DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHN G., DAYTONA J.,	)	No. 1 CA-JV 13-0007
	)	
Appellants,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, A.G.,	)	Rule 28, Arizona Rules of Civil Appellate Procedure)
	)	
Appellees.	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD20795

The Honorable Jay R. Adleman, Judge *Pro Tempore*

AFFIRMED

Jennifer Perkowski — Mesa
Attorney for Appellant, John G.

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Attorneys for Appellees

J O H N S E N, Judge

¶1 The parents of A.G. ("Child") appeal the superior court's order terminating their parental rights.[1] We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father are the biological parents of Child, who was born in February 2003 in California. Mother and Child moved to Arizona in 2008, while Father remained in California. In 2011, Mother and Child, then eight years old, were living with Dominick G. and Chad G., the respective fathers of Mother's other two children.[2] According to the evidence at trial, on September 11, 2011, Mother and the two men got into an argument at the home while the children were present, and Mother punched Dominick and cut Chad's throat with a meat cleaver. Mother was taken into custody and charged with aggravated assault with a deadly weapon, three counts of simple assault and one count of disorderly conduct. Father's whereabouts were unknown at the time, and he had not spoken to Child since the previous February. With Mother in jail and Father's whereabouts unknown, the Arizona Department of Economic Security ("Department") took legal custody of Child, who continued to live with Dominick, Chad and her two half-siblings because she had a significant

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[1] We amend our caption pursuant to Administrative Order 2013-0001 to safeguard the identity of the child.

[2] Mother's other children are not parties to this appeal.

relationship with Dominick, who helped care for her the previous three years and whom she called "Dad."

¶3 In September 2011, the Department filed a dependency petition, alleging that Child was dependent as to Mother due to her incarceration and because she had exposed Child to domestic violence. The Department alleged Child was dependent as to Father because he had failed to maintain a normal parent relationship and to provide for her support. After mediation, Mother submitted the issue of dependency to the superior court, which found Child dependent as to Mother in February 2012. In April 2012, Mother pled guilty to one count of aggravated assault and received a five-year sentence in the Arizona Department of Corrections ("DOC"). Mother was instructed to seek services in prison and she complied, participating in every applicable service offered.

¶4 Father contested the dependency. Father had last seen Child in July 2010 and had not communicated with Child from February 2011 until just after Mother was arrested. At that time, Father lived with his mother ("Grandmother"), was unemployed and received disability payments of $840 per month. Father and the Department agreed prior to the dependency hearing to allow weekly phone visits and to conduct a home survey to determine the suitability of Grandmother's home for Child. The home survey was not conducted, however, because Grandmother

deemed it inappropriate for the Child to live in the home and her caretaker refused to provide her Social Security number. Although Father had been granted weekly phone visits, he contacted Child only once before the dependency hearing.

¶5 After a hearing in April 2012, the court adjudicated Child dependent as to Father. At the hearing, Father claimed that he could get a job and a place to live. Father was offered multiple services, including parenting classes, a psychological consultation and services deemed necessary as a result of the consultation. The court also ordered the Department to consider a home study if Father obtained separate housing.

¶6 In May 2012, the case worker, Michelle Samuel, sent Father a certified letter informing him that she was unable to contact him to coordinate services. The letter warned Father that if he did not participate fully in the case plan, he would risk severance of his parental rights. Father signed for the letter but did not contact Samuel to participate in services, claiming the "ball was left in [the Department's] court to contact me with services." Father also did not call Child for the weekly telephone visits or arrange to visit Child in person. The Department never sent Father any details about the psychological evaluation or parenting classes.

¶7 In July 2012, the Department changed its case plan from reunification to severance and adoption and filed a

petition for termination of Mother's and Father's parental rights. The petition alleged that Mother had deprived Child of a normal home for a period of years because of her incarceration, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(4) (West 2013).[3] The petition alleged Father abandoned Child pursuant to A.R.S. § 8-533(B)(1) and that Child had been in an out-of-home placement for nine months or longer pursuant to § 8-533(B)(8)(a).

¶8 The termination trial was held on November 30, 2012. Mother testified that she was prevented from contacting Child due to a restraining order and so she had not seen Child since the night of the assault. Mother said she did not send letters to Child through the case worker because Mother did not like the case worker. Mother claimed she sent her sister Nicole letters, cards and gifts to give to Child even though she understood that Nicole could not forward them to Child until the restraining order lapsed. Mother had asked the Department for help to arrange visitation and to lift the restraining order because DOC denied visitation with Child on the basis of the restraining order. Samuel testified that the restraining order could be lifted and that she had asked Dominick to remove it, but she herself had done nothing else to correct the matter. Father had

[3] Absent material revision after the relevant date, we cite a statute's current version.

not obtained employment or separate housing nor contacted Samuel to arrange services. He also had not yet called or visited Child.

