



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**SANDRA R., SERGIO C. v. DEPARTMENT OF CHILD SAFETY,  
M.R., F.M., AND J.M.,**  
246 Ariz. 180 (App. 2019)  
Arizona Supreme Court No. CV-19-0057-PR

**PARTIES:**

*Petitioners/Appellants:* Sandra R. (“Mother”) and Sergio C. (“Father”)

*Respondent/Appellee:* The Department of Child Safety (“DCS” or “Department”)

**FACTS:**

In 2013, Mother and her five-year-old daughter M.R. began living with Father. M.R.’s father’s parental rights have been terminated and he is not a party to this appeal. Mother later gave birth to F.M. and J.M. with Father. In April 2017, six-week-old J.M. slept most of the day and vomited “a lot” that evening. Mother noticed that J.M.’s arms began shaking at various times. Assuming it was a stomach issue, Father went to the store to buy tea for J.M. Meanwhile, J.M.’s condition worsened. J.M. turned pale, started moaning, could not fully open her eyes, and her arms became stiff. After Father returned from the store, Mother and Father took J.M. to an urgent-care center where they waited more than 40 minutes for the doctor to evaluate her. Upon examination, the doctor told Mother and Father to immediately take J.M. to Phoenix Children’s Hospital (“PCH”).

At PCH, a scan revealed that J.M had a large subdural hemorrhage on the left side of her brain and a smaller subdural hemorrhage on the right. She also had significant midline shift and herniation of her brain, meaning there was so much pressure in the brain that it started to shift out of its normal position. J.M. required emergency neurosurgery to relieve the pressure because it had become so great that her skull could no longer contain the brain and its contents without threatening her life. She also had diffused retinal hemorrhages (or bleeding) in all quadrants of the retina and all layers of the retina. Her head injuries negatively affected a multitude of systems in her body. Post-trauma, doctors diagnosed her with cerebral palsy because she had significant motor impairment. She also suffers from regular epileptic seizures and is blind. She now requires occupational therapy, feeding therapy, and 24-hour monitoring.

After surgery, Dr. Melissa Jones, a pediatrician with a specialty in child abuse pediatrics, evaluated J.M. After reviewing the family’s medical history and J.M.’s birth records, Dr. Jones determined the injuries resulted from abusive head trauma and Mother and Father provided no alternative explanation for the cause of J.M.’s injuries. PCH reported the injuries, and DCS took

custody of all three children and filed dependency petitions. The juvenile court later established the case plan as severance and adoption.

In July 2017, DCS petitioned to terminate Mother's rights to J.M., F.M., and M.R., and Father's rights to J.M. and F.M., under the abuse ground. Over seven months, DCS offered Mother and Father services, including hair-follicle testing to rule out drug abuse, psychological evaluations, individual counseling, and a parent aide during visits with the children. Although Mother and Father participated in services, in discussions with counselors, they continued to minimize J.M.'s severe injuries and provided no further explanation for how the injury occurred.

The juvenile court held a four-day termination hearing in December 2017 and April 2018. Dr. Jones testified for DCS, opining that J.M.'s injuries resulted from nonaccidental trauma. She added that J.M.'s lack of external injuries did not rule out abuse. Dr. Ruth Bristol, J.M.'s pediatric neurosurgeon, testified that J.M.'s injuries were most likely caused by recent trauma. She also testified that J.M. will likely require long-term, full-time care for the foreseeable future.

Mother and Father's expert, Dr. Joseph Scheller, a pediatric neurologist with specialties in pediatric neurology and neuroimaging, disagreed with the Department's experts. He testified that J.M.'s injuries resulted from a subdural hematoma at birth that began spontaneously re-bleeding some weeks later, which in turn caused her retinal hemorrhages. He conceded that this occurrence would be "an unusual complication" and that no other non-traumatic medical condition could have caused J.M.'s injuries.

In turn, Drs. Jones and Bristol opined on Dr. Scheller's conclusion, testifying that such an occurrence under the circumstances present with J.M. would be "very, very rare." Dr. Jones testified that "children [who] have spontaneous re-bleeding [also] have some other complicating factor with their brain." Dr. Bristol testified that in her experience as a pediatric neurosurgeon she had "not seen a spontaneous re-bleed to that degree." Dr. Jones opined that J.M.'s presentation and injuries did not correspond to Dr. Scheller's theory, particularly the diffuse nature of J.M.'s retinal hemorrhages, which was consistent with "massive trauma with acceleration and deceleration." Regarding J.M.'s eye injuries, Dr. Jones stated that:

[T]here had to be [a] significant force that led to that pattern of retinal hemorrhages. You can get retinal hemorrhages from many different causes, but the only times we see [J.M.'s] pattern of retinal hemorrhages in the pediatric population is from abusive head trauma, severe motor vehicle collisions or there's some case reports of children who have fallen out of two or three story windows onto concrete.

Dr. Jones specifically distinguished Dr. Scheller's theory, testifying that "when the pressure is high in the brain, you can get retinal hemorrhages," but they are typically "in the . . . most recessed part of the retina . . . surrounding the optic nerve," which was "not the same pattern that [J.M.] had."

The juvenile court took the matter under advisement and issued an order on April 23, 2018, terminating Mother's rights to J.M., three-year old F.M., and nine-year old M.R., and Father's rights to J.M. and F.M. Based on its conclusion that J.M.'s injuries were the result of

nonaccidental trauma, the court also found that Mother or Father, or both, intentionally abused J.M. or knew or reasonably should have known that the other parent abused her, “as she was in their sole care when she suffered life-threatening injuries.” The court further found that, despite the “timing, extent, mechanics and presentation of [J.M.’s] injuries,” Mother and Father continued to deny that abusive conduct occurred, presented a “united front,” and remained committed to each other and their relationship, even marrying. And, because neither parent had “shown a willingness to leave the other to protect the children from the other parent,” the court concluded that “both parents have demonstrated their lack of protective capacities for all of the children, not only [J.M.]”

Mother and Father timely appealed. In an opinion filed January 29, 2019, the court of appeals affirmed, holding that sufficient evidence supported the abuse finding related to nonaccidental trauma even though the evidence did not prove which parent abused the child. More specifically, the court concluded that reasonable evidence supported the juvenile court’s determination that: (1) one or both parents willfully abused J.M. by causing J.M.’s physical injuries; and (2) one or both parents failed to protect J.M. after they knew or reasonably should have known J.M. had been abused.

Mother and Father filed their petitions for review in this Court on March 14. DCS filed its response in opposition on April 23.

**ISSUES FOR WHICH REVIEW GRANTED:**

1. Should this Court accept review to clarify that the constitutional nexus between abuse of one child and another is mandated as part of the initial ground for severance finding, not simply one of many factors to consider under a best interests analysis?
2. Does it violate due process to make the nexus finding in the best-interests inquiry?

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