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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

v.

DEPARTMENT OF CHILD SAFETY,  
B.Z-V., I.Z-V., A.Z-V., O.Z-V.,  
*Appellees.*

No. 1 CA-JV 19-0276  
FILED 3-19-2020

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Appeal from the Superior Court in Maricopa County  
No. JD35081  
The Honorable Jo Lynn Gentry, Judge

**AFFIRMED**

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COUNSEL

Maricopa County Legal Defender's Office, Phoenix  
By Jamie R. Heller  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Autumn Spritzer  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Jennifer M. Perkins joined.

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**M O R S E**, Judge:

¶1 Manuel V. ("Father") appeals the juvenile court's order terminating his parental rights to his four children. For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Father and his wife ("Mother")<sup>1</sup> have four children, B.Z-V., I.Z-V., A.Z-V., and O.Z-V. ("Children"). Father has a history of domestic violence, often becoming physical with Mother when he suspects infidelity. One night, with all four Children sleeping in their bed, Father choked Mother after hearing rumors that she was unfaithful. B.Z-V. woke up and ran to alert the neighbors that her Father "was killing [her] mom." Father was found with two hands around Mother's neck, and would not release his grip until forcefully restrained. Father pled guilty to assault and disorderly conduct, but returned to live with Mother upon his release.

¶3 The Department of Child Safety ("DCS") filed a dependency petition to remove the Children from the home based on domestic violence. Father was provided with reunification services, including counseling and a psychological evaluation. Both Father and Mother participated in reunification services and, for a time, it appeared that both parents had made progress. Father's psychological evaluation noted that he had anger issues, but that his violent tendencies could possibly be controlled. The evaluation directed Father to "take responsibility for his actions," warning he could lose the Children if he did not address his domestic violence issues.

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<sup>1</sup> The juvenile court terminated Mother's parental rights, and she is not a party to this appeal.

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¶4 The domestic violence continued. Father again choked Mother after she relapsed on methamphetamine, although he initially denied it.

¶5 DCS petitioned to terminate Father's parental rights based on the fifteen-month time-in-placement ground. A.R.S. § 8-533(B)(8)(c). After the petition was filed, Mother stated that aggressive arguments were a regular occurrence in their home, while Father repeatedly denied that the family had any issues. On at least one occasion, Father physically discouraged Mother from speaking privately to a DCS case manager, putting "a very . . . strong hold on [Mother's] shoulder, like he was angry." DCS tried to help Mother leave her relationship with Father, but Father and his family had apparently told Mother that ending the relationship would create hardship for her because of her immigration status.

¶6 The juvenile court held a two-day termination trial. During trial, Father minimized his actions. When asked to describe why the Children had been taken away, Father simply said he "had an argument with [his] wife[.]" When asked how his assault on Mother might effect B.Z-V., who had witnessed the attack, Father said that, since it was "just the one time[.]" he believed it would have no impact. Evidence indicated that Mother's drug use and suspected infidelity were regular triggers for Father's violent tendencies. During the second day of the trial Father, for the first time, said that he planned to separate from Mother, which he hoped would help him address his violent tendencies.

¶7 The juvenile court found that DCS had proven the statutory ground for termination by clear and convincing evidence. More specifically, the court held that "[d]espite father's successful participation in couple's counseling, domestic violence counseling, and parenting classes, father and mother had another document[ed] incident of domestic violence one year after the incident that brought the children into care - and after completing the services designed to address the issue." Given Father's continued domestic violence, the juvenile court found that the circumstances leading to the out-of-home care had not been remedied. Moreover, the court found Father's statement that he would separate from Mother lacked credibility and therefore the circumstances were likely to continue. Based on this evidence, the court held that there was a substantial likelihood that Father would not be able to exercise proper and effective parental care and control in the near future and that termination of Father's parental rights was in the Children's best interests. Accordingly, the court terminated Father's parental rights.

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¶8 Father timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A).

