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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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BRITNEE G., MICHAEL G., *Appellants*,

*v.*

DEPARTMENT OF CHILD SAFETY,<sup>1</sup> D.G., D.G., *Appellees*.

No. 1 CA-JV 15-0346  
FILED 5-17-2016

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Appeal from the Superior Court in Maricopa County  
No. JD28078  
The Honorable Connie Contes, Judge

**AFFIRMED**

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COUNSEL

Denise L. Carroll, Attorney at Law, Scottsdale  
By Denise L. Carroll  
*Counsel for Appellant Britnee G.*

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

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<sup>1</sup> Pursuant to S.B. 1001, Section 157, 51st Leg., 2nd Spec. Sess. (Ariz. 2014) (enacted), the Department of Child Safety (DCS) is substituted for the Arizona Department of Economic Security (ADES) in this matter. *See* ARCAP 27. For consistency, we refer to DCS in this decision even where, at the time, actions were taken by ADES.

Arizona Attorney General's Office, Mesa  
By Michael F. Valenzuela  
*Counsel for Appellee Department of Child Safety*

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**MEMORANDUM DECISION**

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Patricia A. Orozco and Judge Peter B. Swann joined.

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**T H O M P S O N**, Judge:

¶1 Britnee G. (mother) and Michael G. (father) appeal from the juvenile court's order terminating their parental rights as to D.G. and D.G. (D.A.G.) (collectively the children). For the following reasons, we affirm.

**FACTS<sup>2</sup> AND PROCEDURAL HISTORY**

¶2 Mother and father are the biological parents of D.G., born in September 2012, and D.A.G., born in January 2014. On the evening of March 10, 2014, the children were in father's care while mother went out for the evening. Father was playing on his computer when D.A.G. became fussy, started gasping for breath, and eventually became unresponsive. Father performed CPR and requested that grandfather, who resided at the house, call 911. By the time D.A.G. was transported to a nearby hospital, she was in critical condition, but was responsive and breathing normally.

¶3 After D.A.G. was stabilized, she was transferred to a children's hospital where doctors performed a CT scan, skeletal survey and MRI. The tests revealed bilateral skull fractures, multilayered subdural bleeding, and anterior and posterior rib fractures. While at the hospital, D.A.G. experienced intractable seizures and developed problems with sucking and feeding.

¶4 Father informed the medical staff that approximately two weeks earlier, he tripped while holding D.A.G. and fell to the ground on

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<sup>2</sup> We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002) (citation omitted).

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top of her, though she did not leave his arms. He stated that he was unsure whether D.A.G. hit her head during the fall. Although D.A.G. cried and became irritable after the fall, father did not seek immediate medical treatment.

¶5 Mother reported that she was not home when father fell on D.A.G, but she believed it occurred six weeks earlier. She stated that when she returned home, D.A.G. was crying but did not appear to be hurt. According to mother, she called D.A.G.'s pediatrician who directed her to observe D.A.G. for twenty-four hours, and if she appeared fine, to bring D.A.G. to the office later in the week at her regularly scheduled check-up. Mother stated that she took D.A.G. to the pediatrician for her check-up soon after the fall, and the doctor informed her that D.A.G. "was perfect".

¶6 The hospital staff subsequently notified DCS and the police department that D.A.G.'s injuries were suspicious of non-accidental trauma and were not consistent with father's explanation of a single fall. The MRI "strongly indicat[ed] repeated episodes of head injury," and the rib fractures were in different stages of healing. The posterior rib fractures were likely caused by posterior compression, "such as what might be seen in a grasp of the chest by hands." Additionally, the wide spread nature of the subdural bleeding indicated it was not caused solely by the skull fracture, but rather "a more global nature such as rotational acceleration/deceleration." Consequently, D.A.G. had "most likely . . . undergone repeated episodes of inflicted trauma in order to sustain these injuries."

