

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANGELA M., *Appellant*,

v.

SEAN S., E.S., *Appellees*.

No. 1 CA-JV 16-0127
FILED 8-16-2016

Appeal from the Superior Court in Maricopa County
No. JS12411
The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Berkshire Law Office, PLLC, Phoenix
By Keith Berkshire, Maxwell Mahoney
Counsel for Appellant

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Jon W. Thompson joined.

T H U M M A, Judge:

¶1 Angela M. (Mother) filed this case seeking to terminate the parental rights of Sean S. (Father) to their six-year old child E.S. Mother alleged Father had abandoned E.S. and sought termination so that her husband could adopt E.S. After Mother rested in her case-in-chief, the superior court granted Father’s motion for a “directed verdict” regarding best interests and, as a result, denied Mother’s petition. Because Mother has shown no error, the denial of her petition is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father, who never married, are the parents of E.S., who was born in January 2010. In 2012 or 2013, Mother sought and obtained child support in Family Court. In April 2013, Mother filed a Petition for Termination of Parent-Child Relationship that did not allege abandonment. The court summarily dismissed that petition, noting it did “not make sufficient allegations why the best interests” of E.S. “would be served by termination of parental rights.”

¶3 In May 2014, Mother married her husband. In July 2015, Mother filed a Petition for Termination of Parent-Child Relationship alleging abandonment. This petition alleged it was in the best interests of E.S. to terminate Father’s rights because E.S. “does not know Father and is in [the] sole custody of [M]other. [E.S.] is being raised by [M]other and husband whom [E.S.] . . . has known as ‘dad’ since age two.”

¶4 At a two-day severance adjudication in March 2016, Mother testified and presented evidence, including testimony from her husband and a home study expert. After Mother rested, and the guardian ad litem (GAL) for E.S. elected not to offer any evidence, Father orally moved for a “directed verdict,” arguing Mother had not shown abandonment by clear and convincing evidence or best interests by a preponderance of the evidence. After hearing argument from Father, Mother and the GAL, the court stated Mother had proven abandonment by clear and convincing

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evidence. The court, however, found Mother failed to prove that severance was in the child's best interests by a preponderance of the evidence. The court noted there was no evidence that E.S. would be harmed if severance was denied. And in addressing a potential benefit to E.S. if severance was granted, while praising Mother's husband, the court found Father having a continued presence in the child's life would mean E.S. "would be benefited by having" two father figures.

¶5 Citing *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1 (2016), Mother argued she did not have to prove harm to the child, a proposition the superior court agreed with but denied Mother's request that the court reconsider its ruling. The court concluded by noting it "did weigh the testimony that was provided. And for the reasons that I have given to you today on the record, the Court finds that the child would not benefit, at this point in time, from a severance." The detailed minute entry that followed stated Mother failed to prove by a preponderance of the evidence "that continuation of the parent-child relationship between [Father and E.S.] . . . would harm the child" or "that termination of the parent-child relationship between [Father and E.S.] . . . would benefit the child."

¶6 This court has jurisdiction over Mother's timely appeal pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235, 12-120.21(A)(1) and -2101(A)(1) and Arizona Rules of Procedure for the Juvenile Court 103-04 (2016).¹

DISCUSSION

¶7 As applicable here, the superior court may terminate a parent-child relationship if the petitioner proves by clear and convincing evidence at least one statutory ground for severance as set forth in A.R.S. § 8-533(B) and proves by a preponderance of the evidence that termination is in the best interests of the child. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000) (outlining statutory procedures for terminating parental rights); *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 329 ¶ 18 (App. 2007). Best interests may be proven by evidence the child would either be harmed if the parent-child relationship continued or would benefit if the parent-child relationship were terminated. See *Demetrius L.*, 239 Ariz. at 4 ¶ 16 (citing cases). This court will reverse an order resolving a petition to terminate parental rights only if the necessary factual findings are clearly erroneous or not supported by the record. See *Audra T. v. Ariz. Dep't of Econ.*

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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Sec., 194 Ariz. 376, 377 ¶ 2 (App. 1998). This court reviews the superior court's interpretation of court rules de novo. *See In re Reymundo F.*, 217 Ariz. 588, 590 ¶ 5 (App. 2008) (citing cases). This court may affirm a superior court's order if it is correct for any reason. *State v. Perez*, 141 Ariz. 459, 464 (1984).

