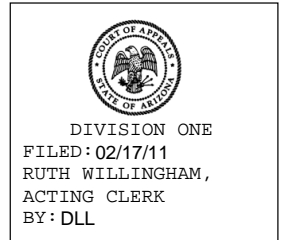


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



RAYMOND A., SOPHIA C., ) 1 CA-JV 10-0189  
)  
Appellants, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G), Ariz. R.P. Juv.  
SECURITY, MARIBELLA A., RAYMOND ) Ct.; Rule 28, ARCAP)  
A., CARLOS A., )  
)  
Appellees. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. JD17803

The Honorable Aimee L. Anderson, Judge

**AFFIRMED**

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David W. Bell, Attorney at Law  
by David W. Bell  
Attorney for Appellant Mother

Mesa

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by Denise L. Carroll  
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Scottsdale

Thomas C. Horne, Attorney General  
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P O R T L E Y, Judge

¶1 Raymond A. ("Father") and Sophia C. ("Mother") appeal the termination of their parental rights. For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother and Father are the unmarried parents of three children, born in 2004, 2005, and 2006.<sup>1</sup> The police went to their apartment in September 2007 and found a gun lying on the floor of the parents' bedroom and marijuana accessible to the children. The report described the living condition as follows:

Throughout the house clothing, garbage and debris was scattered. The house had dirty diapers in corners. Cockroaches and the dogs were eating them. These conditions were also present in the front yard. In the room the children were sleeping in, I picked up the blanket the kids were sleeping on and it was infested with ants. The bedroom had no carpet and had a wooden foundation floor. Stale, old food which was covered with ants was lying on the floor throughout the house. Ants were also inside the refrigerator. In the kitchen old rotten food was everywhere. The residence had a horrible odor. There were open, spliced together active power cords in the living room. They were assessable to the children and at ground level.

The parents placed the three children in the care of Father's great aunt, and both parents subsequently pled guilty to possession of marijuana for sale and child abuse.

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<sup>1</sup> Mother has two additional children who are not party to this appeal.

¶13 The aunt relinquished control of the children to Phoenix Crisis Nursery in February 2009. In addition to beating the children daily, she told staff that she locked them in closets, refused to touch one of the children, and was concerned that if the children remained in her care, she would kill them. The Arizona Department of Economic Security ("ADES") then placed the children in a licensed foster home.

¶14 ADES filed a dependency petition later that month, and the children were found dependent as to Mother in April 2009. Because Father failed to appear for a pretrial dependency conference, the children were found dependent as to him as well.

¶15 ADES filed its motion to terminate parental rights in March 2010. As to both parents, ADES alleged four separate grounds for termination: abandonment of the children, Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (2007); neglect or willful abuse, § 8-533(B)(2); parents' incarceration for a felony that renders them unfit to parent, § 8-533(B)(4); and nine months in out-of-home placement, § 8-533(B)(8)(a).

¶16 The matter proceeded to trial, and the juvenile court terminated both Mother's and Father's parental rights. As to Mother, the court found that ADES proved by clear and convincing evidence abandonment, willful abuse or neglect, and nine months in out-of-home placement. As to Father, the juvenile court found that ADES proved by clear and convincing evidence willful

abuse or neglect, and nine months in out-of-home placement. The juvenile court also found that termination was in the best interests of the children. Both parents appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1), and -2101(B) (2003).

#### **DISCUSSION**

¶7 We view the facts in a light most favorable to upholding the juvenile court's order. See *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010). "We will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Termination of parental rights is appropriate when ADES proves by clear and convincing evidence that there is a statutory basis for the termination. *Id.* at ¶ 3. We will affirm the termination if any one of the statutory grounds is proven. *Id.*

#### **I. Diligent Effort to Provide Father with Reunification Services**

¶8 Father first asserts that the juvenile court erred when it held that ADES made reasonable efforts to reunite him with his children pursuant to § 8-533(B)(8)(a). We disagree.

¶9 Prior to severing parental rights based on nine months in out-of-home placement, ADES must make a "diligent effort to provide reunification services." A.R.S. § 8-533(B)(8)(a). "Although [ADES] need not provide 'every conceivable service,' it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). ADES, however, need not provide futile services, *Pima Cnty. Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989), and a parent must do more than sporadically attempt reunification. *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994).

¶10 The month after the children were placed in ADES Father attended his first supervised visit and was late for his second visit. After the dependency finding, ADES Case Manager Jenna Burden testified that she was unable to immediately contact Father in April 2009 to offer him the reunification services. She found him in May, provided information to him about the case and informed him of the court-ordered services. She scheduled an intake interview for him with TERROS Families First, provided Father with contact information so he could complete his drug testing, and scheduled a supervised visit with his children. Father only completed the TERROS intake in June

2009, and because he failed to follow up with services, TERROS closed out his case.

¶11 Between March 2009 and July 2009, Father only reported for drug testing four times. He attended one supervised visit in July 2009 and failed to attend any subsequent supervised visits. He was jailed in July, released the next month, and was found to have violated probation. He was sentenced to prison in October 2009.

¶12 He testified that he did not complete his drug testing and attend supervised visits because he lacked transportation. Although he once asked ADES for a bus card, he testified that he did not know how to use the bus system and never requested assistance to learn.

¶13 Father asserts that because ADES never offered the court-ordered parent aid services, parenting classes, and psychological consultation, it failed to provide him appropriate reunification services. Given Father's sporadic attendance for the services he received and his explanation for noncompliance, there was substantial evidence to support the juvenile court's finding that ADES made reasonable attempts at reunification and further efforts would have been futile.

## **II. Best Interests of the Children**

¶14 Both parents contend that the juvenile court erred by finding that severance was in the best interests of the

children. Specifically, both parents focus on the lack of an adoption plan to support their assertion.

¶15 The juvenile court is required to find that severance is in the best interest of the child by a preponderance of the evidence. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The evidence must support a finding that the child would receive “an affirmative benefit from termination or incur a detriment by continuing the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 335, ¶ 6, 100 P.3d 943, 945 (App. 2004); see *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). The existence of an adoption plan is not a prerequisite for termination. *Bobby G.*, 219 Ariz. at 511, ¶ 15, 200 P.3d at 1008. ADES needs only establish that the children are adoptable. *Id.*

¶16 Although ADES was not able to develop a final adoption plan for the children, the case manager testified that she believed the children were adoptable based on discussions with the foster mother and others having contact with the children, including their intensive case manager. In fact, the juvenile court concluded that, in spite of Mother’s efforts in prison and Father’s concern about the children’s behavioral problems, “maintaining a relationship with parents who abused and neglected them and have done very little to work towards being a

better parent and being with them would be detrimental to the children to keep them lingering in foster care."

¶17 Because the juvenile court was in the best position to determine credibility in making its best interest finding, we find no abuse of discretion. *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987).

**CONCLUSION**

¶18 Based on the foregoing, we affirm the decision of the juvenile court terminating Father's and Mother's parental rights.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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PETER B. SWANN, Presiding Judge

/s/

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PATRICK IRVINE, Judge