

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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JASMINE M.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND A. H.-M.,  
*Appellees.*

No. 2 CA-JV 2021-0006  
Filed June 7, 2021

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pima County  
No. JD20190316  
The Honorable Joan Wagener, Judge

**AFFIRMED**

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COUNSEL

Sarah Michèle Martin, Tucson  
*Counsel for Appellant*

Mark Brnovich, Arizona Attorney General  
By Doriane Neaverth, Assistant Attorney General, Phoenix  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

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BREARCLIFFE, Judge:

¶1 Appellant Jasmine M. challenges the juvenile court's order of December 14, 2020, terminating her parental rights to A.H.-M., born in January 2018, on grounds of neglect, chronic substance abuse, and Jasmine's inability to remedy the circumstances causing the child to remain in a court-ordered, out-of-home placement for longer than six months. *See* A.R.S. § 8-533(B)(2),(3),(8)(b). On appeal, Jasmine contends the court violated her due process rights by conducting trial by telephone and argues there was insufficient evidence to establish that terminating her parental rights was in the child's best interests. We affirm.

¶2 We view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008). The Department of Child Safety (DCS) took A.H.-M. into custody in June 2019 after receiving reports that Jasmine had been "abusing methamphetamine" and "exposing the child to 'unhealthy people.'" A.H.-M. was also reported to have multiple "razor cuts" on one of her legs. Jasmine, who had untreated mental-health issues, tested positive for methamphetamine and THC. In July, she admitted the allegations in an amended dependency petition, and A.H.-M. was adjudicated dependent.

¶3 Over the following months, Jasmine failed to maintain contact with her case manager, to submit to drug testing, to appear for a psychological evaluation, or to consistently attend visitation, but she participated in a behavioral-health intake in August 2019. She submitted to a drug test in September and tested positive for THC. In November, the case plan was changed to severance and adoption, and in December DCS filed a motion to terminate Jasmine's parental rights on the grounds of neglect, chronic substance abuse, and the length of time A.H.-M. had been in out-of-home care. At an initial severance hearing in January 2020, the severance trial was scheduled to begin on February 11, 2020. It was thereafter rescheduled for dates in March, but on March 16 the governor of

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Arizona issued an executive order suspending all in-person proceedings in the court due to the COVID-19 pandemic.

¶4 The juvenile court granted an initial motion to continue filed by DCS and rescheduled the trial for May 8. On May 4, DCS again moved to continue, but indicated it had not yet heard from A.H.-M.'s guardian ad litem as to a continuance. On May 6, when the guardian had not yet filed a response, the court denied the motion. The parties appeared telephonically on May 8, and Jasmine and the guardian indicated they had no objection to continuing the trial. The court continued the trial and an evidentiary hearing on placement until May 21, indicating the proceedings would be in person, subject to safety rules for COVID-19. On May 21, Jasmine appeared telephonically at the in-person hearing on a motion for change of placement. Due to a family emergency, the case worker could not appear, so the matter was again rescheduled until June, with the court indicating the proceeding might be partially telephonic.

¶5 At the next hearing date, June 1, Jasmine was absent due to illness, and the juvenile court continued the trial for dates in late June and July. The parties then discussed whether the matter should be heard in person or telephonically, and discussed having Jasmine and the case worker testify in person on one of the trial dates, with the rest of the proceeding taking place telephonically. On June 18, Jasmine testified in person, and the court affirmed an in-person hearing for the following day. Jasmine had a medical emergency, so the following day was vacated and the remaining dates in July were affirmed.

¶6 Jasmine moved to continue the remaining trial dates again, and because she was pregnant and close to her due date, the matter was continued until late August. Jasmine gave birth on August 4, and the child was born substance-exposed. Over four dates in August, September, and October, the juvenile court heard testimony telephonically or virtually, via Microsoft Teams, including testimony from the case manager. Noting Jasmine's continued failure to consistently participate in drug testing; to engage in mental health treatment, largely due to her continued drug use; to regularly attend visitation with A.H.-M.; or to maintain consistent employment or housing, the manager testified Jasmine remained unable to care for A.H.-M. and termination was in the child's best interests. The court concluded DCS had proven the grounds for termination and that severance was in A.H.-M.'s best interests, and therefore terminated Jasmine's parental rights.

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¶7 On appeal, Jasmine first argues the juvenile court violated “constitutionally protected procedural and substantive due process rights when it proceeded to trial by telephone against the Mother’s and the Department’s wishes and terminated her parental rights.” As Jasmine correctly points out, Rule 6, Ariz. R. P. Juv. Ct., allows juvenile court proceedings to “be conducted as informally as the requirements of due process and fairness permit.” But her argument as to the formality of the proceeding is limited to assertions that “[t]here was no basis whatsoever for the juvenile court’s denial of [her] request for in-person testimony” and that “technical difficulties alone caused the proceedings to fall below acceptable standards.” But Jasmine’s request for in-person testimony by the case manager was made in June 2020 and she did not renew it or object to telephonic proceedings when the trial was continued multiple times over the following months. And although she mentions “technical difficulties” during the hearings in the juvenile court—mainly difficulty hearing, requiring speakers to repeat themselves, or the presence of background noise—she has not explained how they deprived her of due process. And although she points out that some transcripts include a cautionary statement that “transcript accuracy is subject to COVID-19 limitations,” she has not identified any way in which the transcripts are inaccurate.

¶8 On the record before us, although there were times during which the juvenile court experienced difficulties hearing or understanding witnesses, the participants were asked to repeat themselves or the court went off the record to remedy the problem. Indeed, Jasmine requested only that she and the case manager testify in-person and did not “think the entire trial ha[d] to be in-person.” As DCS points out, Jasmine’s failure to object below waives her claim for all but fundamental error. *See Brenda D. v. Dep’t of Child Safety*, 243 Ariz. 437, ¶¶ 37-38 (2018). On appeal she has not argued fundamental error, *see State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008), nor has she adequately explained how the telephonic proceedings violated her due process rights.

¶9 The remainder of Jasmine’s argument amounts to a request for this court to reweigh the evidence presented at the trial. Jasmine relies on favorable testimony and does not address the contrary evidence cited by the court. But we do not reweigh the evidence, *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002), and will defer to the court’s resolution of conflicting inferences when, as here, it is supported by the record, *In re Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115 (1978).

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¶10 Jasmine also argues the juvenile court's determination that severance was in A.H.-M.'s best interests was "not supported by the evidence." Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

¶11 The juvenile court determined that severance was in A.H.-M.'s best interests because it would give her permanence. The court noted that A.H.-M.'s placement was willing to adopt her and that Jasmine had been "inconsistent" over the course of the dependency and, according to the case worker Jasmine would require "a minimum of six months of compliance" before DCS "would be comfortable reuniting" her with the child. It also described Jasmine's having "missed more visits than she attended" during the dependency, her lack of consistency with drug testing, and concerns about "the quality of the bond" between her and the child. These findings are supported by the record before us, and Jasmine's argument again amounts to a request for us to reweigh the evidence as to A.H.-M.'s best interests. We will not do so. *See Jesus M.*, 203 Ariz. 278, ¶ 12.

¶12 The juvenile court's order terminating Jasmine's parental rights is affirmed.