

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MONICA M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.P., J.P., A.P., *Appellees*.

No. 1 CA-JV 16-0474
FILED 6-29-2017

Appeal from the Superior Court in Maricopa County
No. JD23567
The Honorable Sally S. Duncan, Judge

AFFIRMED

COUNSEL

Clark Jones, Mesa
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which
Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

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T H O M P S O N, Judge:

¶1 Monica M. (mother) appeals from the juvenile court's order severing her parental rights to A.P., J.P., and A.P. (the children). For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 In 2013, DCS received a report that mother was involved in a domestic violence incident with the children's father. Police arrested mother on outstanding warrants and DCS took the children into temporary custody. Mother admitted to a history of methamphetamine use.

¶3 The juvenile court found the children dependent as to mother in July 2013, and DCS put services into place. Mother's participation in services was inconsistent. By January 2016 mother was using methamphetamine again and she tested positive. In July 2016, DCS moved to terminate mother's parental rights on grounds of nine and fifteen months' out-of-home placement and substance abuse. Mother did not contest the severance, and after considering the state's exhibits and testimony from a DCS case manager, the juvenile court found that DCS had proven the grounds for termination and that severance was in the children's best interests. The court stated the findings orally. Subsequently, the court entered a minute-entry order which did not include the court's best interests finding. Mother did not object below to the court's written order, but she timely appealed.

¶4 After mother filed her opening brief, DCS filed a motion conceding that the juvenile court's written order did not meet the requirements of Arizona Revised Statutes (A.R.S.) § 8-538(A) (2016)¹ and Arizona Rules of Juvenile Procedure for the Juvenile Court 66(D) and (F) (Rule 66), and requesting this court to stay the appeal and remand for a ruling on best interests. We stayed the appeal, and on remand the juvenile court nunc pro tunc corrected its minute entry ruling to include the following language:

THE COURT FINDS that it is in the children's
best interest for there to be a termination of

¹ A.R.S. § 8-538(A) provides, in relevant part, "Every order of the court terminating the parent-child relationship . . . shall be in writing and shall recite the findings on which the order is based, including findings pertaining to placement of the child and the court's jurisdiction."

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parental rights. It would provide the children with permanency and stability. It would provide the children an ability to live in a substance free home. They are placed in a kinship placement and if that placement were to disrupt, the children are otherwise adoptable.

The appeal was reinstated and DCS filed its answering brief. Mother did not thereafter file a reply brief. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶5 In her opening brief, mother argues that the juvenile court abused its discretion by failing to make a best interests finding in writing as required by Rule 66. She further argues that the court abused its discretion by failing to state the requisite evidentiary standard that applies to a best interests finding- proof by a preponderance of the evidence- either orally or in writing. Because the juvenile court entered a sufficiently detailed written best interests finding subsequent to mother's filing of her opening brief, the only issue that remains is whether the court was required to state the requisite evidentiary standard.²

¶6 Mother cites no authority to support this argument. Although Rule 66(C) requires a moving party to prove that severance was in a child's best interests by a preponderance of the evidence, nothing in Rule 66 requires the court to specifically articulate the evidentiary standard, either orally or in writing. Moreover, because mother failed to object on this basis in the juvenile court, she has waived the argument. *See Christy C. v. Ariz. Dept. of Econ. Sec.*, 214 Ariz. 445, 452, ¶¶ 20-21, 153 P.3d 1074, 1981 (App. 2007) (parent who failed to object to the juvenile court's findings below waived her argument on appeal that the trial court should have made more detailed findings). Moreover, as "trial judges are presumed to know the law and to apply it in making their decisions," *State v. Trostle*, 191 Ariz. 4, 22, 951 P.2d 869, 887 (1997) (citation omitted); *Fuentes v. Fuentes*, 97 P.3d 876, 883, 209 Ariz. 51, 58 (App, 2004), we would not reverse a superior court's ruling for failure to state an evidentiary standard unless the record affirmatively shows the court failed to apply the correct standard. *Id.*

² The corrected minute entry order did not state the evidentiary standard for a best interests finding.

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CONCLUSION

¶7 For the foregoing reasons, we affirm the juvenile court's severance of mother's parental rights.



AMY M. WOOD • Clerk of the Court
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