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



DIVISION ONE  
FILED: 10/18/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CELESTE H., )  
 ) No. 1 CA-JV 11-0059  
Appellant, )  
 ) DEPARTMENT D  
v. )  
 ) MEMORANDUM DECISION  
ARIZONA DEPARTMENT OF ECONOMIC )  
SECURITY, NAOMI H., ) (Not for Publication -  
 ) 103(G) Ariz.R.P. Juv. Ct.;  
Appellees. ) Rule 28 ARCAP  
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Appeal from the Superior Court in Maricopa County

Cause No. JD18152

The Honorable Bethany G. Hicks, Judge

**AFFIRMED**

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Bruce Peterson, Office of the Legal Advocate Phoenix  
By William W. Owsley, Deputy Legal Advocate  
Guardian Ad Litem for the Child

Sandra L. Massetto Phoenix  
Attorney for Appellee Naomi H.

Thomas C. Horne, Attorney General Phoenix  
By David M. Osterfeld, Assistant Attorney General  
Attorney for Arizona Department of Economic Security

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G E M M I L L, Judge

¶1 The Guardian ad Litem ("GAL"), on behalf of Celeste H., a minor child, appeals the juvenile court's order denying termination of Naomi H.'s ("Mother") parental rights. For the following reasons, we affirm.

#### **BACKGROUND**

¶2 James M. ("Father") and Mother are the biological parents of Celeste H., born in 2007. Father's parental rights as to Celeste were terminated in May 2010. Mother was fifteen when Celeste was born, a minor when the dependency petition was filed, and only nineteen years old at the time of the severance trial.

¶3 In June 2009, Child Protective Services ("CPS") received a report that Mother, age 17, was being arrested for shoplifting, there was no other adult to care for Celeste, and Mother had admitted to methamphetamine and heroin use. CPS arrived at Mother's home to find her alone with Celeste and appearing to be under the influence of an unknown substance. Mother allowed CPS into the home where CPS observed unknown substances, drug paraphernalia, butcher knives and torches all accessible to Celeste. No food or diapers were found in the home. Phoenix Police arrived and Mother was arrested. Naomi H.'s mother (Celeste's maternal grandmother) was the only relative who resided in Arizona at the time, but was found to be an inappropriate placement by the Arizona Department of Security

("ADES") as she had a criminal history and prior history with CPS. Celeste was taken into temporary physical custody by CPS in June 2009.

¶4 ADES filed a dependency petition and petition for paternity and/or child support in June 2009. The petition alleged that Mother was unable to parent due to: 1) Mother's history of methamphetamine and heroin use and admission of recent methamphetamine use; 2) neglect and having an unfit home; and 3) incarceration and inability to adequately supervise her child or provide for the child's basic needs. In July 2009, the juvenile court found the child to be dependent and approved ADES's plan for reunification.

¶5 Mother, although a minor at the time, was charged as an adult, incarcerated from June 2009 to October 2009, and sentenced to three years probation. During her incarceration, Mother participated in GED testing and psychiatric services. Upon her release, CPS made a referral for urinalysis testing and parent aide services and advised Mother to schedule an intake to obtain substance abuse services and behavioral health services.

¶6 Mother was re-incarcerated from December 2009 to February 2010 for a probation violation and drug paraphernalia charges. When released, Mother was enrolled in an inpatient drug treatment program through New Arizona Families, Inc. ("NAFI"). Mother was sober and under the care of NAFI until

July 2010, where she received parenting skills training, relapse prevention counseling, and in-patient substance abuse treatment.

¶17 ADES, in order to finalize the permanency plan for Celeste, offered and made referrals and/or requested the following services for Mother in March 2010: case management services, child care, child and family team, inpatient substance abuse treatment, parent aide services, parenting classes, substance abuse assessment, team decision making meetings, urinalysis testing, and visitation. Placements with out-of-state family members continued to be investigated with two relatives being denied by the Interstate Compact for the Placement of Children ("ICPC").

¶18 In June 2010, the Foster Care Review Board ("Board") recommended changing the permanency goal from family reunification to adoption. The Board found Mother to not be in compliance with providing negative drug screens or within the terms of her probation.

¶19 Upon release from NAFI, in July 2010, Mother was placed in a halfway house, put into drug court, was drug tested by CPS, and did extensive outpatient drug treatment with Community Bridges. Mother received sanctions from drug court which required her to do community service and to serve twenty-four hour jail sentences.

¶10 An assessment of attachment and best interest was conducted by Dr. Moe in September 2010. Dr. Moe concluded if Mother could continue to make positive progress, including the provision of regular negative urinalysis tests, she may be able to eventually resume care of Celeste. No deficiencies were found in the attachment and bonding processes, weekly supervised visitations were recommended, and it was suggested that Celeste continue her placement within the current foster home while further efforts were made with Mother.<sup>1</sup> Dr. Moe found that Celeste had a primary bond with the foster mother and a secondary bond with Mother, but that her bond with Mother was "positive and growing."

