

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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CELESTIN C. AND CHRISTOPHER O.,  
*Appellants,*

*v.*

DEPARTMENT OF CHILD SAFETY AND I.O.,  
*Appellees.*

No. 2 CA-JV 2019-0115  
Filed March 19, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pima County  
No. JD20170540  
The Honorable Wayne E. Yehling, Judge

**AFFIRMED**

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COUNSEL

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**MEMORANDUM DECISION**

Judge Eckerstrom authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

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ECKERSTROM, Judge:

¶1 Celestin C. and Christopher O. appeal from the juvenile court's August 2019 ruling terminating their parental rights to their son, I.O., born April 2017, based on the grounds of length of time in care. *See* A.R.S. § 8-533(B)(8)(c). On appeal, Celestin and Christopher challenge the sufficiency of the evidence to support that statutory ground and to establish that termination of their parental rights was in I.O.'s best interests. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 We view the evidence in the light most favorable to affirming the juvenile court's ruling. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). In September 2017, the Department of Child Safety (DCS) received a report that Celestin had called the police to report being assaulted by Christopher in the hotel room where they were staying with I.O. Both parents subsequently admitted to marijuana use. Due to concerns about domestic violence, substance abuse, and homelessness, DCS removed I.O. and placed him with his paternal great grandparents. Shortly thereafter, DCS filed a dependency petition, alleging that I.O. was dependent as to both Celestin and Christopher due to abuse or neglect. In November 2017, I.O. was adjudicated dependent as to both parents. The juvenile court ordered a case plan goal of family reunification and directed DCS to "make reasonable efforts to achieve [that] goal."

¶3 DCS offered a variety of services to both parents, including random drug testing, visitation, counseling, substance abuse and domestic violence education, healthy relationships classes, and parent aide services. At review hearings in early 2018, the juvenile court found that Celestin and Christopher were in "partial" or "minimal" compliance with the case plan.

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During that time, Celestin and Christopher repeatedly missed drug tests and failed to secure stable housing. However, at a hearing in October 2018, the court found that the parents were “coming into compliance with the case plan after being initially minimally or in partial compliance.” The court thus affirmed the case plan of reunification.

¶4 However, at the next hearing in January 2019, the juvenile court adopted a case plan of severance and adoption, noting that Celestin and Christopher were, again, in “partial compliance with the case plan.” At that time, I.O. was in a potential adoptive placement, but there was also a pending home study for I.O.’s placement with his paternal grandmother in Virginia. DCS’s subsequently filed motion for termination of the parent-child relationship alleged length of time in care and chronic substance abuse, as to both Celestin and Christopher, as grounds for termination. *See* § 8-533(B)(3), (8)(c).

¶5 The juvenile court held a six-day contested severance hearing in May and July 2019. On the third day, the court granted the motion for a directed verdict on the grounds of chronic substance abuse as to both parents. The court also granted DCS’s motion to place I.O. with his paternal grandmother, who had moved to Maryland. In August 2019, the court issued its under-advisement ruling, concluding that DCS had proven the grounds of length of time in care as to both parents. The court also determined that DCS had proven that termination of their parental rights was in I.O.’s best interests. Accordingly, the court granted the state’s motion to terminate the parent-child relationship and approved the case plan goal of adoption. This appeal followed.

### Standard of Review

¶6 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). “[W]e will affirm a termination order that is supported by reasonable evidence.” *Jordan C.*, 223 Ariz. 86, ¶ 18. That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

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**Discussion**

¶7 Celestin and Christopher challenge the juvenile court's determinations that the length of time-in-care grounds for severance exists and that termination of their parental rights was in I.O.'s best interests. We address each in turn.

**Statutory Grounds**

¶8 To justify severance pursuant to § 8-533(B)(8)(c), DCS must establish that the child has been in an out-of-home placement for a total of fifteen months or longer; the parent has been unable to remedy the circumstances that led to the out-of-home placement; and "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." In addition, DCS must make "a diligent effort to provide appropriate reunification services." § 8-533(B)(8); *see also Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 14 (App. 2011).

¶9 In its ruling, the juvenile court determined that DCS had "made diligent efforts to provide reunification services to the parents" but Celestin and Christopher failed to "adequately address[] the issues that brought [I.O.] into care," specifically noting they had not "consistently drug tested during the course of this dependency." The court recognized Celestin and Christopher's financial struggles and living situation but inferred that their "failure to acquire adequate and safe housing is a choice," in light of their "stated abilities and resources." The court also acknowledged that the parents had attended healthy relationships and anger management classes but pointed out that they had denied "domestic violence was ever a significant issue in their relationship," which the court determined was problematic in light of their "unresolved substance abuse issues." The court thus concluded that Celestin and Christopher had "been unable to remedy the circumstances that caused [I.O.] to be in an out-of-home placement and there is a substantial likelihood that they will not be capable of exercising proper and effective parental care and control in the near future."

