



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JESSIE D. v. DEPARTMENT OF CHILD SAFETY, F.V., M.D., M.D.,
C.D.
CV-19-0321-PR**

PARTIES:

Petitioner: Jessie D. (“father”).

Respondent: Department of Child Safety (“DCS”).

FACTS:

Father and mother (not a party hereto) had four children. The family resided together in Phoenix. Mother was the primary caregiver of the children, while father, who was employed, engaged in activities with them such as taking them to the park and teaching them to draw.

On June 22, 2016, father was charged with aggravated DUI, but remained out of custody with the family. In August 2016, one of the children accidentally burned down the family’s home, leaving father, mother, and children homeless. Mother and children found a placement at UMOM, a homeless shelter, but an outstanding warrant prevented father from staying with them. As a result, father slept outside UMOM in an abandoned automobile next to the window where children and mother were staying.

On December 16, 2016, father was arrested on the outstanding warrant while living in the abandoned automobile. He allegedly had methamphetamine in his pocket, and police charged him with possession of a dangerous drug. He pled guilty to the charges.

After he was jailed, father stayed in contact with the four children through telephonic and video visitation, phone calls, letters, and postcards. The paternal grandmother brought the children for visits at the jail until sentencing.

In July 2017, father pled guilty to two counts of aggravated DUI and was sentenced to two concurrent seven-year sentences with a maximum end date of December 2022. At the time of father’s incarceration, the children ranged from 1.5 years to 7 years. That same month, DCS received information that mother was homeless; that the children had been living with a family friend; and that mother’s girlfriend/significant other had beaten her and the children.

On August 1, 2017, DCS took custody of the children and filed a dependency petition as to both parents. DCS placed two children each with unlicensed nonrelative placements. At the August 8, 2017 Preliminary Protective hearing, the juvenile court ordered that father, who contested the dependency, was permitted to send letters to the children. On September 6, 2017, at

a Pretrial Conference, father entered a no contest plea to the dependency and the court found the children dependent as to both parents. Counsel for father requested visitation between the father and children. The juvenile court ordered DCS to “follow up on [father’s] requests for transportation of the children for physical visits, [and] telephonic visits with the children and photographs of the children.” At a Report and Review Hearing on October 5, 2017, the father again requested visits and phone calls with the children, and the court again directed DCS to follow up on father’s requests.

On April 9, 2018, at a Report and Review Hearing, DCS announced that it would request a change of case plan to severance and adoption at the next hearing. Father requested that the children’s placements (foster parents) transport the children to visit him while he was incarcerated. The visits did not take place and, in May 2018, DCS placed all four children in the same licensed foster home.

In response to father’s requests for visits, DCS consulted its unit psychologist, who recommended against allowing visits in prison based on (1) the absence of information indicating that father and the children had a bond, (2) statements by the grandparents that father did not have much of a relationship with the children, (3) the detrimental effect on the young children of the drive from Phoenix to and from the prison in Florence, and (4) the inappropriateness of a prison for a parental visit. After DCS disclosed this information, father did not raise the matter again. However, DCS did not move for leave of court to suspend visits.

Although father repeatedly wrote letters to the children from prison, DCS reviewed the letters and, without providing an explanation to father, did not deliver them to the children. DCS determined that father’s statements in the letters—that father would be getting out of prison, that the family was going to be getting back together, that the system was corrupt, that he was innocent, and the children should speak up for themselves and look out for each other—were inappropriate. Because father repeated these same statements to the children on a phone call, and DCS attributed certain defiant and otherwise undesirable behaviors of the children thereafter to the phone call, DCS prohibited phone calls with the children.

On June 18, 2018, at a Report and Review/Permanency Planning hearing, the court ordered the case plan changed to severance and adoption and that DCS file a severance motion within 10 days. Father’s counsel then stated that the paternal grandparents would like to be able to take the children to visit their father in the Department of Corrections, assuming the children desired to do so. The juvenile court then requested that DCS follow up on father’s counsel’s request but the visit did not take place.

DCS moved to terminate father’s parental rights to the children on the ground of length-of-felony sentence under [A.R.S. § 8-533\(B\)\(4\)](#). After a contested hearing, the juvenile court took the matter under advisement and issued a ruling severing father’s parental rights. The ruling noted that DCS has no duty to provide reunification services in cases brought under the length-of-felony-sentence ground for severance under [A.R.S. § 8-533\(B\)\(4\)](#) because “prolonged incarceration is something that neither the Department nor a parent can ameliorate through reunification services.” *James H. v. ADES*, [210 Ariz. 1, 106 P.3d 327 \(App. 2005\)](#). The court then applied Arizona’s six-factor test for evaluating the strength of an incarcerated parent’s relationship with children who

are the subject of a severance proceeding: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.). *Michael J. v. ADES*, 196 Ariz. 246, 251-52 ¶ 29 (2000).

After applying each factor, the juvenile court granted the severance motion. It next determined that severing father's rights would benefit the children because they were in an adoptive placement that was meeting their needs and they would remain in a stable, loving environment and would be able to achieve permanency.

On appeal, the Court of Appeals determined that the order of severance was supported by reasonable evidence and should be affirmed. The Arizona Supreme Court granted the father's Petition for Review.

ISSUES:

- I. Whether substantial evidence exists in the record to support the juvenile court's finding that the Appellant's conviction and length of sentence of imprisonment was of such a length as to deprive the children of a normal home for a period of years.
- II. Whether substantial evidence exists in the record to support the juvenile court's finding that the Termination of the Appellant Father's Parental Rights Would be in the Children's Best Interests.

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