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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION ONE
FILED: 05-25-2010
PHILIP G. URRY, CLERK
BY: GH

KELLI S., Appellant,	1 CA-JV 09-0212
v.	DEPARTMENT A
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, CAMERON A., Appellees.	**MEMORANDUM DECISION** (Not for Publication – Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)

Appeal from the Superior Court in Maricopa County

Cause No. JS11349

The Honorable Aimee L. Anderson, Judge

AFFIRMED

Lisa M. Timmes — Scottsdale
Attorney for Appellant

Terry Goddard, Attorney General — Mesa
By Kathleen Skinner, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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W I N T H R O P, Judge

¶1 Kelli S. ("Appellant") appeals the juvenile court's order terminating her parent-child relationship with Cameron A.

("the child") based on neglect or failure to protect the child from abuse, *see* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2) (Supp. 2009), and six months' cumulative out-of-home placement.[1] *See* A.R.S. § 8-533(B)(8)(b). Appellant argues that the court erred in terminating her parental rights on these bases, and she contests its finding that termination of her parental rights was in the child's best interest. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[2]

¶2 Appellant is the biological mother of the child. In November 2008, Appellant, Father, and the child, who was approximately three months old, were living with Appellant's parents. On Sunday, November 23, Appellant's parents went to church, and Appellant left at approximately 10:15 a.m. for her second day of work at a seasonal job. Father was left alone with the child, who was asleep when Appellant left. Immediately afterward, the child became "fussy," then began crying and screaming. Father became frustrated that he could not stop the

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[1] The court also terminated the parental rights of the child's biological father ("Father") based on abuse pursuant to A.R.S. § 8-533(B)(2). Father is not a party to this appeal.

[2] We view the facts in the light most favorable to affirming the juvenile court. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). To the extent conflicts exist in the evidence, it was for the juvenile court to resolve them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002).

child from crying, and he abused the child, causing the child to suffer various injuries, including brain trauma from an acceleration/deceleration injury, or "shaken baby syndrome." After the abuse, the child "went from crying to a whimper, and then stopped."

¶3 Throughout the morning, Appellant and Father exchanged text messages. Father's messages at various times indicated that the child was crying, "lifeless," not moving, moaning, and "out of it," as well as that the child had no strength and had bruises on his face. Father did not disclose the abuse, however. Appellant sent suggestions to Father in an effort to help "console" the child and calm him down, and suggested the bruises had been caused by the child's pacifier. Subsequent messages from Father indicated the child had begun eating and was "better now," "ok," "doing good," and "fine."

¶4 At approximately noon, Appellant's parents arrived home, but they did not initially note any concerns. Later that afternoon, when Father brought the child downstairs, the child appeared limp and lethargic, and was whimpering. Father and Appellant's mother took the child to Arrowhead Hospital that afternoon, but Father still did not disclose that he had injured the child. Once Appellant finished work, her mother advised her that the child had been taken to the hospital, and Appellant went there. The child was discharged after being examined.

¶5 The next day, November 24, 2008, the child was taken to Arrowhead Pediatrics as a follow-up appointment and because the child was vomiting and had a fever. The physician advised Appellant to immediately take the child to Phoenix Children's Hospital, where he was admitted with severe injuries, including but not limited to significant intercranial bleeding, rib fractures, bruising to the face and body, and retinal bleeding. Appellant and Father both denied knowing the cause of the child's injuries.

¶6 However, on November 26, 2008, in an interview with Peoria Police Detective John Krause, Father admitted harming the child. Specifically, Father admitted pushing the child into a mattress and squeezing the child with his hands with enough force that he broke the child's ribs, then jerking the child up such that the child's head "launched" forward. Later at trial, Dr. Stephanie Zimmerman, the pediatric emergency room physician at Phoenix Children's Hospital who examined the child when he was admitted on November 24, 2008, testified that the abuse Father confessed committing would likely have caused the injuries the child suffered.

¶7 When the child was ready for discharge from the hospital on December 3, 2008, he was placed in the custody of Child Protective Services ("CPS"), which ultimately placed him in foster care. The child had additional hospitalizations

related to his injuries, and the injuries likely caused some permanent brain damage, although the long-term effects remain unknown. The child has progressed, however, and appears to be relatively on task developmentally, with minor delays.

