

Alma S. v. Department of Child Safety

Full Citation: Alma S. v. Dep't of Child Safety, No. CV-17-0363-PR, 2018 WL 43744432 (Ariz. Sept. 14, 2018).

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Opinion's Author: Justice Lopez

Joined By: Chief Justice Bales, Vice Chief Justice Brutinel, Justices Pelander, Timmer and Gould. (Justice Bolick concurred in the result).

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: The juvenile court severed Alma's parental rights to her two children. Mother had been in a relationship with Esdras, who routinely abused both Mother and the children. After Esdras severely beat one of the children, the Department of Child Safety ("DCS") removed both children from Alma's home and determined them to be dependent. Alma was drug tested and passed consecutive tests. A psychologist evaluating Alma concluded that she was unable to protect herself or the children from abuse. The juvenile court then severed Alma's parental rights on the basis that severance was in the best interests of the children. Alma appealed this finding.

Procedural History: The case is currently before the Arizona Supreme Court. In December 2015, DCS filed to terminate parental rights. The juvenile court severed her parental rights in November 2016, holding that

"severance was in the best interests of the children because their current out-of-home placements were meeting their needs, the children were in an adoptive placement, and both children would be 'considered adoptable if the current placement was not able to complete the adoption for any reason.'"¹

The court of appeals vacated the juvenile court's decision. The court reasoned that the record did not show that Alma was an unfit parent. DCS must demonstrate that there is a "substantial likelihood that the parent will not be capable of parenting effectively in the near future, not that someone with better parenting skills may be able to care for the child."² The court rejected the juvenile's court determination that Alma and Esdras were still in a relationship and disagreed that Alma lacked the ability to protect the children from abuse.³ The court stressed the importance of a parent's constitutional right to raise her children.

Issue: When the children have strong prospects for adoption, is severance of parental rights in the children's best interests under A.R.S. section 8-533(B)? What is the appropriate inquiry for a best-interests analysis under section 8-533(B)?

¹ Alma S. v. Dep't of Child Safety, No. CV-17-0363-PR, 2018 WL 43744432, at *1 (Ariz. Sept. 14, 2018).

² Alma S. v. Dep't of Child Safety, 418 P.3d 925, 935 (Ariz. Ct. App. 2017).

³ *Id.* at 931, 933.

Holding: At this stage of the analysis, it can be presumed that the interests of the parent and the child diverge. Thus, the focus is on the interests of the child as separate from the parent. Termination is in the child's best interests if either (1) the child will benefit from severance, or (2) the child will be harmed if severance is denied.⁴

- A child's prospective adoption will support a best-interests finding, but the court should not disregard other evidence.
- Courts must consider the totality of the circumstances existing at the time of the severance determination.

Disposition: The Arizona Supreme Court affirmed the juvenile court's judgment terminating Alma's parental rights and vacated the court of appeals' opinion.

Rule: When a court considers whether termination of parental rights is in a child's best interests, it must be a "totality of the circumstances" analysis.

Reasoning:

- **The Two-Step Severance Inquiry:** Under section 8-533(B), the court must first find that a statutory ground for termination exists.⁵ The court must then determine that severance is in the child's best interests.⁶
- **Step One:** All of the substantive grounds for termination enumerated in § 8-533(B) are equivalent to parental unfitness.⁷ Eight of the eleven grounds demonstrate a parent's inability to care for his child, while the other three are facially procedural and do not require a finding of parental unfitness.⁸
- **Step Two:** At this point in the inquiry, parental unfitness has been established.⁹ Thus, the interests of the child have diverged from the parent's interests at this stage and the inquiry should focus on the "child's interest in stability and security."¹⁰
- **Prospective Adoption:** When a child is found to be adoptable, severance can be found to be in the child's best interests. "When a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests."¹¹

⁴ Alma S. v. Dep't of Child Safety, 2018 WL 4374432, at *3.

⁵ *Id.* at *2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at *2-3.

⁹ *Id.* at *3.

¹⁰ *Id.* (quoting Demetrius L. v. Joshlynn F., 365 P.3d 353, 356 (Ariz. 2016)).

¹¹ *Id.* (quoting Demetrius L., 365 P.3d at 356).

- **Interests of the Parent:** The court explained that because a finding of unfitness has been made at this point, the parent's interests cannot be elevated above the child's.¹² A court may still consider a parent's rehabilitation efforts as part of the best-interests analysis, but the child's interests cannot be subordinate.¹³ Moreover, the inquiry is not whether a parent is able to properly parent his or her child, as the court of appeals suggested.¹⁴
- **Standard of Review:** The juvenile court's findings of fact should be affirmed if reasonable evidence and inferences support them.¹⁵ Only a finding that is clearly erroneous will be overturned.¹⁶ Instead of adhering to this standard, the court of appeals erred in reweighing the evidence.¹⁷ For example, the court of appeals concluded that the juvenile court had not found that Alma and Esdras were still in a relationship, whereas the juvenile court actually questioned Alma's assertion that her relationship with Esdras had ended.¹⁸ An appellate court's review is deferential.¹⁹

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at *4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at *4-5.