

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

FILED BY CLERK

OCT -1 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

BRIANNA P.,	)	2 CA-JV 2010-0052
	)	DEPARTMENT A
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY, AARON P., and SAMANTHA	)	
P.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18775200

Honorable Javier Chon-Lopez, Judge

AFFIRMED

Ronald Zack

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Carol A. Salvati

Phoenix  
Attorneys for Appellee Arizona  
Department of Economic Security

ESPINOSA, Judge.

¶1 Appellant Brianna P. appeals the juvenile court’s April 30, 2010 order terminating her parental rights to her son Aaron, born in 1999, and daughter Samantha, born in 2006. Brianna does not challenge the court’s findings that termination was warranted on grounds that she had neglected or willfully abused her children, *see* A.R.S. § 8-533(B)(2), and had failed to remedy the circumstances that had caused the children to remain in court-ordered, out-of-home care for more than fifteen months, *see* § 8-533(B)(8)(c). Her sole argument on appeal is that there was insufficient evidence to support the court’s finding that severance of her parental rights was in her children’s best interests.

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B) and “shall also consider the best interests of the child.” *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App.2009). We view the evidence in the light most favorable to upholding the court’s order. *Id.* ¶ 10.

¶3 In a lengthy, under-advisement ruling issued after a contested termination hearing, the juvenile court provided a detailed history of Brianna’s past physical abuse of Aaron, her failure to protect both children from physical abuse by her romantic partners, and her lack of “demonstrated progress in being a protective parent . . . who can put the children’s needs above her own.” In finding termination was in the children’s best interests, the court cited opinions that both children were adoptable, as well as the opinion of their Child Protective Services (CPS) case manager that severance and adoption would be in their best interests, even if both children could not be placed in the same adoptive home. We need not repeat the court’s well-reasoned analysis here. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 On appeal, Brianna argues the Arizona Department of Economic Security (ADES) failed to establish termination was in the children’s best interests because it had not yet identified a prospective adoptive placement for Aaron, and because Samantha’s adoption by her paternal grandparents would result in separation of the two siblings. She maintains that Aaron, in particular, wanted permanency and was willing to return to her care, and that there was no affirmative benefit to his continued placement in therapeutic foster care.

¶5 Although Brianna asserts she “could, with accommodation, effectively parent if given the right resources and the ability to control her anxiety,” she does not dispute the juvenile court’s findings, associated with the statutory grounds for

termination, that she had “failed to make a genuine change through therapeutic intervention,” that she “will be unable to parent Aaron and Samantha in the near future,” and that “returning the children to her would place them [at] unreasonable risk of future abuse and neglect.”<sup>1</sup> And, even though Aaron had told his CPS case manager that he would like to return to Brianna’s home, he added, “I hope my mom can keep me safe, though.” The court found Aaron’s “constant worry” about whether Brianna would protect him from abuse or neglect “remained a legitimate concern at the time of the severance trial.”

¶6 To establish that terminating Brianna’s parental rights was in the children’s best interests, ADES was required to show the children “would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 334, ¶ 6, 100 P.3d 943, 945 (App. 2004). As detailed in the juvenile court’s ruling, this record amply supports that finding. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990) (to establish best interests, “petitioner might prove that there is a current adoptive plan for the child *or* that the child will be freed from an abusive parent”); *In re Pima County Juv. Action No. S-2462*, 162 Ariz. 536, 539, 785 P.2d 56, 59 (App. 1989) (“inconceivable”

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<sup>1</sup>Brianna bases her assertion on the testimony of psychologist Jill Plevell, whose neuropsychological evaluation was limited to Brianna’s organic brain functioning. Essentially, Plevell opined that Brianna’s cognitive impairments were not “so devastating” that they would preclude effective parenting in someone who was provided with resources and “able to implement those services on her own and . . . motivated” to do so.

that legislature intended adoptive plan as prerequisite for best interests finding when termination based on abuse).

¶7 Accordingly, the juvenile court's termination order is affirmed.

*/s/ Philip G. Espinosa*  
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PHILIP G. ESPINOSA, Judge

CONCURRING:

*/s/ Joseph W. Howard*  
\_\_\_\_\_  
JOSEPH W. HOWARD, Chief Judge

*/s/ J. William Brammer, Jr.*  
\_\_\_\_\_  
J. WILLIAM BRAMMER, JR., Presiding Judge