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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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DINA R., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, C.H., *Appellees*.

Nos. 1 CA-JV 17-0377; 1 CA-JV 17-0563  
(Consolidated)  
FILED 7-31-2018

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Appeal from the Superior Court in Maricopa County  
No. JD529436  
The Honorable Arthur T. Anderson, Judge

**AFFIRMED**

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COUNSEL

David W. Bell, Attorney at Law, Mesa  
By David W. Bell  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Cathleen E. Fuller  
*Counsel for Appellee Department of Child Safety*

Maricopa County Legal Advocate's Office, Phoenix  
Consuelo M. Ohanesian  
*Counsel for Appellee C.H.*

**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Kenton D. Jones joined.

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**M O R S E**, Judge:

¶1 Dina R. ("Mother") appeals the juvenile court's denial of her request to transfer placement of her child C.H. to Mother's aunt ("Aunt") and the subsequent order terminating Mother's parental rights to C.H. For the following reasons, we affirm the juvenile court's termination of Mother's parental rights to C.H. and denial of Mother's request to change C.H.'s placement.

**FACTS AND PROCEDURAL HISTORY**

¶2 Mother is the biological mother of C.H., born June 30, 2013. In 2015, Mother was unable to care for C.H. and, after receiving a referral from her pastor, asked a family ("Foster Parents") to care for C.H.

¶3 In November 2015, Foster Parents filed a dependency petition, and the juvenile court ordered the Department of Child Safety ("DCS") to join as a co-petitioner. Initially, the court found that out-of-home placement was not necessary and ordered in-home dependency. After Mother tested positive for methamphetamine, however, the court granted DCS's motion to remove C.H. from Mother's care, and C.H. was again placed with Foster Parents. Mother was happy with this placement.

¶4 In November 2016, the case plan was changed to severance and adoption; Mother consented to termination of her parental rights and wanted Foster Parents to adopt C.H.

¶5 In February 2017, Mother changed her position and no longer consented to severance or Foster Parents' adoption of C.H. Instead, Mother requested C.H. be placed with Aunt who met C.H. for the first time in October 2016. DCS supported changing C.H.'s placement and, in March, established a visitation schedule for Aunt and C.H., which was quickly increased to unsupervised, overnight visits. During the August 2017 placement hearing, the juvenile court found, despite the preference for family-member placement under Arizona Revised Statutes ("A.R.S.") section 8-514(B)(3), that it was in C.H.'s best interests to remain with Foster

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Parents because "all of the professional opinions [] unanimously recommend that [C.H.] not be moved." Mother timely appealed this order.

¶6 In September 2017, the juvenile court held a contested severance hearing. In November, the court found DCS had proven by clear and convincing evidence the grounds for severance based on Mother's history of chronic drug abuse, A.R.S. § 8-533(B)(3); nine-months out-of-home placement, A.R.S. § 8-533(B)(8)(a); and fifteen-month out-of-home placement, A.R.S. § 8-533(B)(8)(c). The court also found that termination of Mother's parental rights was in C.H.'s best interests.

¶7 Mother timely appealed the termination of her parental rights. This appeal was consolidated with her appeal from the placement hearing. We have jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 8-235 and 12-120.21(A)(1).

## DISCUSSION

¶8 Mother argues that the juvenile court erred when it denied her motion to transfer placement of C.H. to Aunt because the placement hearing was not fair and impartial, and the court abused its discretion by not giving the proper weight to the statutory familial-placement preference under A.R.S. § 8-514(B). In her subsequent appeal, Mother argues that the juvenile court erred in terminating her parental rights to C.H. because the court's actions during the placement hearing "cast doubt" on the fundamental fairness of the severance hearing, and the court erred in finding termination was in the best interests of C.H.

### I. Termination of Parental Rights

¶9 To terminate parental rights, a juvenile court must find by clear and convincing evidence at least one statutory ground for severance and by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B) and 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We will affirm a juvenile court's termination of parental rights absent an abuse of discretion and accept its findings of fact unless they are clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

¶10 Mother does not challenge the juvenile court's finding of the three statutory grounds for severance, waiving those issues. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 577, ¶ 5 (App. 2017). Instead, Mother argues that she did not receive a fundamentally fair severance hearing because the juvenile court judge was biased. "A court may order severance

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of parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with 'fundamentally fair procedures' that satisfy due process requirements." *Kent K.*, 210 Ariz. at 284, ¶ 24 (quoting *Santosky II v. Kramer*, 455 U.S. 745, 754 (1982)). "A trial judge is presumed to be free of bias and prejudice and to overcome this presumption, a party must show by a preponderance of the evidence that the trial judge was, in fact, biased." *Cardoso v. Soldo*, 230 Ariz. 614, 619-20, ¶ 19 (App. 2012). "[M]ere speculation about bias is not sufficient." *Emmett McLoughlin Realty, Inc. v. Pima Cty.*, 212 Ariz. 351, 357, ¶ 24 (App. 2006). Because Mother failed to allege bias based on specific citations to the severance hearing, Mother has failed to overcome this presumption.

