

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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MARLENE S., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, A.S., A.S., Z.H., N.H., *Appellees*.

No. 1 CA-JV 17-0145  
FILED 8-31-2017

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Appeal from the Superior Court in Yavapai County  
No. P1300JD201500102  
The Honorable Anna C. Young, Judge

**AFFIRMED**

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COUNSEL

Law Office of Florence M. Bruemmer PC, Phoenix  
By Florence M. Bruemmer  
*Counsel for Appellant*

Arizona Attorney General's Office, Mesa  
By Ashlee N. Hoffmann  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge Patricia A. Orozco<sup>1</sup> joined.

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**J O N E S**, Judge:

¶1 Marlene S. (Mother) appeals the juvenile court’s order terminating her parental rights to A.S.-R., A.S.-D., Z.H., and N.H. (collectively, the Children), arguing the Department of Child Safety (DCS) failed to prove by a preponderance of the evidence that severance was in the Children’s best interests. For the following reasons, we affirm.

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

¶2 In December 2015, the Children, then ages ten, six, four, and three, were removed from Mother’s care after DCS received numerous reports that Mother left the Children with Nicholas H.,<sup>3</sup> whom she knew to be mentally unstable and actively suicidal. DCS also reported concerns regarding the Children’s nutrition, the condition of the home, and the parents’ domestic violence and substance abuse. Mother was immediately referred for substance abuse testing and treatment, mental health treatment, parenting classes, and couples counseling.

¶3 DCS filed a petition alleging the Children were dependent as to Mother on the grounds of neglect, substance abuse, domestic violence, and unresolved mental health issues. Mother denied the allegations of the

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<sup>1</sup> The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Sections 3 and 20, of the Arizona Constitution.

<sup>2</sup> “We view the facts in the light most favorable to upholding the juvenile court’s order terminating parental rights.” *Marianne N. v. DCS*, 240 Ariz. 470, 471 n.1, ¶ 1 (App. 2016) (citing *Ariz. Dep’t of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010)).

<sup>3</sup> Nicholas is the biological father to Z.H. and N.H. His parental rights were terminated, along with those of A.S.-R.’s and A.S.-D.’s fathers, in March 2017. None of the fathers are a party to this appeal.

MARLENE S. v. DCS, et al.  
Decision of the Court

petition but submitted the matter on the record to the juvenile court, which adjudicated the Children dependent.

¶4 A few weeks later, Mother burned the family's home to the ground. She was arrested at the scene, immediately incarcerated, and thereafter largely unable to participate in reunification services. Mother ultimately pleaded guilty to arson of an occupied structure, attempted arson of an occupied structure, criminal damage, and endangerment and, in July 2016, was sentenced to 2.25 years' imprisonment. While incarcerated, Mother was encouraged to send cards and letters to the Children. Mother took advantage of the opportunity, but her communications were not always appropriate. At the Children's therapists' recommendations, Mother did not have any in-person contact with the Children and only spoke on the telephone with A.S.-R. once.

¶5 In November 2016, over Mother's objection, the juvenile court changed the case plan to severance and adoption. DCS immediately moved to terminate Mother's parental rights. At Mother's request, a "paper trial," consisting largely of written submissions, was held in February 2017.

¶6 DCS presented evidence that, even disregarding Mother's lengthy incarceration, legitimate concerns remained regarding Mother's ability to provide the Children a safe, stable home and her as-yet unaddressed mental health and substance abuse issues. Additionally, the DCS caseworker testified the Children's limited contact with Mother and the residual impact of her burning down the family's home had not improved Mother's already "strained relationship" with the Children. Moreover, assuming Mother were to be released at the earliest possible time – September 2017 – she would have to participate in services for at least several months to establish her sobriety and ability to parent and manage her mental health. By the time Mother was released and completed services, the Children would have been out of the home for at least two years – without any guarantee that Mother would be successful in overcoming the barriers to reunification.

¶7 At the time of the termination hearing, the Children were not placed together; however, the placements were meeting the Children's regular and special needs. Although only A.S.-R. was in an adoptive placement, the DCS caseworker testified the Children were adoptable and several permanent placement options, including both relative and non-relative, were being explored. The caseworker thus believed termination would benefit the Children by providing them the opportunity for permanence and stability after having been in out-of-home care for almost

MARLENE S. v. DCS, et al.  
Decision of the Court

fifteen months. She also opined that the Children would be harmed if Mother's parental rights were not terminated given the risk of harm presented by further exposure to "substance use, the results of unstable mental health and unsanitary living conditions."

¶8 Within a letter to the juvenile court, Mother acknowledged not having yet demonstrated her ability to meet the Children's needs, but reiterated her love for them. Mother asked the court to give her additional time to complete services, which, if successful, she asserted would allow the Children to be returned, together, to her care.

