



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



ALMA S. v. DEPARTMENT OF CHILD SAFETY
CV-17-0363-PR

PARTIES:

Petitioner: Department of Child Safety (“DCS”) and J.R. and I.R. (“the Children”).

Respondent: Alma S. (“Mother”).

FACTS:

In 2013, Mother was in a relationship with a man who allegedly was abusive towards her. The two had a child, J.R., and their relationship continued until he was sentenced to twelve years in prison. In 2013, shortly after J.R.’s birth, Mother met another man (“Father”), who had recently been released from three years’ imprisonment. They had a child, I.R.

On May 7, 2015, Mother left I.R., then two years old, in Father’s care while Mother was at work. During the day, Father sent Mother a Facebook message that I.R. had scratched his face while rolling around. Later that night, when Mother returned from work and discovered I.R.’s extensive injuries, she argued with Father because he would not allow her to take I.R. to the hospital. Father left, but Mother failed to take I.R. to the hospital and instead went to sleep.

The next morning, Mother asked her sister and cousin to take I.R. to the hospital. The sister asked Father if she could take I.R. to Chuck E. Cheese and Father agreed. The sister and cousin then took I.R. to the hospital. The hospital staff found that I.R. had a rib fracture, a right-tibia fracture, a possible left-femur fracture (ultimately ruled out), and multiple bruises. The staff also observed bruises on the other child, J.R. Suspecting abuse, the staff contacted DCS.

In a police interview, Mother admitted being abused by J.R.’s father yet maintaining her relationship with him for several years until he was sentenced to prison for aggravated assault while Mother was pregnant. Mother’s sister reported that she had previously heard Father berate and smack Mother to the floor and had seen him grip Mother’s face and yell at her. The sister also reported that Father would repeatedly “spank” J.R. and that she had heard slapping noises and crying coming from the bedroom when Father was the only one in the room with I.R.

After the May 7th incident, DCS placed J.R. with a paternal aunt. Due to his injuries, DCS placed I.R. in a licensed foster home able to care for medically fragile infants. Meanwhile, DCS began to provide services to Mother and Father under a reunification plan. Mother complied with and successfully completed all services. However, in December 2015 the police had to intervene in a domestic violence situation between Father and Mother. A DCS report stated that Mother and Father had “a severe DV [domestic violence] relationship” and that domestic violence was

“actively occurring” in the home at the time of the report. Due to the abuse, the court’s case plan changed from reunification to severance and adoption.

In August 2016, a psychologist, Gustavo Franza, performed a psychological evaluation of Mother. He noted that Mother was “guarded” and “evasive” regarding her substance and alcohol use/abuse. He diagnosed her with several drug dependencies, including Moderate Cannabis Use Disorder, Moderate Cocaine Use Disorder, and Mild Ecstasy Use Disorder, and with an unspecified mood disorder. He concluded that such symptoms “could affect [Mother’s] ability to parent in significant ways” because mothers who suffer from mood disorders tend “to neglect the needs of their children in severe ways.” He observed that Mother “has shown a pattern of being in destructive relationships where she is physically and emotionally abused and she has been unable to leave the situation.” He noted that “[m]aintaining a relationship, even when destructive, becomes more important than the safety of their children.” He concluded that Mother, by failing to take I.R. to receive medical care despite this suspicion, placed I.R. “at tremendous risk.” He also opined that Mother’s behavior “suggest[ed] that [Mother] values her employment more than the safety of her child” and that Mother “was unable to take charge of the situation and make the decision of protecting her child.” He concluded that the children would not be safe to return to the home, citing Mother’s history of substance abuse, her symptoms of various mental disorders, and her “severe lack of insight into how her maladaptive behaviors affect overall functioning.”

At an evidentiary hearing on severance in November 2016, Franza testified that Mother had benefitted “[v]ery little” from completing the services provided by DCS. A DCS Safety Worker testified that DCS sought to terminate Mother’s parental rights because of her “failure to protect, her limited ability to understand the situation . . . [and] her judgment, where she wants these children placed with someone that’s completely inappropriate and has a significant history with [DCS] itself.” (The reference was to Mother’s suggestion that I.R. and J.R. be placed with her own mother, who was unqualified to foster the children because of her own history with DCS.) The Safety Worker concluded that severance would be in the best interests of the children.

Mother testified that she had rectified any concern about future abuse when she broke up with Father. However, DCS submitted evidence that Father had informed the psychologist who evaluated him that they were still in a relationship, but that they had technically separated because “[t]he case manager said [Mother] would not get the kids back if [he] was there.”

The juvenile court issued a ruling terminating Mother’s parental rights to the children. It found that DCS had proven the statutory ground of abuse by clear and convincing evidence:

Mother was aware that Father had hit [J.R.] in the past leaving him with a black eye. She knew that Father had anger issues, was violent and was not good with children. Yet, she chose to leave both children in his care....Mother chose to remain in a relationship with Father in spite of the abuse she and her children suffered. Mother knew of Father’s abusive past with another of his children’s mothers. Only recently has Mother said that she is no longer with Father. However, Father has said otherwise to his therapist. Even if the court accepts that Mother is being honest and she is no longer in a relationship with Father it is literally too little too late to demonstrate that she is willing to protect her children from an abusive person.

The court also found that severance would be in the children's best interests because J.R.'s placement, his paternal aunt, was able to meet all of his needs and was willing to adopt him, and I.R.'s placement, a licensed foster home, was also a potential adoptive placement. Severance would provide the children with "permanency and stability ... free from any risk of physical abuse." They would each have parents "committed to protecting them from harm and who provide loving and nurturing homes."

Mother appealed, challenging only the best-interests finding. The Court of Appeals reversed the severance on the grounds it could not affirm a best-interests finding on the evidence at bar, which it found insufficient under a best-interest standard that it enunciated in a published opinion. DCS appealed to the Arizona Supreme Court, which granted review.

ISSUES:

1. "The court of appeals held that in determining that termination serves the child's best interest, the juvenile court must find that (1) the parent is 'unfit' to parent, (2) the parent is 'unable' to properly parent, and (3) a substantial likelihood exists that the parent will remain unable to parent in the near future. It further held that even if the court finds a benefit to termination, if the court is unable to make these findings of detriment, the child's interests must be subordinated to the parent's and the parental rights should remain intact. Are the court of appeals' holdings regarding the best-interests requirement under [A.R.S. § 8-533\(B\)](#) contrary to the Legislature's intent and do they conflict with the decisions of this Court?"
2. "The court of appeals openly reassessed the credibility of witnesses, reweighed and discounted evidence upon which the juvenile court relied, and drew inferences contrary to that of the juvenile court. Did the court of appeals exceed its proper scope of review?"

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