¶8 Mother's exclusive focus on appeal is how the superior court addressed her best interests claim. Mother correctly argues she presented sufficient evidence to survive Father's motion for directed verdict on best interests. Procedurally, in 1996, the concept of a directed verdict was replaced with a judgment as a matter of law (JMOL). *See Daniel J. McAuliffe & Shirley J. McAuliffe, Arizona Civil Rules Handbook* at 680 (2016 ed.). Accordingly, by moving for a directed verdict, Father pressed a motion that no longer existed. Substantively, even if Father requested a JMOL, it would not have been well taken. A JMOL may be granted "[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Ariz. R. Civ. P. 50(a)(1). Presuming this Arizona Rule of Civil Procedure applies here, *cf.* Ariz. R.P. Juv. Ct. 66(D), Mother met her burden to present legally sufficient evidence for the finder of fact to consider in addressing best interests, Ariz. R. Civ. P. 50(a)(1). Accordingly, even if Father had properly requested a JMOL, the record would not support the granting of that request.

¶9 On this record, had the superior court entered JMOL or a directed verdict without explanation, Mother's claim of reversible error would have substantial force. The superior court, however, provided significant explanation for why it found best interests had not been proven and, in doing so, demonstrated that it weighed and assessed the evidence received. As noted above, the court expressly stated it "did weigh the testimony that was provided" and having done so, and having addressed both the potential benefit of severance and detriment if severance was not granted, found Mother had not proven severance was in the best interests of E.S. The resulting minute entry similarly found Mother "has not proven by a preponderance of the evidence that termination is in the best interests of" E.S. Accordingly, notwithstanding the procedural irregularity regarding the directed verdict request, the question is whether the record supports the court's findings that Mother failed to prove by a preponderance of the evidence that severance was in the child's best interests.

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¶10 Mother argues the superior court misinterpreted *Demetrius L.*, which construed A.R.S § 8-533 as allowing a court to conclude that potential adoption by a step-parent may support a best interests finding. 239 Ariz. at 2 ¶ 1. In essence, Mother argues *Demetrius L.* requires a best interests finding whenever potential adoption by a step-parent is proven. Contrary to Mother's argument, *Demetrius L.* allows -- but does not require -- such a finding. *Id.* ("We hold that in a private proceeding to sever parental rights, just as in state-initiated proceedings, a juvenile court *may* conclude that a proposed adoption benefits the child and supports a finding that severance is in the child's best interests.") (emphasis added). Indeed, *Demetrius L.* confirmed that the superior court "must assess the relevant facts in determining *on a case-by-case basis* whether" the evidence supports a best interests finding, adding "a court need not automatically conclude that severance is in a child's best interests just because the child is adoptable." *Id.* at 4 ¶¶ 13, 14 (emphasis added). Although *Demetrius L.* suggests the superior court could have exercised its discretion to reach a different result in this case, it does not mandate a different result. Accordingly, Mother has not shown the superior court misinterpreted *Demetrius L.*

¶11 Mother also argues the superior court erred by assessing the benefit of severance on speculation "that Father will begin to parent" E.S. in the future. Almost by definition, however, assessing the possible benefit of severance requires a court to address what may happen in the future. Moreover, the superior court properly weighs and assesses the evidence presented; this court does not reweigh the evidence on appeal. *See Mary Lou C. v. Ariz. Dep't Econ. Sec.*, 207 Ariz. 43, 47 ¶ 8 (App. 2004) (citing cases). On this record, Mother has not shown the superior court erred by assessing the benefit of severance based on speculation.

¶12 Mother had a full and fair opportunity to present all admissible evidence she wished to present in support of her petition. After she rested and after the GAL indicated she had no evidence to offer, the superior court made specific findings regarding best interests without Father presenting any evidence. On this record, Mother has not shown the court erred in weighing and assessing that evidence.

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CONCLUSION

¶13 The order denying termination of Father's parental rights to E.S. is affirmed.



Amy M. Wood • Clerk of the court
FILED: AA