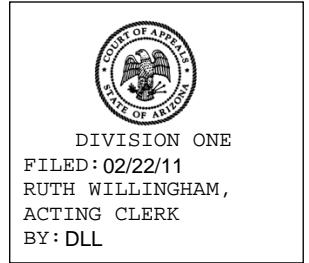


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCP 28(c);  
Ariz. R. Crim. P. 31.21

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



HEATHER K., ) 1 CA-JV 10-0212  
)  
) Appellant, ) DEPARTMENT B  
)  
) v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
) SECURITY, DILLON T., BREANNA T., ) Ct.; Rule 28 ARCAP)  
) JACOB T., JOSHUA T., )  
)  
) Appellees. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. JD18159

The Honorable Mark H. Brain, Commissioner

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Jamie R. Heller, Assistant Attorney General  
Attorneys for Appellee/Arizona Department of Economic  
Security

Sandra L. Massetto Attorney at Law Phoenix  
By Sandra L. Massetto  
Attorney for Appellant/Heather K.

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**K E S S L E R**, Judge

¶1 Heather K. ("Mother") appeals the juvenile court's order terminating her parental relationship with her four children, currently ages nine, six, three, and two, pursuant to

Arizona Revised Statutes ("A.R.S.") sections 8-533(B)(3) and (B)(8)(a) (Supp. 2010).<sup>1</sup> For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶2 In June 2009, the Arizona Department of Economic Security ("ADES") took temporary physical custody of Mother's four children and filed for dependency, alleging neglect and an unsafe and unsanitary home.<sup>2</sup> After Mother and the children's father ("Father") waived their trial rights, the juvenile court found the children dependent in August 2009. Reunification was the case plan, and the court ordered Mother and Father to comply with TERROS's substance abuse assessment and treatment, urinalysis ("UA") testing, parent aide services, psychological consultations, transportation, and visitation.

¶3 In April 2010, ADES filed a motion to terminate the parental rights of Mother and Father, alleging (1) an inability to parent due to chronic drug abuse that would persist for a prolonged indeterminate time under A.R.S. § 8-533(B)(3) and (2) the children had been cared for in out-of-home placement for more than nine months under A.R.S. § 8-533(B)(8)(a). While both

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<sup>1</sup> We cite to the most current version of the statute when it has not been substantively revised since the date of the underlying conduct.

<sup>2</sup> Specifically, ADES alleged there were animal feces and urine, garbage, and cigarette butts on the floor within reach of the children. Also, the children were dirty, had scabies, and police observed at least one child eating out of the apartment dumpster. The family lived in a one-bedroom apartment with only one twin-sized mattress in the home.

parents contested the termination, the juvenile court ultimately determined that Father waived his right to contest the termination by repeatedly failing to appear for hearings.<sup>3</sup>

¶4 At trial, the ADES caseworker ("Caseworker") testified that she advised Mother of all the services required of her and gave her information about the services. She attested that Mother failed to complete substance abuse treatment, education classes, and a psychological consultation due to failure to maintain sobriety. Mother also had been closed out of the required TERROS treatment program four times for failing to set up or attend appointments. Mother had two referrals to parent aide counseling, in which the program recommended Mother continue the counseling because it was concerned about her stability and lack of progress. During her first parent aide referral, Mother missed four of fourteen parenting sessions and eleven of twenty visits with her children, which negatively affected the children each time. Mother also missed the oldest child's birthday. Caseworker testified that she offered Mother every service possible.

¶5 Caseworker also testified that Mother denied having a substance abuse problem; tested positive for meth three times, including twice within three months before the termination hearing (in August 2010); tested positive for marijuana in May

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<sup>3</sup> Father is not a party to this appeal.

2010; and failed to test forty out of forty-six times between June 2009 and July 2010. Caseworker attested that before a parent aide intake in May 2010 and a scheduled visitation in June 2010, Mother tested positive for meth. She further testified Mother may have been under the influence of meth during the visitation because she had used the day before. According to Caseworker, the parent aide report on the latter incident indicated Mother had open sores on her face and arms, which may indicate meth abuse.

¶6 Regarding the condition of the children when taken into custody, Caseworker testified that the two oldest had lice and scabies. The oldest child experienced behavioral and socialization issues, was educationally behind his peers due to missing a significant part of first grade, would rummage for food during the night, and had poor hygiene skills. After coming into ADES custody, the oldest child was doing well behaviorally and educationally.