¶10 On appeal, Celestin and Christopher argue, "DCS failed to make reasonable efforts," asserting, "DCS made little to no effort to determine their needs, let alone accommodate them." Specifically, they point out that Celestin was, "[o]nly a few years earlier, . . . a child in the DCS system," after she was raped by an uncle; she needed "assistance in

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having her green card renewed”; and they both “continued to struggle with housing and transportation,” including a need for monthly bus passes.

¶11 DCS must provide appropriate reunification services to a parent with “the time and opportunity to participate in programs designed to help . . . become an effective parent.” *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). However, DCS is not required “to provide every conceivable service or to ensure that a parent participates in each service it offers.” *Christina G.*, 227 Ariz. 231, ¶ 15 (quoting *Maricopa Cty. No. JS-501904*, 180 Ariz. at 353).

¶12 As a preliminary matter, Celestin and Christopher failed to timely object to the adequacy of their services at the various review and permanency hearings below. As such, we could deem any such challenge waived on appeal. See *Shawnee S. v. Ariz. Dep’t of Econ. Sec.*, 234 Ariz. 174, ¶¶ 13-16 (App. 2014).

¶13 Even assuming the argument were not waived, however, the record belies Celestin and Christopher’s assertion that DCS failed to recognize and address their specific needs. Regarding Celestin’s prior experience as a child in the DCS system, DCS referred her to individual therapy to address her “past trauma.” But Celestin discontinued the therapy after only three sessions, without even “start[ing] work[] on goals,” according to the therapist. Celestin testified that she did not “want to complete individual therapy” because she had “other stuff [she] need[ed] to focus on.” In addition, DCS was aware of Celestin’s green card problems, and Celestin admitted at the contested severance hearing that a parent aide had tried to help her obtain an identification card.

¶14 Regarding Celestin and Christopher’s housing and transportation needs, two different parent aides discussed housing resources with them, including low-income options for people who had previously been evicted and did not have identification cards. A caseworker also confirmed that “in order for DCS to provide any direct housing subsidy assistance, [it] need[s] proof of income and budget from the parents,” which Celestin and Christopher never provided. In addition, a caseworker assisted the parents in obtaining bus passes for several months, and the passes were also available through Arizona Families First, provided the parents attended at least one relapse prevention class a week. That same caseworker also testified there were no services she believed DCS “failed to offer these parents that would benefit them toward a reunification case plan.”

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¶15 Celestin and Christopher additionally argue that the juvenile court erred in giving “considerable focus to the parents’ failure to meaningfully participate in drug testing” when it had granted a directed verdict on the chronic substance abuse ground. But they cite no support for their contention. Although the court found insufficient evidence to “draw a nexus between the substance abuse and the ability to parent” in granting a directed verdict under § 8-533(B)(3), the court nonetheless could consider the parents’ failure to drug test in assessing whether Celestin and Christopher had “been unable to remedy the circumstances that cause[d I.O.] to be in an out-of-home placement,” § 8-533(B)(8)(c).

¶16 Notably, before the fifth day of the contested severance hearing, both parents provided hair samples that tested positive for “chronic usage” of methamphetamine. Their caseworker testified that those results were concerning because both parents had attended substance abuse and relapse prevention classes, and yet “they continue[d] to use substances and . . . minimize their usage.” This evidence therefore supports the court’s determination that Celestin and Christopher were “unable to remedy the circumstances that caused [I.O.] to be in an out-of-home placement.” *See* § 8-533(B)(8)(c).

¶17 In addition to random drug testing, DCS provided Celestin and Christopher with a variety of services over the course of twenty-one months. The record establishes that those services included visitation, anger management and healthy relationships classes, individual therapy, parent aide services, child and family team meetings, adult recovery team meetings, and professional case management. Both parents indicated that they understood the case plan and their need to participate in services. Yet their participation was inconsistent. Their caseworker opined that neither Celestin nor Christopher would “be able to safely parent [I.O.] in the near future” because they had “been provided with multiple months of services” and “still ha[d]n’t fully engaged.” She further explained that it would take a minimum of six to nine months of complete compliance before DCS would consider a case plan of reunification.