¶8 Also in December 2008, the Arizona Department of Economic Services ("ADES") filed a dependency petition, alleging the child was dependent as to Appellant and Father. A case plan of family reunification was developed, and ADES offered parent aide services, visitation, Minnesota Multiphasic Personality Inventory ("MMPI") testing, and eventually a psychological evaluation. Additionally, Appellant participated in counseling on her own.

¶9 On May 27, 2009, ADES filed a motion to terminate both Appellant's and Father's rights as to the child pursuant to A.R.S. § 8-533(B)(2) on the grounds of willful abuse or failure to protect the child from willful abuse. The motion further alleged that termination of Appellant's parental rights was in the child's best interest.

¶10 At the June 24, 2009 initial severance hearing, Appellant and Father denied the allegations of the petition. On July 1, 2009, ADES filed an amended petition, further alleging that severance as to Appellant was proper pursuant to A.R.S. § 8-533(B)(8)(b) because the child had been in an out-of-home placement for a cumulative total period of six months or longer

pursuant to court order, and Appellant had substantially neglected or willfully refused to remedy the circumstances that caused the child to remain in an out-of-home placement. At that time, the child was residing in an adoptive foster home.

¶11 On August 11, 12, and 21, and September 29, 2009, the juvenile court held a contested hearing on the severance motion. At the conclusion of the hearing, the court granted the motion to terminate the parental rights of Appellant and Father. With regard to Appellant, the court found that grounds for severance existed pursuant to A.R.S. § 8-533(B)(2) because she "has neglected this child and [] she reasonably should have known that a person was abusing or neglecting her child. She seriously neglected to protect her child from harm and failed to take action to protect her child from further harm." The court also found that grounds for severance existed pursuant to A.R.S. § 8-533(B)(8)(b) because the child had been in an out-of-home placement for a period of approximately ten months, ADES had made a diligent and reasonable effort to provide reunification services, and Appellant had "substantially neglected or willfully refused to remedy the circumstances which cause[d] the child to be in an out-of-home placement." Specifically, the court found that Appellant "chose to remain with the father who had abused her child, and not be reunified with her child." The court also found that the child was adoptable and that

termination of Appellant's parental rights was in the child's best interest. On November 12, 2009, the court filed a signed order finding that ADES had proved the alleged grounds for termination by clear and convincing evidence, and terminating Appellant's (and Father's) parental rights to the child.

¶12 Appellant filed a timely notice of appeal. We have appellate jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

ANALYSIS

I. Severance Pursuant to A.R.S. § 8-533(B)(8)(b)

¶13 Appellant argues that the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(8)(b). We disagree.

¶14 The right to custody of one's children is fundamental, but it is not absolute. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Id.* at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B)).

¶15 Because the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties,

observe the parties, and make appropriate factual findings," *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Id.; accord Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, 982 P.2d 1290, 1291 (App. 1998). We presume that the juvenile court made every finding necessary to support the judgment, *see Pima County Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985), and defer to the court's resolution of conflicting inferences and claims if supported by reasonable evidence. *See Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978); *O'Hern v. Bowling*, 109 Ariz. 90, 92-93, 505 P.2d 550, 552-53 (1973).

¶16 Under A.R.S. § 8-533(B)(8)(b), the juvenile court may terminate parental rights if a child under three years of age

> has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement,

> including refusal to participate in reunification services offered by the department.

The purpose behind out-of-home placement termination grounds is "to give children who are placed outside the home the opportunity to bond with stable parents after a reasonable period of time, instead of being shuttled from one foster family to the next for as long as it takes their biological parents to assume their responsibilities and take positive steps toward recovery." *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (citation omitted).

¶17 In its signed order terminating Appellant's parental rights as to the child, the juvenile court found that Father had "willfully abused the Child by the infliction of physical injury and impairment of bodily function," and Appellant had neglected the child because she failed to take action to protect him or get him medical treatment. The court then made the following findings:

> 7. As of the filing of the Petition to terminate Mother's and Father's parental rights, the Child, who is under three years of age, had been in an out-of-home placement for a cumulative total period of six months or longer, pursuant to court order. Mother substantially neglected or willfully refused to remedy the circumstances that caused the Child to be in an out-of-home placement including, but not limited to, the refusal to participate in reunification services offered by the Department. A.R.S. § 8-533(B)(8)(b).
>
> (a). The child, at the time of trial, had been in an out-of-home placement for approximately ten months. The Department has made reasonable efforts to

offer Mother appropriate reunification services including, parent-aide services, visitation with the Child and counseling. The Child came into care because Father had physically abused him. Mother does not believe that Father poses a threat to the Child. Further, Mother and Father live together and are engaged to be married.

