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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 11/20/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHRISTEPHER R., SR., ) 1 CA-JV 12-0156  
)  
) DEPARTMENT E  
Appellant, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
) Ariz. R.P. Juv. Ct. 103(G);  
ARIZONA DEPARTMENT OF ECONOMIC ) ARCAP 28)  
SECURITY, CHRISTEPHER R., JR., )  
)  
Appellees. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. JD20878

The Honorable Aimee L. Anderson, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Nicholas Chapman-Hushek, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Juvenile Public Advocate Phoenix  
By Suzanne W. Sanchez, Deputy Public Advocate  
Attorneys for Appellant

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**N O R R I S**, Judge

¶1 Christopher R. ("Father") timely appeals the juvenile court's order terminating his parental rights to his biological child ("child"). Father argues the juvenile court's finding

that termination was in his child's best interests was "clearly erroneous" because the court relied on only one criterion -- the availability of potential adoption -- in making that finding. We disagree; the court did not rely on just one criterion and substantial evidence supported the court's findings. Accordingly, the court did not abuse its discretion in finding termination was in his child's best interests. Thus, we affirm the juvenile court's termination order.

#### **FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>**

¶2 On August 15, 2011, Father left his six-month-old child in the care of Father's parents ("Paternal Grandparents"). On October 5, 2011, Paternal Grandparents filed a dependency petition for the child and alleged Father was incapable of caring for the child because he was homeless, unemployed, and possibly using drugs. The Arizona Department of Economic Security ("ADES") formally placed the child with Paternal Grandparents, substituted itself for Paternal Grandparents as the petitioner in the dependency proceeding, and began efforts to locate Father. During the child's placement with Paternal Grandparents, ADES reported Paternal Grandparents had provided

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<sup>1</sup>We view the facts in the light most favorable to affirming the judgment. *Michael J. v. Ariz. Dep't. of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citation omitted).

"excellent care" for the child and created a "safe and stable home environment."

¶13 On December 31, 2011, a Child Protective Services case manager located Father. Eventually, the juvenile court found the child dependent as to Father and approved a case plan of family reunification concurrent with severance and adoption. The court also approved the services ADES planned to offer Father. These services included supervised visitation, parent aide services, substance abuse assessment/treatment, urinalysis testing, and psychological evaluation/consultation.

¶14 Father, however, failed to comply with the services offered. He did not participate in substance abuse assessment, urinalysis testing, or psychological consultation. Father also did not visit the child regularly, maintain appropriate housing, or provide for the child. Meanwhile, Paternal Grandparents indicated they were willing to adopt the child "if the case plan goal of family reunification [was] not viable." Accordingly, the juvenile court changed the case plan to severance and adoption and authorized ADES to move to terminate Father's parental rights.

¶15 After an evidentiary hearing, the court terminated Father's parental rights under Arizona Revised Statutes sections 8-533(B)(1) (Supp. 2012) (abandonment) and 8-533(B)(8)(b) (Supp. 2012) (out-of-home placement). The court also found by a

preponderance of evidence that terminating Father's parental rights was in the child's best interests. As the court explained, "[t]he child is adoptable and adoption will provide him with the permanency and stability that his parents are unable to provide," and therefore, termination would "further the plan of adoption."

#### DISCUSSION

¶6 As discussed above, on appeal Father argues the juvenile court's finding that termination was in the child's best interests was "clearly erroneous" because the court relied on only one criterion -- the availability of potential adoption -- in making this finding. Father essentially argues that in *Maricopa County Juvenile Action No. JS-500274*, 167 Ariz. 1, 804 P.2d 730 (1990), our supreme court held this factor, by itself, could not support a best-interest finding. The problem with Father's argument is two-fold: first, under *JS-500274*, the supreme court actually recognized the availability of adoption could by itself support a best-interest finding; and second, the juvenile court here did not rely only on the availability of adoption in finding termination was in the child's best interests.

¶7 In *JS-500274*, our supreme court discussed the type of evidence that could support a best-interest determination and emphasized the party seeking termination must prove "an

affirmative benefit to the child resulting from termination." *Id.* at 6, 804 P.2d at 735. As the court explained, this benefit could be shown by proof "there is a current adoptive plan for the child or that the child will be freed from an abusive parent." *Id.*, 804 P.2d at 735 (emphasis in original). The court then discussed several cases where the lack of an adoption plan did not prevent a finding that termination was in a child's best interests, including *Pima County Juvenile Action No. S-2460*, 162 Ariz. 156, 158, 781 P.2d 634, 636 (App. 1989) (adoption plan need not exist to terminate parental rights). In this context, the supreme court quoted the following language from *S-2460*: "The immediate availability of an adoptive placement obviously weighs in favor of severance, while the improbability of adoption, absent other factors, weighs against it. But the availability of adoption is not the sole criterion." *JS-500274*, 167 Ariz. at 6, 804 P.2d at 735 (quoting *S-2460*, 162 Ariz. at 158, 781 P.2d at 636).

¶18 Here, Father takes the quote from *S-2460* above -- "the availability of adoption is not the sole criterion" -- out of context and misconstrues *JS-500274* as requiring additional evidence beyond the availability of adoption to support a best-interest determination. Father ignores that in *S-2460*, the court actually held termination was in the child's best interests despite the absence of an adoption plan because

continuation of the parental relationship would have "negative consequences for the child," 162 Ariz. at 158, 781 P.2d at 636 -- a holding entirely consistent with the supreme court's discussion of the type of evidence that can prove a child will benefit from termination in lieu of an adoption plan. Further, *JS-500274* specifically pointed out "a current adoptive plan" is a well-recognized example of "an affirmative benefit to the child resulting from termination." 167 Ariz. at 6, 804 P.2d at 735; see *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6, 100 P.3d 943, 945 (App. 2004).

¶9 Moreover, the juvenile court here did not rely only on the availability of potential adoption in finding termination was in the child's best interests. In addition to finding the child was adoptable, the court also found the child was "thriving" in the placement with Paternal Grandparents. See *Bobby G. v. Ariz. Dep't. of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008) (juvenile court may rely on evidence child is adoptable and existing placement is meeting child's needs in best-interest determination). As the case manager testified, the child needed "permanency, a safe home, [and] consistent parenting," which Father had been unable to provide.

¶10 Given the evidence the child was adoptable, Paternal Grandparents were providing excellent care for the child and