¶18 To the extent Celestin and Christopher ask us to reweigh the evidence presented at the contested severance hearing, we will not do so. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). “Instead, because reasonable evidence exists to support the juvenile court’s findings here, we accept them.” *Id.* Accordingly, the juvenile court did not

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err in concluding that the grounds for severance of Celestin and Christopher's parental rights under § 8-533(B)(8)(c) had been established.

**Best Interests**

¶19 To establish that termination is in the child's best interests, DCS must show that the child would benefit from severance of the parent-child relationship or be harmed by continuing the relationship. *A.R. v. Dep't of Child Safety*, 246 Ariz. 402, ¶ 8 (App. 2019). As part of this inquiry, the juvenile court "must balance the unfit parent's 'diluted' interest 'against the independent and often adverse interests of the child in a safe and stable home life.'" *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016) (quoting *Kent K.*, 210 Ariz. 279, ¶ 35). "Of foremost concern in [this] regard is 'protect[ing] a child's interest in stability and security.'" *Id.* (quoting *Kent K.*, 210 Ariz. 279, ¶ 34).

¶20 In its ruling, the juvenile court noted that I.O. was placed with his paternal grandmother in Maryland. It determined that I.O.'s "placement will look after his needs in a safe and loving environment," and, "[e]ven if [the] current placement is unable to adopt [I.O.], he is an adoptable child." The court also found that "[t]erminating his parents' parental rights would provide him the stability he has lacked throughout his life." The court acknowledged that I.O. "is attached to his parents and they are bonded to him," but it determined that providing Celestin and Christopher "the additional year or more to remedy the circumstances that led to [I.O.'s] removal when, in the last 22 months they have made little progress towards that goal would be detrimental to [I.O.] by leaving him [in] a state of limbo regarding his future."

¶21 On appeal, Celestin and Christopher argue the juvenile court "made no additional findings" to support its best-interests determination "other than to note that I.O. is in an adoptive placement and that it believed the parents have made little p[r]ogress toward reunification and would need another year to accomplish it." They suggest that "[i]mplied in the court's ruling is that the child will be harmed," but they question that finding "because termination breaks the familial bond that the court acknowledged was so strong in this case."

¶22 The juvenile court's ruling contains findings to support its best-interests determination. First, the court found that allowing Celestin and Christopher to continue working toward the goal of reunification when they had made little progress at that point would be "detrimental" to I.O. in that it would leave him in "limbo" for at least a year. As Celestin and

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Christopher seemingly admit, leaving I.O.'s status unsettled constitutes a harm under the best-interests inquiry because he will be without a safe and stable home life for an indeterminable amount of time. *See Demetrius L.*, 239 Ariz. 1, ¶ 15; *cf. Aleise H. v. Dep't of Child Safety*, 245 Ariz. 569, ¶ 10 (App. 2018) (best-interests determination supported based on harm in continuing relationship where children would remain in care for indefinite period). It was for the juvenile court to weigh the evidence of any familial bond against I.O.'s need for stability and security. *See Jesus M.*, 203 Ariz. 278, ¶ 12.

¶23 Second, the juvenile court found that I.O. had been placed with his paternal grandmother who was willing to adopt him. Even if I.O.'s paternal grandmother was unable to adopt him, the court determined that I.O. was "an adoptable child," noting that he "has no physical, developmental, or emotional special needs" and is "well-adjusted, resilient, friendly, and engaging." Being adoptable, when an adoption is "legally possible and likely," *Demetrius L.*, 239 Ariz. 1, ¶ 12, constitutes a benefit to I.O. in the best-interests inquiry, *see Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19 (App. 2004) ("The best interest requirement may be met if, for example, the petitioner proves that . . . the child is adoptable."); *see also Maricopa Cty. No. JS-501904*, 180 Ariz. at 352 (specific adoption plan not required before terminating parent's rights; children, however, must be adoptable).

¶24 Either of the findings—the harm or benefit to I.O. from severance—would support the juvenile court's best-interests determination. *See Demetrius L.*, 239 Ariz. 1, ¶ 16 ("Framed in the disjunctive, this standard permits a finding of best interests based on either a benefit to the child from severance or some harm to the child if severance is denied."). Both findings are supported by reasonable evidence here. *See Jordan C.*, 223 Ariz. 86, ¶ 18. Accordingly, the court did not err in concluding that termination of the parent-child relationship is in I.O.'s best interests.

### Disposition

¶25 For the foregoing reasons, we affirm the juvenile court's ruling terminating Celestin's and Christopher's parental rights to I.O.