¶9 On December 4, 2012, at what the superior court's order termed an "un-calendared, non-appearance hearing," and in a signed judgment entered thereafter, the court granted the Department's petition severing Mother's and Father's parental rights. Father timely appealed; Mother filed a delayed notice of appeal pursuant to Arizona Rule of Procedure for the Juvenile Court 108(B). We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 8-235(A) (West 2013), 12-120.21(A)(1) (West 2013) and -2101(A)(1) (West 2013).

DISCUSSION

A. Standard of Review.

¶10 We review the superior court's termination order for an abuse of discretion; we will affirm the order unless its factual findings are clearly erroneous, "that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We review *de novo* any issues of law, including the interpretation of statutes. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 36, ¶ 12, 243 P.3d 636, 639 (App. 2010).

B. Mother's Appeal.

¶11 The superior court may terminate a parent's rights upon clear and convincing evidence of one of the statutory grounds in A.R.S. § 8-533(B) and upon finding by a preponderance of the evidence that termination is in the best interests of the child. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶ 12, 995 P.2d 682, 684-85 (2000).

¶12 One statutory ground for termination is that "the parent is deprived of civil liberties due to the conviction of a felony . . . if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." A.R.S. § 8–533(B)(4). In *Michael J.*, our supreme court set out a non-exclusive list of factors for courts to consider when determining if a parent's prison sentence will deprive a child of "a normal home for a period of years":

> (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., 196 Ariz. at 251–52, ¶ 29, 995 P.2d at 687–88. The supreme court rejected a "bright line" definition that any

particular length of sentence justifies termination, instead requiring courts to "consider each case on its particular facts." *Id.* at 251, ¶ 29, 995 P.2d at 687. A lack of evidence on one or more of the *Michael J.* factors does not require reversal, but "*all* relevant factors need[] to be considered," *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 450, ¶ 15, 153 P.3d 1074, 1079 (App. 2007), and "the juvenile court must consider the many facts and circumstances specific to each case," *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 281, ¶ 9, 53 P.3d 203, 206 (App. 2002). We will affirm an order of termination when facts support the superior court's findings "whether or not each supportive fact is specifically called out by the trial court in its findings." *Christy C.*, 214 Ariz. at 451-52, ¶ 19, 153 P.3d at 1080-81.

¶13 The superior court found that Mother would be incarcerated until at least December 2015, and might not be released until 2016. Further, in stating its findings on the record, the court found that:

> given the efforts or really the lack of efforts by [Mother] during the period of her incarceration, she's not made any attempt to contact her child through the case manager, there have been no phone contact, no cards, gifts or letters provided.
>
> Apparently some may have been provided to [Mother's] sister, but certainly nothing was provided to the one person with CPS who could have forwarded any proper materials or

information to her daughter. She did that knowing quite frankly that none of those materials were going to be provided to her daughter in the course of the dependency.

So, there's been very little if any indication to this Court that Mother is able to continue her relationship with her child during the period of incarceration.

* * *

Given those circumstances, it's very difficult to see how Mother is able to continue the – any type of normal parent-child relationship with her child during her period of incarceration, which again will continue for at least three more years.

The age of the child and the extent to which she's deprived of a normal home; again, the child's going to be deprived of a normal home for the better part of four to five years starting at age eight and going to age 12 to 13.

That's a significant time in her life, it's an important time of her life and she'll be lacking a normal parent-child relationship with her mother.

Also, with her father as well. The Court can also consider the lack of availability of another parent. [Father], to be kind, has had little to no relationship with his daughter for the better part of her life, certainly any normal parent-child relationship between the Father and the child has failed to exist.

So again, [Mother] has that weighing against her. . . .

Again, the effect of the deprivation of the parental presence on the child is evident. It's evident, among other reasons that quite frankly [Child], given the

> testimony at trial, does not wish to currently have a relationship with Mother or Father.[4]

¶14 In its judgment, the court made the following findings of fact regarding the basis for severing Mother's rights:

> Mother has been sentenced to serve five years in prison for Aggravated Assault. There is no other parent willing or able to care for the child during the incarceration, as Father had abandoned the child. The relationship cannot be nurtured during the incarceration because Mother refused to send letters to the child through the case manager, knowing the child would not receive them. The child will be deprived of a normal home life for a period of years.