**DISCUSSION**

**I. Reasonable Evidence Supports the Statutory Ground for Termination.**

¶9 To terminate a parent-child relationship, a court must find at least one statutory ground for termination by clear and convincing evidence, and also find that termination is in the best interests of the child by a preponderance of the evidence. *Aleise H. v. Dep't of Child Safety*, 245 Ariz. 569, 572, ¶ 7 (App. 2018). We will not reverse the juvenile court's termination order "unless no reasonable evidence supports its factual findings." *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 287, ¶ 16 (App. 2016). The juvenile court sits as the trier of fact, and this Court views the evidence and reasonable inferences drawn from it in the light most favorable to sustaining the juvenile court's decision. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009). "The appellate court's role is not to weigh the evidence." *State v. Fischer*, 242 Ariz. 44, 52, ¶ 28 (2017).

¶10 To prove the allegations for the fifteen months' time-in-care ground, DCS had to show that it "made a diligent effort to provide appropriate reunification services" and that:

The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to [A.R.S.] § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

A.R.S. § 8-533(B)(8)(c).

¶11 Father's only argument regarding the statutory ground for termination is that the juvenile court erred in determining DCS had shown a substantial likelihood that Father would not be able to parent effectively

in the near future.<sup>2</sup> Reasonable evidence exists to support the juvenile court's findings, and therefore we reject Father's argument.

¶12 The termination of Father's parental rights was prompted by Father's repeated problems controlling his violent tendencies. Despite actively participating in counseling services, Father continued to minimize his conduct and never acknowledged the severity of his actions. Father's psychological evaluation showed he could address his violent behavior but must first accept responsibility for his actions. This never occurred. Indeed, Father attacked Mother even after he attended counseling services to address his violent behavior. We find that reasonable evidence supports the ground for termination.

## II. Reasonable Evidence Supports that Termination of Parental Rights was in the Best Interests of the Children.

¶13 Terminating a parent-child relationship is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016). Relevant factors in this determination include whether: (1) the current placement is meeting the child's needs, (2) an adoption plan is in place, and (3) the child is adoptable. *Id.* at 3-4, ¶ 12. Courts "must consider the totality of the circumstances existing at the time of the severance determination, including the child's adoptability and the parent's rehabilitation." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 148, ¶ 1 (2018). "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." *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 12 (App. 2016).

¶14 Moreover, "[i]n a best interests inquiry, . . . we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005); *see also Demetrius L.*, 239 Ariz. at 4, ¶ 15 (2016) ("In most cases,

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<sup>2</sup> Given that Father's brief does not address any other aspect of A.R.S. § 8-533(B)(8)(c), we find that any arguments based on the length of the Children's placement, DCS's effort to provide reunification services, and failure to remedy the circumstances have been waived. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 578, ¶ 6 (App. 2017) ("[W]e adhere to the policy that it is generally not our role to *sua sponte* address issues not raised by the appellant.").

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the presence of a statutory ground will have a negative effect on the children[,] which supports a best-interests finding.") (citation omitted). Once a juvenile court finds that a parent is unfit, the focus shifts to the child's interests. *Kent K.*, 210 Ariz. at 285, ¶ 31. Thus, in considering best interests, the court must balance the unfit parent's "diluted" interest "against the independent and often adverse interests of the child in a safe and stable home life." *Id.* at 286, ¶ 35. Of foremost concern in that regard is "protect[ing] a child's interest in stability and security." *Id.* at ¶ 34 (citing *Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 101 (1994)).

¶15 Father essentially argues that the juvenile court's best interests finding was in error because it did not properly consider evidence favorable to him. But, again, "[t]he appellate court's role is not to weigh the evidence." *Fischer*, 242 Ariz. at 52, ¶ 28. The juvenile court found that termination of Father's rights was in the Children's best interests because the Children had been in care for over fifteen months and Father had not remedied the concerns about his violent tendencies. The court further found termination was in the Children's best interests because failure to do so would leave them in care for an indeterminate period, basing its decision on the fact that Father was unlikely to be able to safely parent the Children any time in the near future. The juvenile court's ruling was supported by reasonable evidence.

CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental relationship with B.Z-V., I.Z-V., A.Z-V., and O.Z-V.



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