

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

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IN RE TERMINATION OF PARENTAL RIGHTS AS TO N.N.H.,

No. 2 CA-JV 2023-0142  
Filed April 17, 2024

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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NOT FOR PUBLICATION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. 602(i)(17).

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Appeal from the Superior Court in Pima County  
No. JD20210233  
The Honorable Michael Butler, Judge

**AFFIRMED**

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COUNSEL

The Huff Law Firm PLLC, Tucson  
By Daniel R. Huff  
*Counsel for Appellant*

Kristin K. Mayes, Arizona Attorney General  
By Autumn Spritzer, Assistant Attorney General, Tucson  
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IN RE TERMINATION OF PARENTAL RIGHTS AS TO N.N.H.  
Decision of the Court

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**MEMORANDUM DECISION**

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Vásquez and Judge Gard concurred.

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E P P I C H, Presiding Judge:

¶1 Michael D. appeals from the juvenile court’s order terminating his parental rights to his son, N.N.H., born October 11, 2022, based on chronic substance abuse. He argues the court erred in terminating his rights because he had not abused substances during N.N.H.’s lifetime and the Department of Child Safety (DCS) admitted it did not make reasonable efforts to provide reunification services. We affirm.

¶2 Michael’s parental rights to another child, C.D., were terminated in May 2022 based on neglect, Michael’s substance abuse, and length of time in court-ordered care. Shortly thereafter, Michael was arrested on an outstanding warrant and incarcerated. N.N.H. was born approximately five months later, and DCS took custody of him after his mother abandoned him at the hospital.<sup>1</sup> Michael pled no contest to allegations in DCS’s subsequent dependency petition, and the juvenile court adjudicated N.N.H. dependent in May 2023.

¶3 Although DCS was limited by Michael’s incarceration, it provided services that included arranging for virtual visitation and Michael’s attendance at child and family team meetings when possible. Michael claimed to be attending AA meetings and that he was on a waiting list for parenting classes and substance abuse services.

¶4 In July 2023, DCS moved to terminate Michael’s parental rights on neglect and substance abuse grounds.<sup>2</sup> After a contested severance hearing, the juvenile court concluded DCS had not demonstrated that severance was warranted due to neglect but had presented clear and

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<sup>1</sup>N.N.H.’s mother is also C.D.’s mother. She has not been located, her parental rights to both children have been terminated, and she is not a party to this appeal.

<sup>2</sup> DCS also initially sought termination on the ground of abandonment but withdrew that allegation.

IN RE TERMINATION OF PARENTAL RIGHTS AS TO N.N.H.  
Decision of the Court

convincing evidence that termination of Michael's parental rights was appropriate on the ground of substance abuse. Central to the court's reasoning was Michael's failure to meaningfully participate in services or otherwise address his substance abuse issues during the dependency proceeding for C.D. It concluded that termination of his parental rights to C.D. showed Michael's "inability to parent due to substance abuse while not incarcerated." The court also noted that Michael's substance abuse and failure to participate in services during C.D.'s dependency showed he was unable to maintain sobriety "even when the loss of his parental rights to C.[D.] was imminent." Additionally, the court found DCS had made reasonable efforts to provide reunification services. It noted DCS had provided "sufficient services" to address Michael's substance abuse in the recent previous proceeding, but Michael had failed to benefit. And it noted DCS's limited ability to provide services to Michael while he was incarcerated. Last, the court determined termination was in N.N.H.'s best interests. The court granted DCS's termination motion, and this appeal followed.

¶5 On appeal, Michael argues the juvenile court erred in terminating his parental rights based on his chronic substance abuse. A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the evidence that termination of the parent's rights is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224, ¶ 12 (2020). We defer to the juvenile court's factual findings because, as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). Accordingly, we will affirm a severance order if reasonable evidence supports the factual findings and the juvenile court's legal conclusions are not clearly erroneous. *Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, ¶¶ 30-31 (2023).

¶6 Here, DCS was required to show Michael was "unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." § 8-533(B)(3). Michael points to his participation in AA and his testimony in which he claimed he had been sober while incarcerated – despite being offered drugs – and would remain sober when released. He additionally points to his claim that he had not

IN RE TERMINATION OF PARENTAL RIGHTS AS TO N.N.H.  
Decision of the Court

participated in treatment in the previous dependency because DCS had refused to offer outpatient treatment.

¶7 But, as Michael admits, the juvenile court was permitted to consider his lengthy history of substance abuse as well as his failure to remedy that abuse despite being faced with the termination of his parental rights in the previous proceeding. *See Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, ¶ 20 (App. 2016) (court may consider “the length and frequency of [a parent]’s substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses”); *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶ 29 (App. 2010) (court may consider that parent unable to curb substance abuse despite being faced with termination of parental rights). And as the court pointed out in its ruling, there was evidence that incarcerated parents frequently return to substance abuse after being released from prison. *See Raymond F.*, 224 Ariz. 373, ¶ 29 (parent must demonstrate ability “to rise above . . . addiction in a non-custodial and unstructured setting”). And the record also includes evidence that Michael failed to participate in a substance abuse assessment in his previous proceeding and the referral was closed due to his lack of contact—belying his claim he declined to participate in treatment solely because it was only available inpatient. In sum, Michael’s argument is little more than a request that we reweigh the evidence, which we will not do. *See Oscar O.*, 209 Ariz. 332, ¶ 14.

¶8 Michael also argues that DCS admitted it did not make reasonable efforts to provide him with reunification services. The record does not support his argument. Instead, it shows Michael’s access to services was limited by his incarceration. Although we are mindful that a parent’s incarceration does not relieve DCS of its responsibility to provide services, *see Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, ¶ 21 (2021), Michael has identified no service that DCS could have offered him while incarcerated that it failed to provide. In any event, as he acknowledges, Michael did not object to the purported lack of services during the dependency and thus has waived this argument. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 18 (App. 2014). For the same reason, we do not address his argument that “DCS’s provision of services in a prior dependency . . . does not alleviate DCS’s obligation to make reasonable efforts to provide reunification services” in the current dependency.

¶9 We affirm the juvenile court’s order terminating Michael’s parental rights to N.N.H.