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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

v.

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

No. 1 CA-JV 21-0185  
FILED 12-23-2021

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Appeal from the Superior Court in Maricopa County  
No. JD37212  
The Honorable Robert Ian Brooks, Judge

**AFFIRMED**

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COUNSEL

Law Office of H. Clark Jones, LLC, Mesa  
By H. Clark Jones  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Jennifer R. Blum  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge David B. Gass joined.

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

¶1 Shelby W. ("Mother") challenges the juvenile court's termination of her parental rights to her child D.A. We affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother has three children: W.J. born 2015; Z.A. born 2018; and D.A. born 2020. Zayne A. ("Boyfriend") is the biological father of D.A., but not W.J. or Z.A. Mother claims she ended her relationship with Boyfriend about five months before D.A. was born.

¶3 In February 2019, the Department of Child Safety ("DCS") received a report alleging W.J. had dark green bruises on his shoulder, arm, and buttock. The next month, DCS investigated another report alleging W.J. had a large bruise on his buttock and Z.A. had bruises on her chest, hips, stomach, and left leg. Neither Mother nor Boyfriend provided a plausible explanation for the children's injuries, attributing Z.A.'s bruises to shots received a few days prior. A medical examination revealed Z.A. had multiple rib and leg fractures and a fractured arm. DCS removed the children from Mother's care, placed them with maternal grandparents ("Grandparents"), and filed a petition to terminate Mother's parental rights.

¶4 In July 2019, the juvenile court terminated Mother's parental rights to W.J. and Z.A., concluding "Mother either perpetrated the abuse o[r] failed to protect the children from abuse," and she "continue[d] not to recognize the dangers" to her children because she remained in a relationship with Boyfriend and requested the court allow him to have contact with the children. The court noted that (i) Mother admitted to leaving Z.A. alone with Boyfriend, (ii) W.J. disclosed "[Boyfriend] hurt baby," (iii) Mother blamed daycare personnel for the children's injuries despite a police investigation ruling out that possibility, and (iv) the children's injuries reflected multiple instances of abuse. Following termination, Grandparents adopted W.J. and Z.A.

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¶5 In 2020, Mother gave birth to D.A. Within weeks, DCS filed a dependency petition, which the juvenile court granted. Soon after, DCS moved to terminate Mother's and Boyfriend's parental rights.<sup>1</sup> During the dependency, DCS offered, and Mother participated in, services to evaluate her mental health and parenting capacities to determine if she could safely care for D.A. Dr. Roger Martig, the psychologist who evaluated Mother, concluded Mother exhibits "a number of depressed features," "tends to lack insight," denies "her own faults, and . . . may tend to be in a confusional state at times." Moreover, Dr. Martig warned "we also need to be cautious regarding [Mother] having direct supervision of her youngest child until we are sure she has the capacity to think well, her rational thinking skills are eminent and also her insight has improved dramatically."

¶6 The juvenile court held a four-day termination hearing in March 2021 and heard testimony from several witnesses, including Mother, Grandmother, the DCS case manager, and Dr. Martig. Mother testified she did not believe Boyfriend abused W.J. and Z.A. and continued to blame the children's daycare for the older children's injuries. Mother persisted even when challenged with contrary evidence, stating "[t]he daycare has something to do with [the abuse]." Additionally, Mother denied observing extensive bruising to the older children's bodies and testified she did not suspect any child abuse before DCS's investigation. The DCS case manager testified that because Mother never discovered and did not have a reasonable explanation for the older children's injuries, the risk of harm to D.A. is "still very high, and the threat is still imminent."

¶7 Following the hearing, the court terminated Mother's parental rights on grounds of abuse, neglect, and prior termination of parental rights. *See* A.R.S. § 8-533(B)(2), (10). The court found termination was in D.A.'s best interests, concluding Mother's testimony and psychological evaluation show she is unable "to use appropriate critical thinking and insight to identify who will be safe around D.A." The court also found Boyfriend "intentionally and willfully abused the older children" and "Mother's insight into the abuse suffered by her older children remains minimal," placing D.A. "at ongoing risk in her care."

¶8 Mother timely appealed. We have jurisdiction under A.R.S. §§ 8-235, 12-120.21(A)(1), and -2101(A)(1).

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<sup>1</sup> Boyfriend did not contest termination, and the court terminated his rights to D.A.

