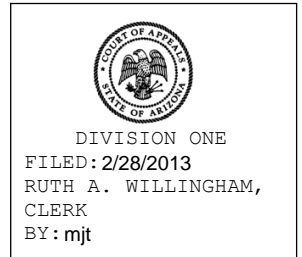


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

VIRGINIA B., ) 1 CA-JV 12-0171  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G), Ariz. R.P. Juv. Ct.;  
SECURITY, ) Rule 28, ARCAP)  
)  
Appellee. )  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD505680

The Honorable Kirby D. Kongable, Judge Pro Tempore

**AFFIRMED**

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Robert D. Rosanelli, Attorney at Law Phoenix  
by Robert D. Rosanelli  
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix  
by Eric Devany, Assistant Attorney General Mesa  
Attorneys for Appellee Arizona Department of Economic Security

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P O R T L E Y, Judge

¶1 Virginia B. ("Grandmother") appeals the revocation of her permanent guardianship of her grandchild, M.D. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 For reasons not in the record, Grandmother became the child's permanent guardian in 2006. She called the Arizona Department of Economic Security's ("ADES") hotline in April 2011 requesting assistance because she was unable to control the five-year-old's behavior. ADES offered family preservation services, but Grandmother repeatedly told the intake worker she wanted the case closed.

¶3 Grandmother called ADES one month later requesting that ADES take the child into custody because she "[did] not want to hurt [the child] but may [do so] if someone [did] not intervene." ADES removed the child, placed her in foster care and found her dependent as to her Grandmother.<sup>1</sup> ADES then moved to terminate the guardianship.

¶4 After the child was removed, Grandmother participated in ADES services, including a psychological and psychiatric evaluation, parenting aide classes, and supervised visits. The psychologist, however, reported that Grandmother suffered from

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<sup>1</sup>The child was found dependent as to her parents on July 25, 2011.

various cognitive disorders and the prognosis on her ability to effectively parent her granddaughter was poor. The parenting aide reported Grandmother struggled to understand the parenting information and made no progress within the program. Most importantly, ADES learned that the child had been abused by Grandmother's nephew, a registered pedophile, and she failed to report the abuse.

¶15 Following the contested hearing, the juvenile court made its findings of fact and conclusions of law, and terminated Grandmother's guardianship. We have jurisdiction over her appeal pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235, 12-120.21(A)(1), and -2101(B) (West 2013).

#### DISCUSSION

¶16 Grandmother contends there was insufficient evidence to support the finding that guardianship revocation was in the child's best interest.<sup>2</sup> We review the facts for an abuse of discretion and will affirm the revocation of a permanent guardianship so long as there is reasonable evidence to support it. See *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). Revocation of a permanent guardianship requires clear and convincing evidence that demonstrates a change of circumstances has occurred and

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<sup>2</sup> Grandmother does not dispute the court's finding that a change in circumstances occurred. Consequently, we do not address this issue on appeal.

that "revocation is in the child's best interests." A.R.S. § 8-873 (West 2013). Best interests can be proven by evidence that demonstrates "an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship." *Jennifer B.*, 189 Ariz. at 577, 944 P.2d at 72.

¶7 Here, there is sufficient evidence supporting the court's finding that revocation was in the child's best interest. Grandmother failed to protect her granddaughter from sexual abuse by a family member, failed to report the abuse and failed to seek counseling for the youngster. Moreover, the psychiatrist reported that Grandmother would probably be unable to provide the necessary emotional and medical care for the child. Consequently, the evidence supports the best interest finding because revocation would allow the child to be away from a family pedophile and get the necessary help to overcome the resulting trauma.<sup>3</sup>

¶8 Grandmother contends that the child would derive no affirmative benefit from revocation since she is still "uncontrollable" and has no more stability in her foster home than with Grandmother. We disagree. Although the child's

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<sup>3</sup> The case manager also reported that revocation would give the child the opportunity to be placed with an adoptive family that could provide her with a loving, stable home environment.

foster parents were unwilling to adopt her,<sup>4</sup> she is safe from harm and receiving treatment to cope with the abuse she suffered. Additionally, the case manager testified that the youngster is "much calmer," excelling in school with the help of her foster parents, and that two families are interested in adopting her. Consequently, the court did not err by revoking Grandmother's permanent guardianship.

**CONCLUSION**

¶19 Based on the foregoing reasons, we affirm.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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MARGARET H. DOWNIE, Presiding Judge

/s/

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PHILIP HALL, Judge

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<sup>4</sup> The foster parents had recently adopted a child and were then unwilling to agree to adopt another. Regardless, being free from unreported abuse by a pedophile and receiving services to cope with the resulting trauma is in the child's best interest.