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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 12/08/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

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

SAMANTHA M.,

Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC
SECURITY, S.W., H.W,

Appellees.

1 CA-JV 11-0007

DEPARTMENT A

MEMORANDUM DECISION

(Not for Publication -
Ariz.R.P.Juv.Ct.
103(G); ARCAP 28)

Appeal from the Superior Court in Maricopa County

Cause No. JD505856

The Honorable Mark Aceto, Judge

AFFIRMED

Sandra L. Massetto
Attorney for Appellant

Phoenix

Thomas C. Horne, Attorney General
by Amanda Holguin, Assistant Attorney General
Attorneys for Appellees

Mesa

I R V I N E, Judge

¶1 Samantha M. ("Mother") appeals from the juvenile court's order severing her parental rights to her daughters Santana W. and Halo W. (the "Daughters"). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Santana was born in August 2006. Mother has a history of alcohol and methamphetamine abuse and was already participating in reunification services through the Arizona Department of Economic Security ("ADES") for one of her other six children. ADES filed a dependency action regarding Santana within weeks of her birth. Santana was originally placed with the paternal grandmother, but she was soon moved to foster care because the grandmother permitted Mother to have unsupervised contact with Santana. In March 2008, Mother gave birth to Halo. A month later, ADES filed a dependency petition as to Halo.

¶3 As part of the reunification process, Mother was required to submit to drug testing. Mother would test substance free for a period of months and then she would go on a binge and test positive for alcohol and/or methamphetamine. On other occasions, Mother failed to appear at the drug-testing center and admits she did not call to offer any explanation. During these binge periods, Child Protective Services was unable to locate Mother.

¶4 In May 2010, less than five months before the severance hearing, Mother was arrested for public intoxication and possessing alcohol in a public park. The arresting officer reported that people were standing around watching Mother's erratic behavior and that Mother had trouble keeping her balance

and speaking properly. Two days later, Mother called the police and advised them that she wanted to commit suicide. The responding officer reported that Mother admitted to drinking earlier that morning.

¶15 In June 2010, ADES filed a petition to terminate Mother's parental rights to the Daughters. The juvenile court held a contested severance hearing on ADES's motion to terminate in October 2010. After taking the matter under advisement, the court granted ADES's motion to terminate Mother's parental rights to the Daughters.

¶16 The juvenile court found that termination was in the Daughters' best interests and that grounds for severance existed pursuant to Arizona Revised Statutes ("A.R.S.") § 8-533(B)(3) (2010) because there was clear and convincing evidence that Mother was unable to discharge her parental responsibilities because of a history of chronic abuse of alcohol and dangerous drugs, and there were reasonable grounds to believe that Mother will continue to have a substance-abuse problem for a prolonged indeterminate period. Additionally, the juvenile court found that grounds for severance existed pursuant to A.R.S. § 8-533 (8)(a) and (8)(c) (2010) because the Daughters were being cared for in an out-of-home placement for a total period of fifteen months pursuant to court order, and Mother has been unable to remedy her substance-abuse issues.

¶7 Mother timely appeals.

DISCUSSION

¶8 The right to custody of one's children is fundamental, but it is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). In Arizona, to justify termination of parental rights, a juvenile court must find, by clear and convincing evidence, the existence of at least one statutory basis for termination pursuant to A.R.S. § 8-533. *Id.* at ¶ 12. The court must also find by a preponderance of the evidence that the termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶9 In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[T]he juvenile court was in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). Accordingly, we do not reweigh the evidence but determine only whether there is evidence to sustain the juvenile court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "[W]e will affirm a severance order unless it is

clearly erroneous," and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶10 Mother argues that her drug and alcohol use does not amount to "chronic abuse" and that her drug and alcohol use does not render her unable to discharge her parental responsibilities. Mother also argues that there are not reasonable grounds to believe that her drug and alcohol use will continue for a prolonged indeterminate period. Mother does not dispute the juvenile court's finding that severance was in the Daughters' best interests.

¶11 We find that reasonable evidence supports the juvenile court's findings. Despite periods of compliance with drug testing, substance-abuse treatment, and counseling, Mother consistently missed appointments and failed to follow through with available services. Mother continued to abuse alcohol and methamphetamine and failed to report for numerous drug tests without explanation. Additionally, Mother went on several binges during the reunification process. Most recently, Mother was arrested for public intoxication less than five months before the severance hearing.

¶12 We also find no support for Mother's argument that ADES failed to make diligent efforts to provide her with

appropriate and timely reunification services. ADES offered Mother a substance-abuse assessment, substance-abuse outpatient treatment and in-patient treatment, urinalysis, psychological evaluations, parent-aid services, and visitation. ADES began offering these services to Mother before the Daughters were born and continued to offer these services up until the severance hearing. Mother had approximately three years to demonstrate that she could stop abusing substances, and she was unable to do so. Accordingly, we find no error.

¶13 Mother also argues that the juvenile court abused its discretion in finding that grounds for severance existed pursuant to A.R.S. § 8-533 (8)(a) and (8)(c). Because we affirm the juvenile court's findings under A.R.S. § 8-533(B)(3), we need not address these findings. See *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685.

CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights to the Daughters.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Presiding Judge

/s/

DANIEL A. BARKER, Judge