¶11 However, Mother argues that if the juvenile court judge had displayed bias during the placement hearing, "then logically, it would be fair to question the impartiality of the court when the termination matter was heard . . . ." Essentially, Mother asserts that once bias is established, it is presumed for subsequent hearings. Without deciding the validity of Mother's assertion, we address whether Mother has established judicial bias during the placement hearing.

¶12 Mother asserts that the judge made several statements during the placement hearing that demonstrate bias and a pre-determined outcome because they were made before the judge heard evidence and testimony. While the statements were made before *hearing* testimony, the judge had already reviewed the reports from DCS, C.H.'s therapist, and two psychologists, and the reports were received into evidence. Further, the therapist and psychologists all agreed that C.H.'s placement should not be changed because it would "likely be traumatizing to her . . . ." Thus, the judge's statements were not made before receiving evidence into the record.

¶13 Mother points to specific statements the judge made during the placement hearing as examples of bias: (1) questioning the amount of weight Mother's placement preference should be given; (2) expressing concern that DCS would support a change in placement based on a statutory family placement preference, pursuant to A.R.S. § 8-514, that was "clearly outweighed" by the unanimous recommendations of DCS's professionals; (3) referencing Foster Parents as C.H.'s "parents" and "mother;" and (4) explaining that, based on the bonding and best interests report, Foster Parents, and not Aunt, were C.H.'s "primary attachment."

¶14 These statements were not made in isolation. The judge explained that these statements were his "initial reaction" to the reports and that he was open to hearing why C.H. should be placed with Aunt, against

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the recommendations of DCS's professionals. Further, the statements were based on facts already admitted into evidence or posing legal questions for the attorneys to address. Based on the context, the statements do not demonstrate bias, and Mother therefore has not overcome the presumption that the judge was free from bias. *See Cook v. Losnegard*, 228 Ariz. 202, 206, ¶ 22 (App. 2011).

¶15 Mother also argues that the "professionals involved in this case made legally deficient conclusions based primarily upon the self-serving statements of the foster parents." The juvenile court is in the best position to "weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009). "Thus, the resolution of conflicts in the evidence is uniquely the province of the juvenile court, and we will not reweigh the evidence in our review." *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 287, ¶ 16 (App. 2016) (citations omitted). "[W]e accept the juvenile court's findings of fact if reasonable evidence and inferences support them . . . ." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3, ¶ 9 (2016). The court heard testimony from Mother, the case manager, the Foster Care Review Board, C.H.'s therapist, and a psychologist. Then the court found that altering C.H.'s placement would not be in her best interest, noting that the professional opinions unanimously recommended against moving C.H. Because reasonable evidence supports the court's findings, we accept its factual findings.

¶16 Mother also argues that the juvenile court erred in its best interests determination because the "best interest assessment could have been viewed differently if the child was placed with a member of her biological family that was willing to allow ongoing contact, as appropriate, between mother and child." The juvenile court's determination of a child's best interests is separate from a placement determination. *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, 370-71, ¶ 2 (App. 2009). "To establish that severance is in the best interests of the child, the state is not required to rule out possible placements with biological relatives before considering other placements. Nor does the juvenile court weigh alternative placement possibilities to determine which might be better." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5 (App. 1998). Thus, Mother's continued reliance on C.H.'s placement as the sole support for her argument is not sufficient to overcome the juvenile court's best interests determination.

¶17 Further, the record supports the juvenile court's finding that termination of Mother's parental rights was in C.H.'s best interests. "[A] determination of the child's best interest must include a finding as to how

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the child would benefit from a severance *or* be harmed by the continuation of the relationship." *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Here, the juvenile court found severance was in C.H.'s best interests because Foster Parents "provide[d] a safe and nurturing environment" that was "stable and free from domestic violence and drugs." Foster Parents were able to meet all of C.H.'s needs, and if they did not adopt C.H., she was adoptable. Further, the court found that "Mother has conceded that she is not equipped to provide the stability and parental care that [C.H.] deserves."

**II. Denial of Placement Request**

¶18 Mother also appealed the juvenile court's order denying her request to transfer placement of C.H. to Aunt. Because we affirm the court's termination of Mother's parental rights to C.H., she no longer has standing to appeal C.H.'s placement. *See Antonio M.*, 222 Ariz. at 370, ¶ 2 (finding parents no longer have standing to challenge a placement decision once their parental rights are terminated). Therefore, we also affirm the juvenile court's order denying Mother's request to change C.H.'s placement.

**CONCLUSION**

¶19 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights to C.H. and denial of Mother's request to change C.H.'s placement.



AMY M. WOOD • Clerk of the Court  
FILED: AA