

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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KESHA B.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND J.F.,  
*Appellees.*

No. 2 CA-JV 2015-0216  
Filed May 27, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pima County  
No. JD198714  
The Honorable Jennifer P. Langford, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Nuccio & Shirly, P.C., Tucson  
By Jeanne Shirly  
*Counsel for Appellant*

Mark Brnovich, Arizona Attorney General  
By Laura J. Huff, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

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Pima County Office of Children's Counsel, Tucson  
By Sarah Richelson  
*Counsel for Minor*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Appellant Kesha B. challenges the juvenile court's order of September 16, 2015, terminating her parental rights to her daughter, J.F., born November 2012, based on Kesha's inability to remedy the circumstances causing J.F. to remain in a court-ordered, out-of-home placement for longer than fifteen months.<sup>1</sup> See A.R.S. § 8-533(B)(8)(c). On appeal, Kesha challenges the sufficiency of the evidence to sustain the statutory ground for severance.

¶2 To sever a parent's rights, the juvenile court must find there is clear and convincing evidence that at least one of the statutory grounds for termination exists and that a preponderance of the evidence establishes severing the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41, 110 P.3d 1013, 1020, 1022 (2005). We do not reweigh the evidence on appeal; rather, we defer to the court's factual findings because, as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Consequently, we will affirm the order if reasonable evidence supports the factual findings upon which the

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<sup>1</sup>J.F.'s father's parental rights have also been terminated. He is not a party to this appeal.

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order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, we view the evidence in the light most favorable to upholding the court's order. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007).

¶3 At the time of J.F.'s birth, Kesha was involved in a dependency proceeding with her older child, C.B. J.F. was born with severe medical problems, including a serious heart condition. J.F. was hospitalized from her birth in November 2012 until January 2013, after which she was placed with a foster care provider specially trained for medically fragile children. Due to Kesha's failure to maintain a special diet before her birth, J.F. has severe birth defects; she needs a special feeding tube, her oxygen level must be checked frequently, and she has a compromised immune system. Failure to strictly comply with this medical regimen could result in her death. J.F. was adjudicated dependent in March 2013 after Kesha entered a no-contest plea to the allegations made in a dependency petition filed by the Department of Child Safety (DCS).<sup>2</sup>

¶4 In December 2014, DCS filed a motion for termination of Kesha's parental rights to J.F. DCS alleged that despite "numerous services and specialists" having been assigned to Kesha to help her learn to care for J.F., she lacked the ability to meet J.F.'s developmental and medical needs. At the contested severance hearing, Kesha's case manager acknowledged Kesha had completed various services, but noted various problems in J.F.'s care, including that Kesha needed to be reminded to make doctor appointments, and opined that placing J.F. in her mother's full-time care would be a risk to her in terms of receiving "adequate medical care." For instance, Kesha failed to vaccinate J.F. for respiratory syncytial virus

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<sup>2</sup>DCS is substituted for the Arizona Department of Economic Security (ADES) in this decision. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

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within the recommended time frame, which she acquired and resulted in a six-day hospitalization during which time Kesha did not consult with medical personnel. There were similar incidents demonstrating a failure to understand the need for specialized medical care involving a dentist and a developmental pediatric specialist. Likewise, the foster care placement testified she had observed Kesha behave in ways that indicated she was unable to fully care for J.F. on her own.

¶5 The juvenile court issued a thorough ruling setting forth its factual findings and legal conclusions, and terminating Kesha's parental rights to J.F. Kesha argues that because her daughter's time with her was somewhat limited, she did not have sufficient time to demonstrate an ability to adequately care for J.F. Kesha also challenged the finding that she "will not be capable of exercising proper and effective parental care and control in the near future." These arguments, as well as others pertaining to adequate parenting, amount to a request for this court to reweigh the evidence presented to the court, but we do not reweigh the evidence, *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207, and will defer to the court's resolution of conflicting inferences if supported by the record, *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978). Because the record before us contains reasonable evidence to support the factual findings in the juvenile court's minute entry order and because we see no error of law, we adopt the court's ruling. *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 We affirm the juvenile court's order severing Kesha's parental rights to J.F.