(b). Mother admitted at trial that Child Protective Services told her on multiple occasions that if she left Father she could have the Child returned to her care. Yet, Mother never left Father. On November 26, 2008, Father confessed that he had injured the child. Mother testified that, despite the confession, she did not believe that he had abused the child. At a team decision meeting on January 30, 2009 the Child Protective Services case manager, John Hicks, told Mother that she needed to move out of Father's house or the Department would consider a case plan of severance. At that meeting, Father told Mother that Child Protective Services was telling her that she needed to decide between him and the child. Mother replied, "I know."

(c). Dr. Thal[3] testified at trial that Mother wants to look at Father's violence against the Child as an isolated incident instead of child abuse. Dr. Thal further testified that Mother could not, and would not, make the difficult decision to choose the Child over Father. Mother never asked Father about the abuse, and Mother never asked Detective Krause about Father's confession. Mother testified that while she wants to know about the Child's injuries, she does not want to hear about the type of force that is necessary to cause the injuries that the Child suffered from the abuse. Mother testified that her relationship with Father, not her relationship with the Child, was the most significant relationship that she has ever had. She claims that she is not choosing Father over her child. However, Mother has repeatedly chosen Father over the Child through her actions and statements. Mother has failed to do the one thing

[3] Dr. James S. Thal, Ph.D., is a licensed psychologist who conducted Appellant's psychological evaluation on August 5 and 6, 2009. Dr. Thal also conducted Father's psychological evaluation on August 6 and 12, 2009.

> necessary to remedy the circumstances that cause the Child to be in an out of home placement – leave Father.

(Footnote added.)

¶18 We conclude that reasonable evidence supports the juvenile court's findings. In this case, no dispute exists that Appellant participated in the services offered by ADES and participated in counseling on her own. Despite her participation in services, however, Appellant substantially neglected or willfully refused to provide a safe environment for the child by living and remaining in a relationship with the child's abuser, Father.

¶19 The record indicates that Appellant initially did not believe that Father had caused the injuries to the child. It took Appellant at least five months before she acknowledged that Father caused the injuries, despite the fact that he was the only one caring for the child at the time of the injuries and he admitted shaking the child. Further, even after Appellant acknowledged that Father caused the injuries, she never read the police report or Father's confession, or learned the amount of force actually necessary to cause the injuries, although it was likely Father shook the child much more violently than he had admitted. In fact, at the time of the severance hearing Appellant still believed that some of the injuries were due to benign causes (such as bruising on the child's face being caused

by his pacifier) despite Dr. Zimmerman's opinion that they were likely caused by non-accidental trauma.

¶20 Appellant was also informed numerous times that she needed to leave Father in order to parent the child, but she chose not to do so. Specifically, she was told "at least five or six times" by the initial investigative case manager, John Hicks,[4] that she would need to reside separately from Father in order to parent the child. Additionally, Detective Krause advised Appellant that she needed to make a decision between Father and the child, and "that if she chose [Father], she was likely going to be losing her access to [the child]." Despite her acknowledgement that she had been informed she needed to leave Father in order to parent the child, Appellant chose to stay with Father. At the severance hearing, Appellant testified that she and Father were engaged and had been living in an apartment together since December 2008, shortly after Father abused the child. She further testified that she was unwilling to leave Father and could not see herself leaving him in the future. She also told Dr. Thal that she had "made a decision to

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[4] Mr. Hicks was assigned to Appellant's case from November 24, 2008, until January 30, 2009, at which time an ongoing case manager, Ann Hardt, was assigned to the case. Mr. Hicks, however, continued to monitor the case by reviewing the case notes and reports and had attended visitation between Appellant and the child on approximately six to ten occasions. The ongoing case manager did not testify at the hearing because she was on extended medical leave due to a death in the family.

remain with [Father] even if she loses her parental rights" to the child.

¶21 Dr. Thal testified that Appellant was emotionally and financially dependent on Father, in part because "she did not have a means to support herself apart from [him]." Dr. Thal opined that Appellant was afraid "to hear bad things" and "doesn't want frightening and perhaps potentially unresolvable issues to come up with [Father]." Instead, she wanted to view Father's child abuse "as an accidental set of circumstances, unintended, no malice involved and most importantly as [a] single and isolated episode." However, according to Dr. Thal, the incident was "otherwise," and Appellant did not "want[] to know that or face that truth." Although Appellant admitted she had seen Father lose his temper, and according to his psychological evaluation Father appeared to have a "history of low frustration tolerance and anger," Appellant informed Dr. Thal and testified that she believed Father had changed and would not pose a risk to the child in the future. Appellant admitted, however, that she could not be certain that Father would not harm the child in the future.