¶11 In November 2010, the court ordered that the case plan be changed to severance and adoption. ADES then moved for termination of the parent-child relationship between Mother and Celeste on the grounds that Mother was unable to discharge her parental responsibilities because of a history of chronic abuse of dangerous drugs, controlled substances and/or alcohol, and a reasonable belief that the condition would continue for a prolonged indeterminate period, and that Mother had failed to remedy the circumstances that caused her child to be in an out-

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<sup>1</sup> Dr. Moe learned at trial that Mother had been dishonest during the assessment about her drug use and his assessment was based on Mother informing him she had been approximately seven months sober when in fact she was likely using at the time.

of-home placement after 15 months time in care. Mother contested the severance.

¶12 Mother applied on her own to Casa de Amigas ("Casa"), an inpatient drug treatment program recommended by Community Bridges, in January 2011 and was admitted in February 2011 after checking on availability for three weeks. Mother completed 30 days of treatment, was released from Casa on March 9, 2011 and was almost three months sober at the time of the severance hearing on March 22, 2011. Mother's aftercare program included 12 weeks of intensive outpatient care through Community Bridges, three days a week.

¶13 A two-day severance hearing commenced in March 2011. Celeste had been in care with CPS for 21 months at the time of the hearing. Mother, Dr. Moe, house manager at Casa de Amigas Juanita Garza, CPS case manager Tarina Wood, and Naomi H.'s grandmother (Celeste's maternal great grandmother) testified at the hearing.

¶14 Mother, 19 years old at the time, testified that following her release from Casa she found a sponsor, began the 12 steps program, and changed her social environment. Mother received financial assistance from her own mother (Celeste's maternal grandmother), acquired food stamps, and had recently obtained employment.

¶15 Tarina Wood, the CPS case manager, testified that Mother's most recent positive drug test for drug court was on December 30, 2010 for methamphetamine. This was the longest time Wood had seen Mother remain sober. Wood believed it was in Celeste's best interests to have the parental rights severed due to the child having been in care for 21 months, concerns over Mother's ability to demonstrate a sober lifestyle for any significant length of time outside of a structured environment, the child being in an adoptable placement at the time, and because Celeste had some special behavioral needs.

¶16 Naomi H.'s grandmother (Celeste's maternal great grandmother), testified she was willing to permanently take care of Celeste. Michigan Child Protective Services had conducted an in home study with Naomi H.'s grandmother in March 2011 but no decision had yet been made. At the time of the hearing Naomi H.'s grandmother was 62 years old and had been employed as a caretaker in an adult foster care home for 19 years.

¶17 Following the hearing, the court took the issue under advisement. After consideration, the court denied the motion for termination of the parent-child relationship without prejudice. The court found by clear and convincing evidence that the basis for termination pursuant to Arizona Revised Statutes ("A.R.S") section 8-533 (Supp. 2009) existed because of Mother's prolonged substance abuse, because Celeste had been

cared for in an out-of-home placement for a cumulative total period of 15 months or longer pursuant to court order, and because ADES had made reasonable efforts to reunify the family. The court further found, however, that ADES had not proven by a preponderance of the evidence that termination was in Celeste's best interests.

¶18 The GAL timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235 (2007) and 12-120.21 (2003) and Rule 103(A), rules of procedure for the juvenile court.

#### **ANALYSIS**

¶19 The GAL argues on appeal that the juvenile court erred in its application of the law and the record contains no reasonable evidence to support the court's finding that termination of Mother's parental rights was not in the child's best interests. The GAL contends that Judge Hick's findings (1) are erroneous because ruling out possible placement with relatives and allowing additional time to obtain sobriety are not factors in considering best interests; (2) are erroneous because the finding regarding the grounds of termination based on chronic abuse of drugs and 15 months in care compel a best interests finding; and (3) are erroneous because the record establishes by a preponderance of the evidence that termination was in fact in the best interests of Celeste. We disagree.



¶120           “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). This Court will not disrupt the juvenile court’s order unless the court’s “factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them.” *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶121           We view the facts in the light most favorable to sustaining a juvenile court’s denial of a motion to terminate parental rights, and, we do not reweigh the evidence on appeal. *Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994); *see also Jesus M.*, 203 Ariz. at 282, ¶ 12, 53 P.3d at 207. We review de novo whether the court erred in its application of the law. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 36 ¶ 12, 243 P.3d 636, 639 (App. 2010).

¶122           The juvenile court was not required to make findings of facts in denying the motion for termination. A.R.S. § 8-538 (A) and (E) (2007); *Ariz. Dep’t of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 550, ¶ 10, 225 P.3d 604, 607 (App. 2010). The court found “[t]he basis for termination pursuant to A.R.S. § 8-533 exists because of the mother’s prolonged substance abuse and

because Celeste has been cared for in an out-of-home placement for a cumulative total period of fifteen months or longer."

However, the court further found:

that the Petitioner has not proven by a preponderance of the evidence that termination is in Celeste's best interest. Celeste was taken from her mother when she was approximately two years old. Dr. Moe testified that Celeste and the Mother are bonded and/or attached. While he did testify that the bond was a secondary bond, the Court finds that severing the bond without exploring all kinship options in order to PRESERVE THE FAMILY and without giving the mother, who is very young, another chance at sobriety, could negatively affect Celeste.