¶7 As to the other children, Caseworker testified that due to neglect, the second oldest child had continuing educational and socialization delays, including functioning at a two- or three-year-old level. That child also had poor hygiene. The two youngest children were also developmentally delayed and functioning below their age level due to neglect. After being taken into ADES care, they received speech and occupational

therapy. Caseworker testified that termination was in the children's best interest.

¶18 Mother testified that she used meth at least twice, in July and October 2009. She denied having a drug problem. She claimed that her house was not unsanitary, there was furniture in the house, and there was no food in the house when ADES took custody of the children because her food stamp card had not arrived in the mail. She asserted that the second oldest child was not eating out of a dumpster but instead chewing on her fingers. She testified that no one told her the children had scabies or lice, and the children were not neglected or developmentally delayed when they were in her care.

¶19 Mother blamed other people or circumstances for her missed counseling, parent aide, UA, and visitation appointments. As to her visitation with her children, she conceded missing three appointments because her children were sick or she was in jail. Mother also admitted that she was not very compliant with reunification services in the beginning, but she had become much more compliant after separating from Father in May 2010.

¶10 The juvenile court granted the termination of Mother's parental rights under A.R.S. § 8-533(B)(3) and (B)(8)(a). The court found (1) the living conditions were deplorable at the time of the children's removal, including an unsanitary home and insufficient food; (2) the children were neglected, evidenced by

behavioral issues and educational and social delays; (3) Mother was addicted to meth; (4) Mother was non-compliant with most of the reunification services, including repeatedly failing to submit to UA tests and testing positive for meth a number of times; and (5) termination was in the best interest of the children. Mother timely appealed from the juvenile court's signed minute entry. We have jurisdiction pursuant to A.R.S. § 8-235 (2007), 12-120.21(A)(1) (2003), and -2101(A),(B) (2003).

#### **DISCUSSION**

¶11 Mother argues that the juvenile court erred by holding that she (1) had a history of chronic substance abuse, (2) had willfully refused or substantially neglected to remedy the circumstances that caused the children to be placed outside of her home, and (3) termination was in the best interest of the children. Mother also contends that Caseworker's testimony regarding whether Mother was unable to parent because of her chronic drug abuse that would continue for a prolonged indeterminate time should have been excluded because Caseworker was not qualified to offer that opinion under A.R.S. § 12-2203 (Supp. 2010).

¶12 "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz.*

*Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). On appeal, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a [termination] order unless it is clearly erroneous." *Id.* We view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶13 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground provided in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). It must also find by a preponderance of the evidence that termination is in the best interest of the child. *Id.*; *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).<sup>4</sup> We consider "those circumstances existing at the time of the [termination] 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) (internal quotation marks omitted).

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<sup>4</sup> The juvenile court must also find that ADES made reasonable efforts to reunify the family or that such efforts would have been futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶¶ 31-34, 971 P.2d 1046, 1052-53 (App. 1999) (citation omitted). Mother has not argued that ADES did not make reasonable efforts to reunify the family; therefore, we do not address this issue.

**I. The juvenile court did not err in terminating Mother's parental rights under A.R.S. § 8-533(B)(8)(a).<sup>5</sup>**

¶14 Under A.R.S. § 8-533(B)(8), a juvenile court may terminate a parental relationship when the "child is being cared for in an out-of-home placement," "the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services[,] and that one of the following circumstances exists":

(a) The child has been in an out-of-home placement for a cumulative total period of nine 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.

¶15 While termination of parental rights under A.R.S. § 8-533(B)(8)(a) is not appropriate when a parent has made "appreciable, good faith efforts to comply with remedial programs outlined by ADES," it is appropriate when the parent "makes only sporadic, aborted attempts to remedy" the circumstances resulting in an out-of-home placement. *Maricopa*

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<sup>5</sup> The State argues Mother abandoned her appeal as to the court's termination of her parental rights under A.R.S. § 8-533(B)(8)(a) because she failed to cite the record or authorities in developing her argument, in violation of ARCAP 13(a)(6). Although we have the discretion to treat Mother's failure to cite authorities and the record as a waiver of her argument, we decline to do so. See *Watahomigie v. Ariz. Bd. of Water Quality Appeals*, 181 Ariz. 20, 26, 887 P.2d 550, 556 (App. 1994).



*Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994).

¶16 The juvenile court found that the children had been neglected and Mother had been "generally non-complaint [sic] with the bulk of the services offered during this case (and particularly those addressed to her substance abuse issue, which is the principal reason the children cannot be returned to her)." The court found Mother's testimony not credible and highlighted the inconsistencies in her testimony about her drug use and the condition of the children and home when ADES took custody of the children.

¶17 Mother essentially argues the juvenile court erred in terminating her parental rights because she did not have a history of chronic substance abuse, and while she was not one hundred percent compliant with reunification services, she participated on a more than sporadic basis.

¶18 The record supports the juvenile court's conclusion. The children had been in out-of-home placement since June 2009, or about fourteen months, at the time of the termination hearing in August 2010. While Mother did complete some counseling programs, many she completed only on the second or third referral after having failed to complete earlier referrals. Mother also admitted using meth in July and October 2009. She tested positive for meth in November 2009, after having her

mouth swabbed at a treatment counseling appointment. She did not submit to random UA testing from June 2009 until March 2010. Once she did comply with random UA tests, she tested positive for meth and marijuana in May 2010 and meth in June 2010, just two months before the termination hearing. Mother missed weekly visitation appointments to see her children, and was repeatedly closed out of parent aide and TERROS counseling for failing to attend appointments.

¶19 The record supports the juvenile court's determination that Mother substantially neglected and failed to remedy her meth use, which was a cause for the children to be in out-of-home placement at the time of the termination.<sup>6</sup> The juvenile court did not abuse its discretion in terminating Mother's parental rights under A.R.S. § 8-533(B)(8)(a).

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<sup>6</sup> Mother contends that substance abuse was not an issue at the time the dependency petition was filed and thus not a cause for the placement. In terminating the parental relationship for out-of-home placement, we look to the factors causing the placement as of the date of the severance. *Marina P.*, 214 Ariz. at 330, ¶ 22, 152 P.3d at 1213. While a parent must have notice of the cause for such continued placement, *id.* at 334, ¶ 44, 152 P.3d at 1217, such notice is not limited to the factors which were alleged in the original petition to have the child declared dependent, *In re Juv. Action No. JS-8441*, 175 Ariz. 463, 467-68, 857 P.2d 1317, 1321-22 (App. 1993). The record is undisputed that shortly after the dependency petition was filed, Mother's drug use became an issue. The reunification services were in part aimed at that drug use, and the termination petition specifically alleged such drug use. Thus, Mother had notice that her drug use was one of the conditions which had to be rectified to end the placement and avoid termination.

¶20 Because we find that the court did not err in terminating Mother's parental rights under A.R.S. § 8-533(B)(8)(a), we do not address the additional ground for termination under A.R.S. § 8-533(B)(3). See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered [termination], we need not address claims pertaining to the other grounds.").

**II. The juvenile court did not err in finding that termination was in the children's best interest.**

¶21 The juvenile court must find by a preponderance of the evidence that termination is in the best interests of the child. *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685; *Kent K.*, 210 Ariz. at 288, ¶ 41, 110 P.3d at 1022. Termination is in the best interests of the child if the child will benefit from the termination or would be harmed if the relationship continued. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). Factors the court may consider include the child's adoptability or potential adoptive placement and whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶22 The juvenile court determined that the termination of Mother's parental rights was in her children's best interest by

a preponderance of the evidence, concluding that even though no adoptive placement had been found, the children would benefit from a "stable, loving, drug-free home" and be protected from their parents' neglect.

¶23 Mother contends that termination of her parental rights was not in the best interest of her children because the children were separated from each other without adoptive placement on the horizon, and the children would be difficult to adopt because of their special needs.

¶24 The record supports the juvenile court's finding. When the children came into ADES custody, the two oldest children had lice and scabies. The oldest child experienced behavioral and socialization issues, was educationally behind his peers, would rummage for food during the night, and had poor hygiene skills. He had missed a significant part of first grade. After coming into ADES custody, he was doing well behaviorally and educationally. Due to neglect, the second oldest child also had poor hygiene and continuing educational delays and socialization issues, including functioning at a two- or three-year-old level. The two youngest children were also developmentally delayed and functioning below their age level. After being taken into ADES care, they received speech and occupational therapy.

