



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**BRIONNA J. v. DCS/A.V.  
CV-22-0158-PR**

**PARTIES:**

**Petitioner:** Department of Child Safety (DCS)

**Respondent:** Brionna J. (Mother)

**FACTS:**

Mother gave birth to A.V. in 2005. Between 2006 and 2012, DCS received multiple reports regarding Mother and A.V. In 2016, DCS assumed custody of A.V. after another reported incident. A.V.'s best-interests attorney filed a dependency petition in November 2016. The petition alleged that Mother was unable or unwilling to provide necessary parental care and control, *see* A.R.S. § 8-201(15)(a)(i), because Mother had untreated mental-health issues and had neglected and physically and verbally abused A.V. The juvenile court subsequently found A.V. dependent.

DCS moved in January 2020 to sever Mother's parental rights under the fifteen-month ground. *See* A.R.S. § 8-533(B)(8)(c). After a contested hearing, the juvenile court found that severance was warranted. The court noted that Mother was initially resistant to services and participated minimally. Mother self-referred for dialectical behavior therapy (DBT) through the VA but continued to demonstrate aggressive, hostile behaviors towards providers and, at times, her child. Mother's mental health condition and diagnoses persisted for more than four years. The court found that Mother was not amenable to therapy to make necessary behavioral changes. Mother and her child were no longer having visitation because of fighting. The court concluded that Mother demonstrated she was unable and/or unwilling to appropriately regulate her emotions and safely and effectively parent her daughter. The court also found that severance was in the best interest of A.V.

Mother timely appealed. Mother solely challenged the sufficiency of evidence to support the juvenile court's determination that she was unable to remedy the circumstances that led to A.V. to being in an out-of-home placement and that she would not be capable of exercising proper and effective parent care and control in the near future.

The court of appeals determined that reasonable evidence supported the juvenile court's findings that Mother was initially resistant to and minimally participated in services, she was aggressive and hostile toward providers and sometimes A.V., that she withheld visits, she disrupted a team decision making meeting, she and A.V. were not currently having visits due to fighting, and that she had persistent mental health diagnoses and was not amenable to therapy. It could not agree, however, that the facts warranted the conclusion that Mother was unable to safely and effectively parent her daughter. It determined that the evidence showed that Mother suffers from a long-term personality disorder and often failed to control her temper and act maturely, including when she interacted with or in the presence of A.V. The court of appeals reasoned that, although her

continuing conduct was concerning and may have established that she was an unkind and volatile parent, the evidence did not establish that she was unfit.

On the record, even accepting all of the juvenile court's findings of fact, the court of appeals concluded that it must hold that the State failed to meet its burden to justify severance under § 8-533(B)(8)(c) and that the juvenile court clearly erred. The evidence established that Mother was mentally ill, volatile, and unkind, but it did not establish that she was unfit as a matter of law. The court of appeals indicated that it stopped short of dismissing the dependency. It reasoned that when the record establishes that a parent is fit, the proper remedy is dismissal of the dependency.

DCS filed a petition for review before the Arizona Supreme Court, which was granted.

## **ISSUES:**

As phrased by DCS:

1. Did the court of appeals misinterpret the fifteen-month out-of-home placement severance statute, A.R.S. § 8-533(B)(8)(c)?
2. Did the court of appeals exceed its proper scope of review by independently assessing witnesses' credibility and by applying a "clear and convincing" standard of review?
3. Did the court of appeals misinterpret the dependency statutes and erroneously imply that it could dismiss the underlying dependency order in an appeal from the termination order?

## **RELEVANT STATUTE:**

### **A.R.S. § 8-533. Petition; who may file; grounds**

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

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