¶123 "[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. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The juvenile court must "weigh the overall best interests of the child against the objective behavior of the parent which constitutes the statutory ground." *Maricopa Cnty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988). Factors the court may consider in determining the best interests of the child include the child's adoptability or potential adoptive placement and whether the current placement is meeting the child's needs. *Audra T.*, 194 Ariz. at 377, ¶5, 982 P.2d at 1291. "This reasoning reflects an unspoken assumption that a parent, even an inadequate one, is

better than no parent at all unless the child can somehow benefit from losing his natural parent." *JS-500274*, 167 Ariz. at 6, 804 P.2d at 735.

¶24 The GAL argues that the law prevents the court from denying the termination based on the GAL's need to rule out possible placement with relatives. This Court stated in *Audra T.* that:

To establish that severance is in the best interests of the child, the state is not required to rule out possible placements with biological relatives before considering other placements. Nor does the juvenile court weigh alternative placement possibilities to determine which might be better.

*Audra T.*, 194 Ariz. at 377, 982 P.2d at 1291. The record demonstrates that the juvenile court did not solely rely on "exploring all kinship options" as the basis for its denial of best interests. Instead the juvenile court determined it was in the best interests of Celeste to continue to explore kinship options before granting the severance in order to "preserve the family" if at all possible and to provide Mother with "another chance."

¶25 Arizona statutes governing the termination of the parent-child relationship require the trial court to make two findings before ordering severance of parental rights. A.R.S. § 8-533(B) (Supp. 2009). Pursuant to A.R.S. § 8-533(B), to

prevail on its motion to terminate Mother's parental rights, GAL was required to prove at least one statutory ground for severance by clear and convincing evidence and establish by a preponderance of the evidence that termination was in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). Although the juvenile court found that a statutory basis for termination pursuant to A.R.S. § 8-533 existed, the court denied termination because ADES had not proven by a preponderance of the evidence that termination was in Celeste's best interests.

¶126 The juvenile court is not obligated to make a finding of best interests solely based on a determination that at least one statutory ground for severance was proven by clear and convincing evidence. *Kent*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018. The Arizona Supreme Court has concluded that a finding of grounds for termination "cannot be equated with a finding of best interest." *JS-500274*, 167 Ariz. at 5, 804 P.2d at 734. Instead there must always be a separate analysis of best interests where a court considers factors such as benefit from severance or a possible harm by the continuation of the relationship. *Id.* at 7, 804 P.2d at 736. The GAL's argument that proving by clear and convincing evidence the two grounds alleged in the motion for termination of: (1) chronic history of substance abuse (A.R.S. § 8-533(B)(3)), and (2) fifteen months

time in care (A.R.S. § 8-533(B)(8)(c)) necessarily compels a determination that termination is in the best interests of Celeste is therefore unfounded because a separate best interests analysis is necessary. *See id.*

¶127 The GAL further argues the record supports a finding that termination was in the best interests of Celeste for the reasons that 1) an adoptive plan was immediately available, *Audra T.*, 194 at 377, ¶ 5, 982 P.2d at 1291 (citation omitted); 2) the existing placement was meeting the needs of the child, *id.*; and 3) because Celeste was adoptable. *Maricopa Cnty. No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶128 We agree with the GAL that the evidence in this record would have supported on appeal a finding that severance was in the best interests of Celeste. But we also conclude that the record supports the juvenile court's ruling here. In the months prior to the severance hearing, Mother had made progress in stabilizing her life, getting treatment, remaining sober, and obtaining employment. *See supra* ¶¶ 12, 14. Furthermore, Celeste retained a bond with Mother that was "positive and growing" and a possible permanent placement with Celeste's maternal great grandmother existed. *See supra* ¶¶ 10, 16. Additionally, an appellate court must grant substantial deference to a juvenile court tasked with determining the best

interests of children based on conflicting facts and numerous considerations.

¶129 Superior court judges are necessarily experienced in assessing credibility of witnesses and determining the facts of past events. When presiding over juvenile severance trials, however, our judges often have the additional responsibility to assess personal sincerity, demeanor, candor, character, intentions, medical and psychological conditions, and a myriad of other intangibles, in order to make a reasoned evaluation of what the future may hold. Such determinations are highly subjective, and an appellate court must necessarily defer to a considerable extent to the judgment and wisdom of our superior court judges.

¶130 The juvenile court in this case found that termination was not in the best interests of the child as it could "negatively affect Celeste." We conclude that the evidence in this record supports this finding. See *JS-500274*, 167 Ariz. at 5, 804 P.2d at 734 (concluding that while "best interests of the child are a necessary, but not exclusively sufficient, condition for an order of termination[,] . . . the best interests of the child could be a sufficient reason for a denial of termination"). See also *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 588, ¶11, 177 P.3d 327, 330 (App. 2008) (explaining that a trier of fact determining best interests

"might ultimately conclude that severance would not be in the best interests of an adoptable child because of some other circumstances").

¶31 For these reasons, we affirm the juvenile court's order denying severance of Mother's parental rights to Celeste.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
JON W. THOMPSON, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Judge