

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE  
 CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
 See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
 Ariz. R. Crim. P. 31.24



DIVISION ONE  
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 BY: GH

IN THE COURT OF APPEALS  
 STATE OF ARIZONA  
 DIVISION ONE

HOLLIE OWSLEY, Guardian Ad Litem )	No. 1 CA-SA 10-0114
for Angel S., )	
)	DEPARTMENT E
Petitioner, )	
)	Maricopa County
v. )	Superior Court
)	No. JD508395
THE HONORABLE MARK ACETO, Judge )	
of the SUPERIOR COURT OF THE )	
STATE OF ARIZONA, in and for the )	
County of MARICOPA, )	
)	<b>DECISION ORDER</b>
Respondent Judge, )	
)	
ARIZONA DEPARTMENT OF ECONOMIC )	
SECURITY and ANGEL S., )	
)	
Real Parties in Interest. )	
_____ )	

The court, Presiding Judge Diane M. Johnsen and Judges Patrick Irvine and Lawrence F. Winthrop, has received the Guardian ad Litem's Petition for Special Action, the Response of the Arizona Department of Economic Security ("ADES") and the Joinder by Real Party Erika S. in ADES's Response. Although the Guardian ad Litem was permitted to file a reply memorandum, she did not do so.

On May 19, 2010, the superior court approved a case plan of severance and adoption with respect to the minor child and her mother, Erika S. The court also granted ADES's motion for change of physical custody of the child, a Mexican national, to the Mexican Consulate effective on May 21, 2010. The superior court was advised that after performing a home study and background check, Mexican authorities had concluded the child should be placed in the custody of the maternal Grandmother, whom they had approved for such placement.<sup>1</sup> Then, presented with evidence that the child had fallen ill, the court on May 21 ordered the child not be released to the Mexican Consulate without medical authorization or court order. At the same time, the court denied a request by the Guardian ad Litem to stay its May 19 transfer order.

The Guardian ad Litem filed a petition for special action in this court on May 21, 2010, and moved for a stay of proceedings in the superior court. On May 24, we granted that stay pending further order of this court.

As ADES recognizes, given the nature of the superior court's transfer order, the Guardian ad Litem has no "equally

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<sup>1</sup> The court also was advised that the mother, Erika S., was likely to be deported to Mexico at or about the same time.

plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a).

We review a placement order by the superior court for abuse of discretion. *Matter of Appeal in Maricopa County, Juvenile Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994). We defer to the superior court's findings of fact. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002).

The Guardian ad Litem argues the superior court abused its discretion by ordering the child returned to Mexico when her medical needs are being fully met in the United States, and it is not in her best interest to be transferred abruptly to Mexico. The Guardian ad Litem asserts that Mexican officials performed their investigative study of Grandmother's home without information about the substantial injuries the child suffered before commencement of the dependency and argues that the "expedited return" of the child to Mexico "does not afford adequate time to obtain her medical records and transfer the necessary information regarding her ongoing treatment and needs." She also argues the superior court did not properly evaluate the risk that the child's mother would have access to and would remain in the child's life after the transfer.

As ADES argues, the superior court considered the Grandmother's home study and background checks conducted by the Mexican child welfare agency. Deferring to the superior court as we must on questions of fact, we cannot conclude the court abused its discretion in evaluating the home study and background checks. The superior court considered arguments by the parties concerning whether the child's medical needs could be met in Mexico, and medical records submitted to this court by ADES dated May 21, 2010, indicate the child's injuries are "nearly healed." Additionally, the superior court order transferring custody was conditioned upon the child's physician providing a medical release that she was safe to travel. Finally, although the Guardian ad Litem argues the child may be at risk of harm from her mother if the child is placed in the custody of Grandmother, we cannot conclude the superior court abused its discretion in assessing that risk. Therefore, upon consideration,

**IT IS ORDERED** accepting jurisdiction of the Guardian ad Litem's Petition for Special Action;

**IT IS FURTHER ORDERED** denying relief;

**IT IS FURTHER ORDERED** lifting the May 24, 2010 stay order.

/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge