

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



DIVISION ONE  
FILED: 07/19/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ANGEL C., )  
 ) No. 1 CA-JV 12-0020  
 )  
 Appellant, ) DEPARTMENT D  
 )  
 v. ) **MEMORANDUM DECISION**  
 )  
 JESSICA M., ALEXANDRIA G., ) (Not for Publication -  
 ) 103(G) Ariz.R.P. Juv. Ct.;  
 Appellees. ) Rule 28 ARCAP  
 )  
 )

Appeal from the Superior Court in Maricopa County

Cause No. JS506835

The Honorable Raymond P. Lee, Judge

**AFFIRMED**

Christina Phillis, Maricopa County Public Advocate Mesa  
By Suzanne Sanchez  
Attorney for Appellant

Robert D. Rosanelli Phoenix  
Attorney for Jessica M.

G E M M I L L, Judge

¶1 Angel C. ("Father") appeals the juvenile court's order terminating his parental rights to his daughter, Alexandria G.

("Child"), on grounds of abandonment pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2011).<sup>1</sup> For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 Child was born in early 2005 in Maricopa County. Father and Jessica M. ("Mother") resided with one another before Child was born, at the time of birth, and for a short period of time after Child was born. Child has continuously resided with Mother since her birth. Father, however, moved out of the shared residence in Summer 2005 and never again lived with Mother or Child. For a short period of time, Father continued to visit Child for approximately one hour at a time, up to five times per week.

¶13 Father has not visited or communicated with Child since September 8, 2005. On that day, Father visited Child outside of Mother's residence and did not return Child to Mother at the agreed upon time. Subsequently, Mother contacted the police and insisted that Father obtain a court order specifying any future visitation. Although Father acknowledged his awareness that visitation with Child may be established by filing with the court, he did not attempt to utilize the services of the court or take any legal action to see Child.

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<sup>1</sup> Unless otherwise specified, we cite the current versions of statutes when no material revisions have been enacted since the events in question.

Father has, however, paid child support by wage assignment as ordered by the court in April 2006.<sup>2</sup>

¶4 In March 2011, Mother filed a petition to terminate Father's parental rights on the ground of abandonment. Mother asserted that termination was in Child's best interest because Mother's fiancé, Daniel, who had provided care and support for Child since she was one year old, desired to adopt Child after the parties' marriage. Mother and Daniel were married on September 13, 2011. After a contested severance hearing on October 17, 2011, the juvenile court terminated Father's parental rights, finding Father had abandoned Child and termination was in Child's best interests.

¶5 Father timely appeals and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1) (Supp. 2011).

#### ANALYSIS

¶6 "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). Therefore, this court "will

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<sup>2</sup> The court order issued April 19, 2006 required child support payments in the amount of \$312.00 monthly, with \$2,985.00 in arrearages payable in the amount of \$25.00 per month.

accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Id.* The juvenile court's interpretation of a statute, however, will be reviewed de novo. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 43, ¶ 13, 178 P.3d 511, 515 (App. 2008).

¶7 To terminate parental rights, a juvenile court must find the existence of at least one statutory ground provided in A.R.S. § 8-533 and "that termination is in the best interest of the child." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). While statutory grounds for termination require clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 288, ¶ 41, 110 P.3d 1013, 1018, 1022 (2005).

¶8 On appeal, Father does not contest the juvenile court's finding that he abandoned Child. Father does argue, however, that insufficient evidence exists to prove that termination of his parental rights serves Child's best interests.

¶9 It is true that "a finding of abandonment cannot be equated with a finding of best interest." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990).

Thus, the court will not assume "that a child will benefit from termination simply because [s]he has been abandoned." *Id.* at 5-6, 804 P.2d at 734-35. The termination of the parental relationship, however, is in the best interests of the child if the child will benefit from the termination or would be harmed if the relationship continued. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998).

¶10 Father argues that although an adoption plan may be a factor in determining a child's best interests, it may not be based solely on the adoption plan. We agree that, in the absence of a statutory ground for severance, a willing adoptive parent is immaterial. *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. at 5, 804 P.2d at 734. In this case, however, abandonment was found and is uncontested on appeal. Thus, the required affirmative benefit for best interests analysis may be satisfied if sufficient evidence exists proving a current adoption plan is in place or even that the child is adoptable. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶11 Here, a current adoption plan is in place for Child. An adoption home study was conducted in October 2011 recommending a severance so that Daniel may adopt Child. The report recognized that Daniel's commitment to Child appeared to be "sincere and permanent" and that an opportunity for adoption

"would provide physical security for the child." Mother testified that her husband, Daniel, "has been the child's only father figure since the child was very young." The court also received testimony from Daniel of his intention to adopt and to continue to support Child as he has since May 2006.

¶12 Notwithstanding the adoption plan, Father maintains the court erred in terminating his rights. Father claims that an opportunity for Child to rebuild a relationship with her biological father will provide her an additional benefit while she maintains the current benefits of her home with Mother. Father argues that his relationship with Child cannot be lawfully terminated simply due to Child's well-being in the care of other people. See *Mary Ellen C. v. Ariz. Dept. of Econ. Sec.*, 193 Ariz. 185, 194, ¶ 43, 971 P.2d 1046, 1055 (App. 1999).

¶13 There is ample evidence here that Child would benefit from termination of Father's parental rights. The fact that Daniel is willing to adopt her and that he is currently participating in parenting her supports the finding of best interests. See *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50. Therefore, sufficient evidence in the record supports the juvenile court's finding that Mother proved by a preponderance of the evidence that terminating Father's parental rights is in the best interests of Child.

**CONCLUSION**

¶14 We affirm the juvenile court's termination of Father's parental relationship with Child.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Judge