a twenty-eight-day inpatient treatment program, Alcoholics Anonymous and Narcotics Anonymous, group therapy sessions once a week, and participation in drug testing from August 2009 until January 2010. Her drug tests indicated that she was not using drugs.

¶19 At the contested severance hearing, the ADES case manager, Jennifer S., testified Mother had failed to: demonstrate sobriety; obtain stable employment; show effective discipline with the Children; and address her long substance-abuse history. The juvenile court terminated Mother's rights based on: (1) Mother's history of chronic illegal drug abuse; (2) Mother's inability to remedy the circumstances that caused the Children to be in out of home placement; and (3) that severance was in the best interest of the Children.

¶10 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003).

#### DISCUSSION

¶11 On appeal, Mother claims the juvenile court erred in finding her unable to remedy her current circumstances resulting in the Children's out of home placement. Also, she contends the State did not prove by a preponderance of the evidence that severance was in the Children's best interest.

¶12 The juvenile court terminated Mother's rights based on her inability to remedy the circumstances that caused the children to be in out of home placement and her history of chronic abuse of dangerous drugs. Mother does not challenge the severance based on chronic drug abuse. Because there is a basis to justify severance which was not challenged, we need not address the statutory basis that is challenged.

¶13 To terminate the rights of a parent, ADES must prove by clear and convincing evidence that there is a statutory basis for the termination. *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005). ADES must also show by a preponderance of the evidence that the termination is in the best interest of the children. *Id.*; see A.R.S. § 8-533.B. (Supp. 2010).

¶14 "The central issue when determining the best interests of a child in a termination action is whether the child would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 10, 178 P.3d 511, 514 (App. 2008) (internal quotations omitted). In order to demonstrate termination would be in the children's best interest, "ADES must present credible evidence demonstrating how the child would benefit from a severance or be harmed by the continuation of the relationship." *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 8, 177 P.3d 327, 329 (App. 2008) (internal quotations omitted). A child's best interest is not the same as a child's wishes or their desires of where to be placed. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 287, ¶ 37, 110 P.3d 1013, 1021 (2005) ("the child's interest in obtaining a loving, stable home, or at the very least avoiding a potentially harmful relationship with a parent" should all be considered in determining a child's best interest).

¶15 A factor which may be considered in deciding to sever the parent-child relationship is the immediate availability of an adoptive placement. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). The juvenile court may also examine if the existing placement is meeting the children's needs. *Id.*

¶16 In this case ADES presented testimony indicating an adoptive placement was available for the Children at the time of trial. The adoptive placement was able to "meet all of [the Children's] basic needs and special needs, care for them, provide them medical, dental, educational, social development, provide a safe family home for them to stay, and [was] dedicated to the children and their future."

¶17 Mother argues statements made within the 'attachment and best interest of the Children' assessment show it to be in the Children's best interest to live with Mother. However, Mother overlooks the assessment's conclusions and recommendations. The findings concluded Bradley had anxiety about his relationship with Mother because of her drug history and deficiencies in providing for the Children. In regards to Tristen, the assessment determined he was concerned about the behaviors Mother engaged in while caring for the Children. Emily expressed her concerns and worries about Mother being hurt and exhibited actions that showed a need for attention. The assessment found that while Mother expressed a desire to raise the Children, the psychologist had "no expectation that she can do so at any time in the foreseeable future." The assessment's conclusions recommended the Children's case plan be one of severance and adoption.

¶18 Mother states that each child demonstrated a preference to live with her if she were able to take care of herself. The assessment also found the Children had a desire to live with Mother. However, ADES presented testimony that Children were happy with the adoptive family. The juvenile court heard testimony that Bradley "would be okay with being adopted" even though he would ideally like to go back to Mother. Tristen actually preferred to be adopted because he believed Mother would be able to take care of herself better. Each child expressed concern about Mother's addictions and wanted to see her succeed in the services that were being offered to her. We therefore find the juvenile court was presented with sufficient evidence that termination was in the Children's best interest.

**CONCLUSION**

¶19 For the above mentioned reasons we affirm the juvenile court's order terminating Mother's parental rights.

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

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MARGARET H. DOWNIE, Judge