

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR -4 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PATRICK A.-S.,)	2 CA-JV 2012-0110
)	DEPARTMENT A
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY,)	
)	
)	
Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JD195649

Honorable K.C. Stanford, Judge

AFFIRMED

Child and Family Law Clinic

By Paul D. Bennett, a clinical professor appearing
under Rule 38(d), Ariz. R. Sup. Ct., and
Ashley Zimmerman, a student certified
pursuant to Rule 38(d), Ariz. R. Sup. Ct.

Tucson
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Patrick A.-S. appeals from the trial court’s order severing his mother’s parental rights on the grounds of abuse and time in care. *See* A.R.S. § 8-533(B)(2) and (B)(8)(c). He maintains the trial court abused its discretion in considering certain testimony and in concluding that severance was in his best interest. Finding no error, we affirm.

Background

¶2 We view the evidence in the light most favorable to upholding the juvenile court’s ruling. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In August 2010, then four-year-old Patrick came to preschool with bruising around his eye and on his neck and arm and a “gash” on his back. He told school workers, “Mom hurt me.” The school workers called the police and Patrick’s two younger half-siblings were also found to have “a multitude of old and new bruises, which they stated were caused by Mommy.” Patrick’s mother, Angelina, was arrested and charged with three counts of child abuse,¹ and the children were taken into the custody of Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES). The family’s home “was found to be dangerously dirty with razor blades on the floor,” with a toilet that had been filled with feces “for a year,” head-high piles of laundry blocking access to the house, and “an overgrown yard with boards and nails lying about.”

¶3 Patrick was adjudicated dependent in a November 9, 2010 order after a facilitated settlement conference in which Angelina entered a “no contest plea” to the allegations set forth in an amended dependency petition. In March 2012, the case plan was changed from reunification to severance and adoption, and the state thereafter filed a

¹Angelina ultimately pled guilty to one count of child abuse.

motion for termination of Angelina’s parental rights. After a contested severance hearing the juvenile court granted the motion and terminated Angelina’s parental rights.² This appeal followed.

Discussion

¶4 Patrick first maintains the juvenile court erred in concluding severance was in his best interest because “expert opinion from an adoption specialist” was required to establish his “likelihood of adoption” and the court instead relied on what he characterizes as “lay opinions with expertise.” “A trial court has broad discretion in admitting or excluding evidence, and we will not disturb its decision absent a clear abuse of its discretion and resulting prejudice.” *Lashonda M. v. Ariz. Dept. of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005). Likewise, “whether a lay witness is qualified to testify as to any matter of opinion is a preliminary determination within the sound discretion of the trial court whose decision must be upheld unless shown to be clearly erroneous or an abuse of discretion.” *Groener v. Briehl*, 135 Ariz. 395, 398, 661 P.2d 659, 662 (App. 1983).

¶5 At the severance hearing Graciela Espinoza, the family’s ongoing case manager, testified about her contact with Patrick and his mother. She testified, inter alia, that although Patrick had behavioral issues, he was not “unable to be parented” and she had seen that “when somebody is very firm with him, he’s able to be redirected” and had made improvements while in care. She concluded Patrick was “an adoptable child” and termination of Angelina’s parental rights was in his best interest. She admitted, however, that if Patrick’s current placement did not “work out,” she had “no way of knowing how

²Angelina’s parental rights to Patrick’s half-siblings were also terminated, but only her rights to Patrick are at issue in this appeal.

long it would take to find a family for [him].” She also stated she “ha[d] no particular training in locating adoptive families, other than relatives” and finding adoptive families was not part of her job or training.

¶6 Patrick questioned Espinoza as to whether ADES took the position that every child was adoptable and she responded affirmatively. After objecting to Espinoza’s testimony at various points, Patrick questioned the juvenile court as to whether it would treat Espinoza as an expert. When the court indicated it would not treat Espinoza as an expert, but that she could testify as a layperson and was a “layperson with expertise,” Patrick objected, arguing that expert testimony was required to establish that Patrick was adoptable. The court overruled Patrick’s objection and allowed Espinoza to testify.

¶7 Although we agree with Patrick that the Arizona Rules of Evidence do not specifically provide for “a hybrid opinion of a ‘lay person with expertise,’” we cannot say the juvenile court abused its discretion in admitting her testimony. We do not read the court’s statements about how it would consider Espinoza’s testimony as suggesting that she was such a “hybrid” witness. Rather, taken as a whole, we view the court’s statements on the record as suggesting it would consider Espinoza’s opinion testimony for what it was, lay witness opinion testimony, “not based on scientific, technical, or other specialized knowledge,” that was “rationally based on [her] perception.” Ariz. R. Evid. 701(a), (c). To the extent the court suggested Espinoza’s “special skills and experience” or “expertise” were a factor, it did so in stating that such experience went to the weight of her testimony and, therefore, to how “helpful to . . . determining a fact in issue” the testimony would be. Ariz. R. Evid. 701(b); *see also State v. Medrano*, 185 Ariz. 192, 196, 914 P.2d 225, 229 (1996) (appellate court presumes trial court knew and

followed law); 4 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence* § 701.05 (2d ed. 2001) (to determine “‘helpfulness’” court considers “[w]hether the lay witness is in a better position than the jury to form [an] opinion” and “[w]hether the witness has specialized knowledge that the jury does not have”). Because Espinoza’s testimony meets the requirements for admission as lay testimony under Rule 701, we cannot say the court abused its discretion in admitting it.³ See *Groener*, 135 Ariz. at 398, 661 P.2d at 662. Furthermore, Patrick has cited no authority, nor have we found any, to support his assertion that an expert opinion was required to establish his “likelihood of adoption.” See Ariz. R. P. Juv. Ct. 106(A); Ariz. R. Civ. App. P. 13(a)(6).

¶8 Patrick also argues severance “was premature and not in [his] best interest” because both he and his mother had shown improvement “at the prospect of reunification” and because ADES “had no permanent plan for [him].” But this argument essentially asks us to reweigh the evidence, which we will not do. See *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). Contrary to Patrick’s argument, testimony at the severance hearing supported the juvenile court’s findings that he was adoptable, that placement would be more likely once his mother’s parental rights were severed, and that his development would regress if returned to his mother. Because the record before us contains reasonable evidence to support the factual findings in the court’s minute entry order and because we see no error of law, we adopt the court’s ruling. *Id.* ¶ 16, citing *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

³Patrick also contends ADES failed to disclose Espinoza as an expert witness and the juvenile court should therefore have precluded her testimony as to adoptability. Because we conclude the court properly admitted Espinoza’s testimony under Rule 701, we need not address this argument.

Disposition

¶9 The juvenile court's order terminating Angelina's parental rights to Patrick is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge