DIVISION ONE
FILED: 06/16/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

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

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| DAVID T.<br><br>Appellant,<br><br>v.<br><br>ARIZONA DEPARTMENT OF ECONOMIC SECURITY, RYAN H.,<br><br>Appellees. | ) | No. 1 CA-JV 10-0155<br><br>DEPARTMENT C<br><br><br><br>**DECISION ORDER** |

The court, Presiding Judge Daniel A. Barker and Judges Margaret H. Downie and Michael J. Brown, participating, has considered this appeal, which comes to us on remand from the Arizona Supreme Court. David T. ("Father") appeals the termination of his parental rights to son Ryan.

A detailed summary of facts appears in our earlier decision resolving an appeal filed by Krystle T. ("Mother"), Ryan's mother. *See Krystle T. v. Ariz. Dep't of Econ. Sec.*, 1 CA-JV 10-0155, 2011 WL 1259653 (Ariz. App. Apr. 5, 2011) (mem. decision). The facts relevant to Father's appeal are substantially the same. Father's legal arguments also largely track those resolved in Mother's appeal. *See id.*

For the reasons articulated in *Krystle T.*, we find no error in the juvenile court's decision to proceed *in absentia* after denying the parents' request to appear telephonically, or alternatively, for a continuance. *See id.* at 4-5, ¶¶ 26-31. Though the court allowed Father to appear telephonically at various pretrial proceedings, it repeatedly warned that failure to attend the severance trial could lead to a default and a grant of the State's severance motion. Father did not heed the court's warnings and failed to appear at trial.

We next consider Father's contention that the evidence did not justify severance. The juvenile court must find, by clear and convincing evidence, at least one of the grounds for termination enumerated in Arizona Revised Statutes ("A.R.S.") section 8-533. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, 284, ¶¶ 1 & 22, 110 P.3d 1013, 1014, 1018 (2005). Pursuant to A.R.S. § 8-533(B)(8)(b), ADES alleged that Father failed to remedy the circumstances that led to Ryan being placed in out-of-home care due to medical neglect. To justify severance under § 8-533(B)(8)(b), a court must find:

> The child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate

> in reunification services offered by the department.

At the time of trial, Ryan was less than three years old and had been in an out-of-home placement for more than six months. Father contends, though, that his participation in services precludes a finding that he willfully refused to remedy the circumstances that led to Ryan's out-of-home placement. We disagree.

Experts opined that, though Father appeared to be a marginally better caretaker than Mother, there were concerns about his parenting. Father failed to understand the reasons for CPS's involvement, and there were concerns about his ability to tend to Ryan's substantial special needs while also providing for a newborn. Father initially participated in services. However, beginning in July 2009, his participation declined. And in December 2009, his participation ceased altogether when he relocated to Ohio. Father did not return to Arizona, even when Ryan underwent major surgery.

The CPS caseworker discussed concerns about domestic violence in the household, the parents' lack of understanding of Ryan's complex medical needs, and their inability to care for Ryan on a long-term basis. Moreover, Father's decision to live in Ohio and not participate in his son's ongoing medical

treatments reflected an intention to abdicate further parental responsibilities as to Ryan.

The record includes clear and convincing evidence of Father's inability or unwillingness to remedy the circumstances that brought Ryan into out-of-home placement. ADES provided appropriate reunification services, including parenting classes, supervised visitation, parent aide services, counseling, and transportation.[1]

IT IS ORDERED affirming the juvenile court's severance order.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
DANIEL A. BARKER, Presiding Judge

/s/
MICHAEL J. BROWN, Judge

[1] Because only one basis for severance is necessary, and we affirm the severance under § 8-533(B)(8)(b), we need not discuss the other grounds found by the juvenile court. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). Father has not challenged the superior court's best interests determination.