

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BERNADETTE A.,)	
)	
Appellant,)	2 CA-JV 2008-0134
)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
ROBERT A.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 143792900

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

Joan Spurney Caplan	Tucson
	Attorney for Appellant

Terry Goddard, Arizona Attorney General	Tucson
By Dawn R. Williams	Attorneys for Appellee Arizona
	Department of Economic Security

Joseph J. Valenti	Tucson
	Attorney for Appellee Robert A.

E S P I N O S A, Judge.

¶1 Bernadette A. appeals from the juvenile court’s order of December 3, 2008, terminating her parental rights to her child, Robert A., on grounds of Bernadette’s history of mental illness and chronic substance abuse, *see* A.R.S. § 8-533(B)(3),¹ and the length of time Robert had spent in a court-ordered, out-of-home placement, during which time Bernadette had neglected or refused to remedy the conditions necessitating that placement, *see* § 8-533(B)(8)(a).² Bernadette challenges the sufficiency of the evidence to sustain both statutory grounds. We affirm.

¶2 The juvenile court found that the Arizona Department of Economic Security (ADES) has proven both statutory grounds alleged for termination beyond a reasonable doubt.³ It also found terminating Bernadette’s rights was in Robert’s best interests. *See*

¹To justify severance pursuant to § 8-533(B)(3), the state was required to prove in this case that Bernadette “is unable to discharge parental responsibilities because of mental illness . . . or 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.” *Id.*

²Termination of Bernadette’s parental rights pursuant to § 8-533(B)(8)(a) required proof that Robert had been cared for in an out-of-home placement for a cumulative period of nine months or longer and that Bernadette had “substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.” *Id.*

³Bernadette is an enrolled member of the Tohono O’Odham Nation, and Robert is therefore an Indian child as defined by § 1903(4) of the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963. The Tohono O’Odham Nation participated in the dependency and severance proceedings and did not oppose the termination of Bernadette’s parental rights. The juvenile court expressly found ADES had made “active efforts to prevent the breakup of the Indian family,” and Bernadette does not dispute that the requirements of the Indian Child Welfare Act were fully satisfied in this case. *See* Ariz. R. P. Juv. Ct. 66(C) (burden of proof at termination adjudication hearing involving Indian child is beyond reasonable doubt).

A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we “accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). If sufficient evidence supports any one of the statutory grounds alleged for termination, we need not consider arguments pertaining to other grounds alleged. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶¶ 12, 27, 995 P.2d 682, 685, 687 (2000). Here, abundant evidence in the record supports the termination of Bernadette’s rights pursuant to § 8-533(B)(8)(a), based on the length of Robert’s out-of-home placement and Bernadette’s actions during that time. We affirm on that ground and therefore do not reach Bernadette’s alternative arguments pertaining to her mental illness or her history of chronic substance abuse pursuant to § 8-533(B)(3).

¶3 Viewed in the light most favorable to sustaining the juvenile court’s ruling, *see Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), the evidence established that Bernadette has a long history of substance abuse, dating from childhood. She has a similarly lengthy history of anti-social and criminal activity, and she reported having been incarcerated multiple times, both as a juvenile and an adult.

¶4 Robert is the youngest of Bernadette’s seven children and apparently the only one she had not exposed to cocaine in utero. She has custody of none of her children: her parental rights to four children had previously been terminated, and two others were reportedly in the custody of tribal child-welfare authorities. Bernadette’s actual parenting experience was thus very limited, as were her parenting skills.

¶5 When Robert was born in June 2006, Bernadette was incarcerated, serving a federal prison sentence on drug-related charges. Immediately after his birth, he was placed in the care of a maternal aunt, who remained his primary caregiver until Child Protective Services (CPS) removed him from her custody. In October 2007, Tucson police officers notified CPS after finding a group of ten adults and children, including sixteen-month-old Robert and his aunt, living in an abandoned home that was “in poor condition” and had “minimal running water.” Because Robert’s mother was in prison, his aunt was homeless and unable to provide for his basic needs, and his father had had little to do with him, CPS took him into custody, and ADES initiated this dependency proceeding. Robert was adjudicated dependent as to Bernadette in December 2007 based on her admission to the allegations of a second amended dependency petition.

¶6 After her release from prison in late March 2008, Bernadette began to participate in the tasks and services outlined in her case plan. Those services included a substance abuse assessment, outpatient substance abuse groups, random urinalysis, parenting classes, parent aide services, supervised visitation, and individual counseling.⁴ Between early April and late July 2008, she was substantially compliant with her case plan tasks. Although she had not completed any of the tasks assigned, she had been making progress. And, having been in prison since sometime in 2005, she was also experiencing the longest sustained period of sobriety she could recall having ever maintained.

⁴Bernadette has not challenged the reasonableness or sufficiency of the reunification services provided. *See generally* § 8-533(B)(8).

¶7 Among Bernadette’s assigned responsibilities under the case plan was finding stable employment and housing. She had difficulty finding a permanent job but had managed to secure temporary employment that paid her \$7 an hour. She had also obtained housing through the Gospel Rescue Mission, where she would have been eligible for up to eighteen months of transitional housing had she completed “their program.”

¶8 Instead, Bernadette chose to leave the Gospel Rescue Mission and move to “a place” a friend had helped her find, for which her rent was \$700 per month. Then, concerned about her finances, Bernadette agreed to transport an illegal immigrant for money. She was arrested on July 23, 2008, and charged with the federal felony offense of transporting an illegal alien, as well as with violating the conditions of her existing probation. She had pled guilty to the new offense and admitted the probation violation in early November, and she was in custody, awaiting sentencing, at the time of the termination hearing.

¶9 The total time Bernadette was not incarcerated during the pendency of these proceedings was less than four months. Until she was released from prison in March 2008 and began participating in her case plan in April, she and Robert had had no relationship at all. They had only begun to get acquainted during Bernadette’s ten to fifteen CPS-supervised visits with him while she was out of custody—the sum total of their contact following his birth. By her case manager’s estimate, Bernadette was compliant with her case plan for three and one-half months of the thirteen months that elapsed between the time Robert was taken into custody in October 2007 and the termination hearing in November 2008. Her last visit with Robert had taken place in July 2008. Since mid-November 2008, shortly before the

termination hearing, Robert has been placed in a potential adoptive home, where he was reportedly doing “very well.”

¶10 The reason Robert was taken into protective custody initially was because Bernadette was in prison and Robert had no parent or relative available to care for him. Thirteen months later, Bernadette was still not available to care for him because, despite having briefly participated in her case plan and made some progress toward reunification with her son, she then committed a new felony offense, for which she was in custody and awaiting sentencing when the termination hearing was held. The juvenile court did not err in concluding that, by willfully committing a new offense that had resulted in her reincarceration, Bernadette had substantially neglected or wilfully refused to remedy the circumstances that led Robert to be in a court-ordered, out-of-home placement for a cumulative period of more than nine months. *See* § 8-533(B)(8)(a).

¶11 Reasonable evidence supports the juvenile court’s factual findings, and its order is not clearly erroneous. *See Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We therefore affirm the order of December 3, 2008, terminating Bernadette’s parental rights to Robert.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge