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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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PHILLIP D., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, A.D., O.D., *Appellees*.

No. 1 CA-JV 17-0578  
FILED 8-23-2018

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Appeal from the Superior Court in Maricopa County  
No. JD34413  
The Honorable M. Scott McCoy, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Christopher Stavris  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Dawn Rachelle Williams  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Kenton D. Jones and Judge Jon W. Thompson joined.

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**C A T T A N I**, Judge:

¶1 Phillip D. (“Father”) appeals the superior court’s order severing his parental rights to his children A.D. and O.D. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Father and Amber S. (“Mother”)<sup>1</sup> are the biological parents of A.D., born in October 2014, O.D., born in October 2015, and M.D., born in December 2016.

¶3 The Department of Child Safety (“DCS”) first became involved with the parents when O.D. tested positive for marijuana at birth. DCS offered family preservation team services, including drug-treatment referrals and a daycare subsidy, which the parents successfully completed in October 2016.

¶4 DCS became involved again when M.D. tested positive for marijuana at birth. Concerned about their ability to properly care for M.D. (their third child), the parents told DCS that M.D. would live with her paternal aunt. But the parents subsequently changed their minds and brought M.D. home with them. DCS conducted a home study of the parents’ apartment, and, after finding the apartment to be clean and an appropriate place to care for the children, offered the parents optional services, which they declined.

¶5 After O.D. and M.D.’s births, Mother suffered from post-partum depression. She became more antisocial and reclusive, so much so that she would not help Father care for the children or maintain the apartment. At one point, soon after M.D.’s birth, Mother showed Father a video of a mom who had killed her three children, and then suggested she might do the same thing to their children. Around the same time, Father found out that Mother had been putting a heavy comforter into the play

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<sup>1</sup> Mother did not contest the severance and is not a party to this appeal.

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pen with M.D. Father also found a cut on M.D.'s lip, and Mother admitted that she caused the cut by forcing a bottle into M.D.'s mouth. Although Father would often come home to check on Mother and the children during his lunch breaks, he did not contact DCS or otherwise take protective action in response to these circumstances.

¶6 Mother's abuse of M.D. escalated, and on June 9, 2017, Father returned home from work to find that Mother had left the heavy comforter on top of M.D. for several hours, suffocating and killing her. Father immediately attempted CPR on M.D. and told Mother to start cleaning the apartment. He then cleaned the apartment for several minutes before going to his neighbor's house to call the police. At the hospital, doctors discovered that M.D. had bruises around her mouth and a severe diaper rash. Mother was arrested and charged with homicide.

¶7 DCS removed A.D. and O.D. from Father's care and filed a dependency petition. DCS noted that A.D. and O.D. appeared dirty and unkempt, the apartment was filthy, and there were no diapers or food for the children.

¶8 DCS offered Father reunification services, including substance-abuse testing and treatment, grief counseling, and a parent aide with visitation. Although Father successfully participated in all of the services offered, DCS petitioned for severance on the ground of abuse and neglect under Arizona Revised Statutes ("A.R.S.") § 8-533(B)(2). After a two-day dependency and severance hearing, the court found A.D. and O.D. dependent and granted DCS's petition to sever Father's parental rights. Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

## DISCUSSION

¶9 Father challenges the sufficiency of the evidence supporting (1) the superior court's finding that termination of his parental rights was warranted under the abuse or neglect ground, and (2) the court's finding that severance was in the children's best interests.

¶10 The superior court may terminate a parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, viewing the evidence—and reasonable inferences to be drawn from it—in the light most favorable to affirming the superior court. *Mary*

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*Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009).

**I. Statutory Ground for Severance: Abuse or Neglect.**

¶11 Under A.R.S. § 8-533(B)(2), the superior court may terminate a parent's rights if "the parent has neglected or wilfully abused a child," which includes "situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." If a parent abuses or neglects a child, the court may terminate that parent's rights to other children on this basis, even if there is no evidence that the other children were abused. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14 (App. 2005). To do so, however, the court must find that a "constitutional nexus" exists between the established incidents of abuse and the risk of abuse to the other children in the future. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 16 (App. 2011).

¶12 Father argues that DCS provided insufficient evidence to support the court's finding of a nexus between abuse of M.D. and the risk of abuse or neglect of A.D. and O.D. We disagree.

¶13 First, DCS provided significant evidence showing that Father was aware that Mother was abusing and neglecting M.D. For example, Father was aware that Mother struggled with post-partum depression and that she became so antisocial that she would not leave the apartment or help take care of the children. Father also admitted that Mother had shown him the video about a mother who killed her three children and suggested the same thing was going to happen to their family. Moreover, Father saw signs that Mother was actually abusing M.D. – Mother put a heavy blanket in M.D.'s play pen and forced a bottle into M.D.'s mouth, cutting her lip. And, notwithstanding these clear warning signs of abuse, Father did not take protective action. See A.R.S. §§ 8-201(2), -533(B)(2).

¶14 DCS also provided evidence that Father himself neglected the children. When DCS arrived at the apartment to remove A.D. and O.D., the children appeared bruised and dirty, there were no diapers or food for the children, and, despite the apartment being clean when M.D. was born, it had become filthy. Moreover, although Father testified that he took care of M.D.'s needs, M.D. had a severe diaper rash when she died. Father points to his successful completion of services and his bond with the children to show that he could be an effective parent, but we defer to the superior court's credibility assessments and weighing of the evidence. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12 (App. 2002).

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¶15 Additionally, Father failed to properly prioritize the children's needs. Despite the significant signs that Mother was abusing and neglecting the children, Father did not call DCS or any other authority because he did not want DCS involved again and "did not want [Mother] to get in trouble." And the fact that Father was unable to effectively care for the children before M.D. died increased the likelihood that A.D. and O.D. would be at risk in his care.

¶16 Based on the foregoing, sufficient evidence supported the superior court's finding of a nexus between Father's past abuse of M.D. and the serious risk of abuse or neglect of A.D. and O.D. Accordingly, the court did not err by finding grounds for severance under A.R.S. § 8-533(B)(2).

**II. Best Interests.**

¶17 Father next contends that the severance was not in the children's best interests because of his strong bond with them and his successful participation in reunification services. Termination is in a child's best interests if the child would be harmed by the continuation of the parent-child relationship or benefit from severance. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Evidence of a current adoptive plan or that the child is adoptable supports a best interests finding, as does evidence that an existing placement is meeting the child's needs. *Id.*; *Jesus M.*, 203 Ariz. at 282, ¶ 14.

¶18 Here, the DCS case manager testified that the current placement was meeting both A.D. and O.D.'s social, educational, medical, psychological, and emotional needs, and indicated that the placement was potentially an adoptive home. The case manager further testified that, even if their current placement is not able to adopt them, A.D. and O.D. are adoptable. The evidence thus supports the court's finding that severance would afford the children a stable and safe home, as well as the possibility of being adopted. Accordingly, the court did not err by finding that severance was in A.D. and O.D.'s best interests.

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**CONCLUSION**

¶19 We affirm the superior court's order terminating Father's parental rights to A.D. and O.D.



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