¶7 During the ensuing police investigation, mother and father were unable to explain D.A.G.'s multiple injuries and continued to suggest that her injuries resulted from father's fall. Mother could also not explain the discrepancies between her statements to police regarding D.A.G.'s medical treatment, and the pediatrics office records. D.A.G.'s last recorded visit to the pediatrician's office occurred on February 6, 2014, several weeks prior to the date of the fall. The pediatrics office had no record of a call by mother following D.A.G's February 6, 2014 visit.

¶8 DCS took the children into temporary custody and filed a dependency petition based on mother and father's neglect or willful physical abuse of the children and their failure to protect the children from willful abuse.<sup>3</sup> The court found the children dependent as to both, placed

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<sup>3</sup> Mother and father denied the allegations, but submitted the issue of dependency to the juvenile court for determination.

D.A.G. into foster care, and placed D.G. with her paternal great-grandmother. Although the juvenile court ordered a case plan of severance and adoption for both parents, DCS began providing reunification services to Mother, including: parent aide; parenting classes; supervised visitation with D.G.; counseling, and a psychological evaluation. DCS also provided services to father, including: parent aide; supervised visitation with D.G.; and psychological evaluation.

¶9 Mother and father participated in parent aide and closed out successfully. However, mother continued a relationship with father throughout the dependency, and father refused to participate in a psychological evaluation. Dr. Mastikian, a licensed psychiatrist, preformed an evaluation of mother in October 2014. Dr. Mastikian diagnosed mother with posttraumatic stress disorder (PTSD) stemming from childhood sexual and physical abuse, dependent personality traits, and a long-standing history of anxiety and depression. Dr. Mastikian opined that the children were at risk of harm in mother's care and strongly recommended that mother receive a psychiatric evaluation and individual counseling.

¶10 DCS filed a motion to terminate the parental rights of mother and father on the grounds of neglect or willful abuse and failure to protect the children from willful abuse, and terminate father's parental rights on the additional ground six months' time in care. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(2) (Supp. 2014). DCS also alleged that termination was in the children's best interest. After a contested severance hearing, the juvenile court found that DCS had established the grounds for severance, and that termination was in the children's best interests. Accordingly, the juvenile court terminated mother and father's parental rights to the children.

¶11 Both mother and father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2014), and 12-2101(A)(1) (Supp. 2014).

## DISCUSSION

¶12 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance; the court must also determine that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). On appeal, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a [termination] order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't*

*of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We will not second-guess the court's findings because the judge was in the best position to determine the credibility of the witnesses and weigh the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

### **Grounds for Termination**

¶13 Mother and father argue that DCS failed to produce clear and convincing evidence that they neglected or willfully abused the children, or failed to protect the children from willful abuse, as required by A.R.S. § 8-533(B)(2). We disagree.

¶14 Under A.R.S. § 8-533(B)(2), the parent-child relationship can be severed when a "parent has neglected or willfully abused a child." "Abuse" is defined as "serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." *Id.* "[P]arents who abuse or neglect their children, or who permit another person to abuse or neglect their children, can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79 ¶ 14, 117 P.3d 795, 798 (App. 2005). When severance is based on abuse or neglect of another child, an adequate nexus must be established between the abuse or neglect of the other child and the risk of future abuse to a different child. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 283, ¶ 1, 257 P.3d 1162, 1163 (App. 2011).

¶15 At the severance hearing, Dr. Kathryn Coffman, a forensic pediatrician, and Dr. Roger Belvins, a nurse practitioner at the children's hospital, testified that an accidental fall typically causes simple linear skull fractures. In contrast, D.A.G. had two complex skull fractures, which require increased force and are highly concerning for abusive head injury. Drs. Coffman and Belvins also testified that D.A.G. had subdural bleeding of at least two different ages in multiple areas around her head, which indicated multiple instances of injury. Dr. Coffman explained that D.A.G.'s multifocal bleeds were not limited to the fracture sites, as she would expect after a single fall. Additionally, Drs. Belvins and Coffman opined that D.A.G.'s posterior rib fracture, which was at a different stage of healing from D.A.G.'s anterior rib fracture, could not be explained by the single fall as described by father. The juvenile court found that "parents do not have a consistent explanation for the cause or the child [D.A.G.'s] injuries that is consistent with medical findings." Although it remains undetermined who