¶22 Although Appellant testified that she believed she had remedied the circumstances that brought the child into an out-of-home placement and would be able to parent the child, Dr. Thal stated that Appellant's dependency on Father could prevent

her from protecting the child in the future. The doctor expressed concern that it was premature to conclude Father would not harm the child again and stated that the potential Father would commit another sudden, violent, unpredictable act would continue for an indeterminate period of time. Therefore, according to Dr. Thal, the child could not be safely returned to Appellant's care if she remained with Father because "there [wa]s an unacceptable level of risk of physical abuse to [the child]."

¶23 Dr. Thal also noted that Appellant's apparent dependent personality disorder would likely continue for a prolonged, indeterminate period of time and continue to impact her ability to parent. Appellant had a history of relationships with abusive men, and even if the relationship with Father ended, the probability was that she would become "involved with a similar type of person." Mr. Hicks, CPS's investigative case manager, also believed that Appellant was "at high risk of getting into another dependent relationship." He expressed concern that Appellant "would harm [the child] by bringing somebody in his life that would be a danger to him" and stated that Appellant could not be trusted to "not get into or continue in a dangerous relationship" with another man if she were caring for the child.

¶24 Based on the aforementioned evidence, we conclude that reasonable evidence supports the juvenile court's finding that Appellant substantially neglected or willfully refused to remedy the circumstances causing the child to be in an out-of-home placement for a total period of six months or longer pursuant to A.R.S. § 8-533(B)(8)(b).

II. ADES's Effort to Provide Appropriate Reunification Services

¶25 We also conclude that reasonable evidence supports the juvenile court's finding that ADES made a sufficient effort to provide appropriate reunification services to Appellant.

¶26 Generally, before seeking to terminate a parent-child relationship, ADES must make "reasonable" efforts to preserve the family as a necessary constitutional element to overcome the "fundamental liberty interest of the natural parents in the care, custody and management of their child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶ 32, 971 P.2d 1046, 1052-53 (App. 1999) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)); *see also* A.R.S. § 8-533(B)(8) (requiring "the agency responsible for the care of the child [to make] a diligent effort to provide appropriate reunification services"). This means that ADES must make a reasonable effort to rehabilitate the parent by offering parent services designed to improve the parent's ability to care for the child. *Mary Ellen*

C., 193 Ariz. at 192, ¶¶ 33-34, 971 P.2d at 1053. However, ADES is not required to provide every conceivable service, *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), or to provide futile services. *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989). Further, although a parent need not "completely overcome [her] difficulties" within the statutory period, the parent must "make appreciable, good faith efforts to comply." *JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229.

¶27 In this case, ADES provided Appellant with parent-aide services, visitation, MMPI testing, and a psychological evaluation. Appellant fully participated in the services provided by ADES and, as we have noted, participated in counseling on her own. Further, her counseling records and the parent aide's testimony indicate that Appellant was making progress.

¶28 Appellant contends that because she "actively participated [in] and benefited from services throughout the case, she cannot be said to have 'substantially neglected or willfully refused' to remedy the circumstances" causing the child to be in an out-of-home placement for a total period of six months or longer. However, as she herself acknowledges, she was still with Father and planned to stay with him at the time of the severance hearing despite the fact that she had been

informed by CPS and others on several occasions to separate from Father if she wished to have the child returned to her care.

¶29 Appellant further contends that CPS had not yet provided her with the appropriate therapy to address her dependency issues and assist her in making a decision to leave Father. Although the psychological evaluation was not offered until August 2009, Appellant was eventually provided with all suggested services other than counseling, which she completed on her own. Further, Appellant's private counseling addressed some topics related to protecting the child from abuse, such as anger and stress management. Appellant also should have provided her counselor with full disclosure and accurate information, which, given the basis for the dependency, would have made clear that she needed to address failure-to-protect issues. Appellant, however, testified that she provided her counselor with only "[s]ome of" the information relating to why CPS was involved in her life. Additionally, Appellant did sign release forms to provide her counseling records to CPS, although the record is unclear whether CPS actually obtained those records.