## DISCUSSION

¶9 A parent's right to custody and control of her child is fundamental, but not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶¶ 11-12 (2000). We review the juvenile court's termination of parental rights for an abuse of discretion. *Mary Lou C. v. Ariz. Dep't. of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, we accept the court's findings of fact unless no reasonable evidence supports them, and will affirm a termination "order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002); *see also Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 97, ¶ 6 (App. 2006) ("On appeal, we do not reweigh evidence and will affirm the juvenile court's factual findings if supported by reasonable evidence.").

### I. Termination of the Parent-Child Relationship.

¶10 The juvenile court may terminate parental rights when "the parent has neglected or wilfully abused a child." A.R.S. § 8-533(b)(2). Abuse includes "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.* Termination under A.R.S. § 8-533(B)(10) is justified if "the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause." Thus, when a parent has neglected or abused children, a court may terminate the parent's rights to other unharmed children, if it finds, by clear and convincing evidence, that the other children are at risk of harm. *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224, 227-230, ¶¶ 13, 17, 27 (2020).

¶11 Mother challenges the statutory grounds for termination. Specifically, she argues reasonable evidence does not support the court's finding D.A. was at risk of harm or she was unable to discharge parental responsibilities because those who supervised Mother with D.A. did not observe concerning or unsafe behaviors, Mother's parenting capacities improved during dependency, and she had plans to ensure D.A.'s safety.

¶12 Mother's argument, however, ignores her inability to come to terms with her older children's abuse and who caused that abuse. The juvenile court found "[b]ased [on] the mechanism of injury, nature of injury, explanations available for the injuries, and timing . . . the abuse occurred while in the care of Mother and [Boyfriend]." Mother testified she did not

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consider Boyfriend a possible source of the children's injuries and continued to blame the children's daycare despite a police investigation eliminating that possibility. *Cf. Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 51, ¶ 16 (App. 2016) (noting a finding of dependency is appropriate when parents deny responsibility for past abuse). Dr. Martig's psychological evaluation advised caution "regarding [Mother] having direct supervision of [D.A.] until . . . her insight has improved dramatically." Yet, Mother's plan to keep D.A. safe was not realistic, only explaining she would isolate him from other people and "keep[] him in [her] eyes 24/7." And even though Mother testified she would limit D.A.'s access to people who might cause him harm, she stated Boyfriend should be allowed to maintain "some type of relationship" with D.A. Accordingly, reasonable evidence supports the juvenile court's findings that D.A. was at risk of harm and Mother was unable to discharge parental responsibilities. *See Mary Lou C.*, 207 Ariz. at 47, ¶ 8 (noting we "will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling"). We conclude the juvenile court did not err.

**II. Best-Interests Finding.**

¶13 Mother argues reasonable evidence does not support the court's best-interests finding because she improved her parenting capacities during dependency, her DCS-assigned parent aide testified she believed Mother could safely parent, and Mother has a "tremendous bond" with D.A.

¶14 The juvenile court must find "by a preponderance of the evidence that severance is in the child's best interests." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149-50, ¶ 8 (2018). Terminating a parent-child relationship is in the child's best interests when the child will be harmed if the relationship continues or will benefit from termination. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016). In determining the child's best interests, "courts must consider the totality of the circumstances existing at the time of the severance determination," *Alma S.*, 245 Ariz. at 148, ¶ 1, including whether the current placement is meeting the child's needs, an adoption plan is in place, and the child is adoptable, *Demetrius L.*, 239 Ariz. at 3-4, ¶ 12. Although a factor to consider, "[t]he existence and effect of a bonded relationship between a biological parent and a child . . . is not dispositive in addressing best interests." *Dominique M.*, 240 Ariz. at 98, ¶ 12.

¶15 Here, reasonable evidence supports the court's best-interests finding. The court found termination would benefit D.A. because Mother "is unable to use appropriate critical thinking skills and judgment to keep

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[D.A.] safe on her own." The court also found D.A.'s current placement "will be able to adopt him, provide him with stability and permanency, and keep him safe from abuse in the future." See *Demetrius L.*, 239 Ariz. at 4, ¶ 12 ("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 interest."). Finally, the court found "[b]ecause [D.A.] is placed with family he will be able to develop and maintain his relationship with extended family and his older siblings." Because the court's best-interests finding is supported by reasonable evidence, it did not err in finding termination was in D.A.'s best interests.

**CONCLUSION**

¶16 We affirm.



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