



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**DEMETRIUS L. v. JOSHLYNN F., D.L.  
CV-15-0274-PR**

**PARTIES:**

*Petitioner/Appellee:* Joshlynn F. (“Mother”)

*Respondent/Appellant:* Demetrius L. (“Father”)

**FACTS:**

Father is the biological father of Child and lived with Mother when Child was born on September 11, 2006. Father and Mother’s relationship ended in 2009. Mother and Father have never been married. Although Father moved to California, Father and Mother agreed on an informal visitation schedule that governed Father’s contact with Child. Father’s visitation ceased in 2010.

Mother petitioned to terminate Father’s parental rights in 2014, citing abandonment under A.R.S. § 8-533.B.1, as the ground for termination. At the termination hearing, Mother testified that she stopped taking Child to California for visitation because Father began threatening her. Mother testified that between 2010 and 2012, Father’s only contact with Child was a Christmas gift Father gave Child through Father’s brother. Mother also stated that Father had no contact with Child between 2012 and 2014. Mother acknowledged, however, that Child saw Father during a November 2013 incident at which an altercation occurred between Mother and members of Father’s family.

Father testified that Mother stopped allowing him to visit Child in 2010 and blocked him from any further contact thereafter. Father claimed he could not get in touch with Mother because Mother would not answer his phone calls and “blocked” his phone number and social media accounts. Father stated that he attempted to get in touch with Mother by visiting her workplace and contacting various members of her family on social media. Father testified that, in 2010, he sought court-ordered visitation in a California court but was told he had to file in Arizona. Father stated he filed an Arizona petition in 2011 but never had it served on Mother. Father filed another petition in early 2014 after the November 2013 altercation between Mother and members of his family. Father tried unsuccessfully to serve Mother with that petition around the time Mother filed her termination petition.

The juvenile court terminated Father's parental rights and Father timely appealed.

In a memorandum decision filed July 30, 2015 (2015 WL 4575956), the court of appeals reversed and remanded. Relying primarily on *Jose M. v. Eleanor J.*, 234 Ariz. 13 (App. 2014), the court concluded that "the record does not establish by a preponderance of evidence that termination of Father's parental rights is in Child's best interests." Mem. Dec. ¶ 12. The court explained its decision as follows:

The distinction in *Jose M.* between the effect of adoption-related evidence in State-initiated and private termination proceedings is instructive here because the *Jose M.* court considered a termination petition much like the one in this case. As in *Jose M.*, Mother's termination petition cited abandonment as the statutory grounds for termination, and the juvenile court's best interests analysis relied on evidence of adoptability and a potential adoptive plan. The *Jose M.* court noted that such evidence would be insufficient to conclude terminating parental rights was in a child's best interests because the record lacked any evidence that the parent whose rights were terminated was harming child, incapable of parenting, or that adoption actually would provide further stability for the child. *Id.* at 17-18, ¶¶ 20-23. We conclude the same analysis applies to this case.

Although Mother testified that Father began threatening her, she offered no evidence showing abusive or violent behavior towards her or Child. There is no evidence Father has characteristics or habits that make him unable to parent Child, and there is likewise no evidence of legal issues, civil or criminal, that negatively implicates Father's ability to maintain a safe and meaningful parent-child relationship. Father has demonstrated a desire to have a relationship with Child, and *Child's current living arrangement will be altered only if Father can show a family court that he can effectively care for Child during parenting time.* But whether Father's parental rights are terminated will have no effect on the stability and permanency of Child's current situation. Unlike situations in which adoption obviously benefits a child by ending the need for foster care, the adoptive plan in this case does not establish an increase in stability and permanency that necessitates terminating Father's parental rights. As a result, we conclude this record does not establish a preponderance of evidence that terminating Father's parental rights is in Child's best interests.

Mem. Dec. ¶¶ 10-11 (emphasis added).

Mother filed her petition for review in this Court on August 31, 2015. Father filed his response on October 5.

**ISSUE PRESENTED FOR REVIEW:**

Whether the record establishes by a preponderance of the evidence that termination of Father's parental rights is in the Child's best interest, and whether the reasoning of the *Jose M.* case is persuasive and should apply in this case.

***This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum or other pleading filed in this case.***