¶30 Appellant also testified and argues that she lacked any regular contact with the ongoing case manager. Although the ongoing case manager did not testify, the investigative case manager, Mr. Hicks, did testify that he had worked on the case until January 30, 2009, and he had kept updated on Appellant's

and the child's progress after January 2009 through the case notes and reports. He had also previously attended visitation between Appellant and the child on approximately six to ten occasions, and Appellant admitted that he was "always there" during the time he was assigned to the case. Furthermore, Appellant acknowledged that she saw the ongoing case manager at hearings, the ongoing case manager had informed her of the services she needed to participate in, and the parent aide provided information documenting Appellant's visits with the parent aide to the ongoing case manager. Given the record before us, we conclude that reasonable evidence supports the juvenile court's conclusion that ADES made a sufficient effort to provide Appellant with appropriate reunification services.

III. Severance Pursuant to A.R.S. § 8-533(B)(2)

¶31 Appellant also contends that the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-533(B)(2), the subsection allowing for termination based on neglect or willful abuse of a child. However, finding the existence of any one of the enumerated statutory grounds is sufficient to justify termination. *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988). Because we find that reasonable evidence supports termination pursuant to § 8-533(B)(8)(b), we need not consider the

additional ground found by the juvenile court. *See JS-501568*, 177 Ariz. at 575, 869 P.2d at 1228.

IV. Best Interest of the Child

¶32 Appellant also challenges the juvenile court's finding that termination of her parental rights was in the child's best interest. *See* A.R.S. § 8-533(B) (requiring the court to "consider the best interests of the child").

¶33 With regard to the child's best interest, the court found as follows:

> 9. The Department has proven, by a preponderance of the evidence, that termination of the parent-child relationship between the child . . . and the parents . . . is in the Child's best interest.[] The Child would benefit from the termination of these parental rights. A termination of these parental rights would further the plan of adoption, allowing the Child to have a stable, permanent, loving home where he is safe and protected. The Child would suffer a detriment if the parental relationship continues. The Child would remain at risk for abuse, as Father has abused the child and Mother has neglected the Child and is unable and unwilling to protect the Child from abuse.[5]

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[5] The court further found that placement with the child's grandparents or extended family was not in the child's best interest because no such appropriate placement had been identified. *See generally* A.R.S. § 8-514(B) (2007) (requiring that ADES place a child in the least restrictive type of placement available, including with a parent, a grandparent, or extended family, consistent with the needs of the child). The court considered the maternal grandparents as a possible placement but concluded they were not an appropriate placement because they did not recognize the risk that Appellant and Father posed to the child's safety, and would therefore be unable to protect the child. The court noted that the maternal grandparents each testified that Father is a good parent, loves the child and would never harm the child again. Finally, the

(Footnote added.)

¶34 To support a finding that termination is in a child's best interest, the petitioner must prove that the child will affirmatively benefit from the termination. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990). This means that "a determination of the child's best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship." *Id.* at 5, 804 P.2d at 734. The best interest requirement may be met if, for example, the petitioner proves that a current adoptive plan exists for the child, *id.* at 6, 804 P.2d at 735, or even that the child is adoptable. *JS-501904*, 180 Ariz. at 352, 884 P.2d at 238.

¶35 In this case, reasonable evidence supports the juvenile court's finding that termination of Appellant's parental rights was in the child's best interest. At the time of the severance hearing, the child remained placed in a licensed, adoptive foster home. He appeared to have bonded with the foster family, was receiving speech and physical therapy, and was adoptable. Mr. Hicks, the investigative case manager, testified that severance and adoption was in the child's best interest because that would give him an opportunity to have a

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court found that the child's current placement was the least restrictive placement, consistent with the child's needs.

stable and safe environment that Appellant did not have the ability to provide. Mr. Hicks further explained that severance was in the child's best interest because Appellant had not made the decision to protect the child from possible future harm from Father, who he likened to a "loaded gun that the safety is broken on." Concluding that reasonable evidence supports the juvenile court's finding that termination of Appellant's parental rights was in the child's best interest, we affirm the court's order terminating Appellant's parental rights to the child.

CONCLUSION

¶36 The juvenile court's severance order is affirmed as to Appellant.

________________/S/____________________
LAWRENCE F. WINTHROP, Judge

CONCURRING:

________________/S/__________________
PATRICIA A. OROZCO, Presiding Judge

________________/S/__________________
DANIEL A. BARKER, Judge