¶9 After taking the matter under advisement, the juvenile court entered an order finding DCS proved by clear and convincing evidence termination of Mother's parental rights was warranted because: (1) Mother neglected the Children, *see* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(2)<sup>4</sup>; (2) Mother had been convicted of a felony causing her to be incarcerated for a length of time that would deprive the Children of a normal home for a period of years, *see* A.R.S. § 8-533(B)(4); and (3) Mother substantially neglected or willfully refused to remedy the circumstances causing the Children to be in an out-of-home placement for longer than nine months, *see* A.R.S. § 8-533(B)(8)(a). The court also found severance was in the Children's best interests and entered an order terminating Mother's parental rights. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

## DISCUSSION

¶10 To terminate parental rights, the juvenile court must find by a preponderance of the evidence that severance is in the children's best interests. A.R.S. § 8-533(B); Ariz. R.P. Juv. Ct. 66(C); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005).<sup>5</sup> Termination is in a child's best interests if the child "would derive an affirmative benefit from termination or incur a

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<sup>4</sup> Absent material changes from the relevant date, we cite a statute's current version.

<sup>5</sup> DCS must also prove at least one of the statutory grounds for severance by clear and convincing evidence, A.R.S. § 8-533(B); Ariz. R.P. Juv. Ct. 66(C); *Kent K.*, 210 Ariz. at 288, ¶ 41, but Mother does not argue insufficient evidence supports the juvenile court's determination that DCS proved the statutory grounds for severance, and that finding is affirmed. *See supra* ¶ 9.

MARLENE S. v. DCS, et al.  
Decision of the Court

detriment by continuing in the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6 (App. 2004) (citing *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 557 (App. 1997), and then *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990)). We review the propriety of a best interests finding for an abuse of discretion, see *Orezza v. Ramirez*, 19 Ariz. App. 405, 409 (1973) (citation omitted), and will affirm the best interests finding so long as it is supported by reasonable evidence, see *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2 (App. 1998) (citations omitted).

¶11 The juvenile court found termination was in the Children’s best interests because it would free them for adoption into a permanent, safe, stable home. Mother argues this finding is erroneous given evidence that: (1) specific, adoptive placements had not been identified for all the Children; (2) severance foreclosed the opportunity for the Children to be placed together; (3) A.S.-R. expressed a desire to return to Mother’s care; (4) Mother shares a bond with the Children; and (5) Mother subjectively believes she will be able to establish her ability to parent upon release from prison.

¶12 As an initial matter, we note that in addressing best interests, no one factor is dispositive; rather, in each case, “the juvenile court is required to evaluate the totality of circumstances and determine whether severance is in the best interests of the children.” *Dominique M. v. DCS*, 240 Ariz. 96, 98-99, ¶ 12 (App. 2016) (“The existence and effect of a bonded relationship between a biological parent and a child, although a factor to consider, is not dispositive in addressing best interests.”) (citing *Bennigno R. v. Ariz. Dep’t of Econ. Sec.*, 233 Ariz. 345, 351, ¶ 30 (App. 2013)); see also *Frank R. v. Mother Goose Adoptions*, 239 Ariz. 184, 202, ¶¶ 60-61 (App. 2016) (affirming the juvenile court’s finding that severance was in the child’s best interests even after considering the parent’s “genuine and heartfelt,” “natural desire to raise his own child” and approving “[c]hildhood stability [a]s an important but not a controlling factor in determining the best interest of the minor”); *Aranda v. Cardenas*, 215 Ariz. 210, 219, ¶ 34 (App. 2007) (noting self-serving testimony is not conclusive, but rather, becomes “a matter of credibility for the fact-finder to determine”) (citation omitted); *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (identifying as factors for the court’s consideration in determining best interests whether “the child is adoptable,” whether “a current adoptive plan exists,” or whether “an existing placement is meeting the needs of the child”) (citations omitted).

MARLENE S. v. DCS, et al.  
Decision of the Court

¶13 Moreover, we do not reweigh evidence on appeal; as the trier of fact, the juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Oscar O.*, 209 Ariz. at 334, ¶ 4 (citing *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002)). Although Mother presented the same five arguments she now presents on appeal at the termination hearing, the juvenile court ultimately, after careful consideration of each, rejected them in favor of the Children’s interest in a permanent, stable home – precisely the type of home Mother has thus far been unable or unwilling to provide. On this record, we find no abuse of discretion. See *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 12 (2016) (“When a current placement meets the child’s needs and the child’s prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child’s best interests.”) (citing *Mary Lou C.*, 207 Ariz. at 50-51, ¶¶ 19-21, and *Audra T.*, 194 Ariz. at 378, ¶ 6).

CONCLUSION

¶14 The juvenile court’s order terminating Mother’s parental rights to the Children is affirmed.



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