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



DIVISION ONE  
FILED: 08/30/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

SIERRA F., ) No. 1 CA-JV 11-0041  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R. P. Juv.  
SECURITY, FERRA K., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Mohave County

Cause No. B8015JD-2009-04020

The Honorable Richard Weiss, Judge

**AFFIRMED**

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Jill L. Evans, Mohave County Appellate Defender Kingman  
By Diane S. McCoy, Deputy Appellate Defender  
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General Mesa  
By Amanda Holguin, Assistant Attorney General  
Attorneys for Appellee

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

¶1 Sierra F. ("Mother") appeals from the superior court's termination of her parental rights to daughter F.K. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 F.K. was born in July 2009. In November 2009, Child Protective Services ("CPS") received a report that Mother had been arrested after police served a search warrant on her home and found methamphetamine and drug paraphernalia.<sup>1</sup> F.K. was present in the home. The Arizona Department of Economic Security ("ADES") removed F.K. and filed a dependency petition, alleging that Mother's "long history of substance abuse and current drug use" placed the child "at risk of substantial neglect and imminent danger." The juvenile court adjudicated F.K. dependent and approved a case plan of family reunification.

¶3 Mother was released from jail on December 23, 2009. On December 28, CPS referred her to WestCare for substance-abuse assessment and counseling. Mother contacted WestCare and requested assistance but did not follow through with weekly support services. She was later discharged from the program for noncompliance. AmeriPsych offered supervised visitation with F.K. two times a week. After Mother missed several

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<sup>1</sup> Mother had been arrested eight times in the previous seventeen months. She was subsequently arrested in February 2010 on an outstanding warrant and again in April 2010.

appointments, AmeriPsych required her to call ahead to confirm, but Mother continued to appear late or not show up at all. Mother was referred to Mohave Mental Health but never pursued treatment. At Southwest Behavioral Human Services, Mother completed an intake assessment and helped develop a treatment plan, but failed to participate in services, despite several outreach attempts by the agency.

¶4 Mother reported that she was participating in twelve-step programs but did not provide documentation of her participation after the first month. In a March 2010 assessment, Mother reported using methamphetamine three to six times per week, with her last use being earlier that week. Although Mother acknowledged the need to quit using in order to get her daughter back, she reported she "would use whenever [she] had it available to [her]." From March to June, Mother missed several drug tests and submitted several diluted urine samples. On February 10, she refused to submit to testing, admitting she had used methamphetamine two days earlier. Mother tested positive for marijuana twice in March.

¶5 In May, the case manager reported that Mother resisted reunification services, continued to have contact with law enforcement, and failed to remedy the circumstances that brought her daughter into care. The juvenile court approved a case plan change to severance and adoption.

¶16 In June and July, Mother missed three substance-abuse counseling sessions and failed to maintain contact with the service provider. The counselor wrote letters and made phone calls to Mother, informing her of the date and time of the sessions, but never received a response. A home visit was attempted at Mother's last known address, but the mobile home she had lived in had been moved. Mother missed or was late to almost all of her visits with F.K.

¶17 On August 20, Mother pled guilty to conspiracy to sell dangerous drugs and was placed on supervised probation for five years.<sup>2</sup> In September, Mother missed a supervised visit with F.K. and a bonding assessment that had been requested by her attorney. The following day, Mother tested positive for methamphetamine.<sup>3</sup> A week later, the substance-abuse treatment provider closed her file for failure to participate in services. In October, the court suspended visits between Mother and F.K.

¶18 ADES filed a motion to terminate Mother's parental rights. After a three-day trial, the juvenile court granted ADES's motion. Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A), 12-120.21(A)(1), and -2101(B).

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<sup>2</sup> Mother was ordered to serve 120 days in jail beginning February 21, 2011.

<sup>3</sup> Mother was seven months pregnant at the time.

## DISCUSSION

### I. Grounds for Termination

¶9 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). 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). We will not reverse an order terminating parental rights unless the court's 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 it. *Id.*

¶10 The juvenile 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 interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, 284, ¶¶ 1, 22, 110 P.3d 1013, 1014, 1018 (2005). ADES alleged that Mother had neglected F.K. or failed to protect her from neglect; that Mother was unable to discharge parental responsibilities due to a history

of chronic substance abuse; and that F.K. had been in an out-of-home placement for six and nine months or longer. See A.R.S. § 8-533(B)(2), (3), (8)(a) and (b).

¶11 It is undisputed that, at the time of the severance trial, F.K. was less than three years old and had been in an out-of-home placement for more than six months. Mother contends, though, that her participation in services demonstrated an effort to remedy the circumstances that caused F.K.'s removal.

¶12 "Termination is not limited to those who have *completely* neglected or willfully refused to remedy such circumstances." *Maricopa Cnty. Juvenile Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). To justify severance under A.R.S. § 8-533(B)(8)(b), a court must find that:

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.

¶13 The record includes clear and convincing evidence of Mother's failure to remedy the circumstances that brought F.K. into care and refusal to participate in services. ADES provided appropriate reunification services, including substance-abuse

assessment and counseling, supervised visits, and behavioral health treatment. Contrary to Mother's contention, CPS referred her for substance-abuse assessment and counseling just one month after her arrest and only a few days after her release from jail. The juvenile court did not err by concluding that ADES fulfilled its obligation to provide reunification services and to make reasonable efforts to preserve the family.

¶14 ADES "must provide [the] 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, though, "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa Cnty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is ADES required to undertake futile rehabilitative measures. *Mary Ellen C.*, 193 Ariz. at 192-93, ¶¶ 37-38, 971 P.2d at 1053-54.

¶15 Mother's participation in services was inconsistent at best. See *Maricopa Cnty. Juvenile Action Nos. JS-4118/JD-529*, 134 Ariz. 407, 409-10, 656 P.2d 1268, 1270-71 (App. 1982) (at some point the "trial court must decide whether the natural parent is making a good-faith effort to reunite the family"; "token efforts" will not preclude severance). She failed to

maintain contact with WestCare and would not answer or return phone calls. Mother's visitation with F.K. was inconsistent and unpredictable. Although Mother reported participating in twelve-step programs, she did not provide necessary documentation.<sup>4</sup> She continued to abuse drugs and miss drug tests. The record supports the case manager's assessment that Mother has "serious substance abuse problems," is "involved in ongoing criminal activity," and "is non-compliant with the case plan tasks agreed upon."

¶16 The record establishes that ADES provided adequate and appropriate reunification services and that Mother substantially neglected or willfully refused to remedy the circumstances that brought F.K. into care, including failing to participate in offered services. Because only one basis for severance is necessary, and we affirm the termination based on A.R.S. § 8-533(B)(8)(b), we need not discuss the other grounds found by the juvenile court. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

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<sup>4</sup> Mother claims that documentation of her participation was given to the court. However, she has not provided citations to the record, and we have not found support for this contention during our independent review. Regardless, evidence of twelve-step participation would be insufficient to reverse the juvenile court's severance order in light of the other circumstances in this case.



## II. Best Interests

¶17 "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juvenile Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors that support a finding of 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.*, and whether the child is adoptable. *JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶18 At the time of trial, F.K. had been in an out-of-home placement for almost a year. F.K. is in a relative placement, and the relatives are willing and able to adopt her. The case manager testified that the family meets all of F.K.'s physical, social, educational, medical, psychological, and emotional needs. Substantial evidence supports the juvenile court's best interests finding.

**CONCLUSION**

¶19 We affirm the juvenile court's order terminating Mother's parental rights.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
MAURICE PORTLEY, Presiding Judge

/s/  
MICHAEL J. BROWN, Judge