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inflicted D.A.G.'s numerous injuries, the evidence clearly shows that D.A.G. was severely abused in mother and father's care at a time when D.G. was completely dependent on them as her primary caregivers. Consequently, the juvenile court did not err in finding that the statutory ground for termination had been met by clear and convincing evidence.

¶16 Mother and father contend that the juvenile court erred in rejecting the testimony of Dr. Janice Ophoven, a pediatric forensic pathologist. Dr. Ophoven opined that father's accidental fall likely caused D.A.G.'s multiple skull fractures, subdural bleeding, and rib fractures. Dr. Ophoven concluded that there was no evidence of unidentified abuse. Mother and father "essentially [ask] us to reweigh the evidence presented to the court and to replace its judgment with our own, something we will not do." *Xavier R. v. Joseph R.*, 230 Ariz. 96, 100, ¶ 12, 280 P.3d 640, 644 (App. 2012). Accordingly, we find no error.

¶17 We also reject mother's argument that DCS presented insufficient evidence that she knew or should have known that father was abusing D.A.G. Dr. Coffman testified that a child with D.A.G.'s injuries would have symptoms such as irritability, lethargy, difficulty feeding, vomiting, and excessive crying. He opined that mother and father's explanation that D.A.G. was asymptomatic from the date of the fall until hospitalization, was implausible. Yet D.A.G.'s medical records indicate that neither mother nor father sought medical treatment for D.A.G. immediately after father claimed to have fallen on her. Mother continued a relationship with father despite acknowledging to police detectives that he "gets extremely frustrated . . . and is not really observant" of the children. Even if mother did not cause D.A.G.'s injuries, reasonable evidence supports the juvenile court's finding that mother and father "knew or reasonably should have known that a person was abusing or neglecting" D.A.G. See A.R.S. § 8-533(B)(2). Moreover, mother and father's refusal to take any responsibility for D.A.G.'s injuries supports an inference that both mother and father would be unable or unwilling to protect D.G. from future abuse or neglect. *Id.* We conclude that the record sufficiently supports the family court's findings and order terminating the parent-child relationship between the children and mother and father.<sup>4</sup>

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<sup>4</sup> Because we find that the court did not err in terminating mother and father's parental rights under A.R.S. § 8-533(B)(2), we do not address father's argument that DCS failed to provide sufficient reunification services under A.R.S. § 8-533(B)(8). See *Jesus M.*, 203 Ariz. at

### Best Interest

¶18 Finally, mother and father argue that the trial court erred in finding that severance was in the children’s best interests. To establish that severance is in a child’s best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the continuation of the relationship. *James S. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.*

¶19 Reasonable evidence supports the finding that the children would be harmed by the continuation of the parental relationship and would benefit by severance and adoption. The DCS case manager testified that mother and father’s actions placed the children at risk of harm, and that the reason for removal could not be remedied. The DCS case manager also testified that the children were adoptable and that DCS had a current case plan of adoption for each of them. D.G and D.A.G.’s placements were meeting all of the children’s needs and affording them the opportunity to be raised in a permanent safe environment. Notwithstanding mother and father’s acknowledged bond with the children, the children’s need for stability and security outweighed mother and father’s interests in trying to parent them. *See Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (stating that in termination proceedings, the juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.”). Accordingly, we find no error in the juvenile court’s finding that severance was in the children’s best interests.

### CONCLUSION

¶20 Based upon the foregoing, we affirm the juvenile court’s termination order.



Ruth A. Willingham · Clerk of the Court

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280, ¶ 3, 53 P.3d at 205 (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered [termination], we need not address claims pertaining to the other grounds.”).