¶15 Mother argues that, as to the first and second *Michael J.* factors, she was Child's primary care-giver for her first eight years and argues this was uncontroverted evidence of the "length and strength" of the existing relationship. The Department contends that Mother damaged her existing relationship "by exposing [Child] to domestic violence" during the assault, which Mother conceded scared Child. Samuel also testified Child did not want to visit Mother in prison. Mother argues that her ability to continue and nurture the relationship, the second factor, was hindered because she mistakenly believed a restraining order prevented her from contacting Child and, thus, she sent all of her cards and

[4] On the court's own motion, the record on appeal is supplemented to include the transcript of the December 4 proceeding.

letters to her sister, Nicole. Samuel, however, denied that Mother asked her to arrange any in-person or phone visits with Child, and, as the Department points out, Mother failed to send any cards or letters to Samuel to forward to Child. While Mother asserts she sent letters and cards for Child via her sister, Mother did not have her sister testify.[5] Addressing the fifth *Michael J.* factor, the superior court found that given the severance of Father's rights, there is not another parent available to provide a normal home to Child.

¶16 On this record, a reasonable mind could conclude that Mother's incarceration deprives Child of a normal home for a period of years and, on that basis, we affirm.[6]

¶17 Mother also argues that reasonable evidence does not support the court's finding that severing her rights was in Child's best interests. "[A] determination of the child's best interest must include a finding as to how the child would

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[5] As the trier of fact, the superior court "is specifically charged with resolving conflicts in the evidence" and judging the credibility of witnesses. *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007); *accord Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.

[6] Mother argues the operation of "a general rule that the [superior] court impliedly made every finding necessary to support its judgment" fails to address the fundamental interests of the parent and the Department's duty to make reasonable efforts to preserve the family. Without further development, she only argues against the sufficiency of the evidence. We conclude the court's findings on the record during the December 4 proceeding, along with its conclusions as stated in the judgment, satisfy all legal requirements.

benefit from a severance *or* be harmed by the continuation of the relationship." *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors that support a finding that a child would benefit from termination of parental rights include evidence of an adoption plan or that a child is "adoptable," or even that the existing placement is meeting the child's needs. *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291; *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994).

¶18 Samuel opined that the current placement with Dominick met Child's needs, allowed her to live with her half-siblings and to establish "permanency" and that Dominick was willing to adopt Child. The evidence as a whole is sufficient to support the superior court's best-interests finding.

C. Father's Appeal.

¶19 Father does not argue that the Department failed to prove abandonment. Rather, he argues that the Department was obligated but failed to make reasonable efforts to provide him with reunification services pursuant to A.R.S. § 8-533(B)(8) and (D). The Department sought termination based on nine months time-in-care pursuant to § 8-533(B)(8)(a), but the superior court declined to grant termination on that ground. The Department also alleged that Father abandoned Child pursuant to A.R.S. § 8-533(B)(1). It was on this ground that the superior

court ordered termination of Father's parental rights. This court has held that there is no statutory requirement to provide reunification services when the ground for termination is abandonment. *See Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 64, ¶ 9, 993 P.2d 462, 465 (App. 1999). Father does not provide us with any reason to question that decision.

¶20 Father also cites *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 193, ¶ 42, 971 P.2d 1046, 1054 (App. 1999), for the proposition that the Department was "obliged to prove by clear and convincing evidence that it had made a reasonable effort to provide [the parent] with rehabilitative services or that such an effort would be futile." Although Father does not develop this argument, the requirement to provide reunification services in *Mary Ellen C.* was based in part on constitutional grounds. *See id.* at 192, ¶ 32, 971 P.2d at 1053.[7] Our decision in *Toni W.*, however, considered whether there was a constitutional requirement to offer services when termination is sought based on abandonment and determined that when "a biological parent's interest in the child is nothing more than a genetic link," there was no such requirement. 196

[7] *Toni W.* made clear that the statutory requirement for reunification services discussed in *Mary Ellen C.* was eliminated by subsequent legislative amendment. 196 Ariz. at 64-65, ¶ 10, 993 P.2d at 465-66.

Ariz. at 66, ¶ 15, 993 P.2d at 467. Father's brief does not mention *Toni W.* or argue why the case should not apply here.

¶21 Normally, a party must present significant arguments, supported by authority, or an issue is considered waived. *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 491, ¶ 6, n.2, 154 P.3d 391, 393 (App. 2007) (citing ARCAP 13(a)(6)). In any event, even absent waiver, the record is clear that the Department sent Father a certified letter, for which he signed, informing him that the Department could not reach him and requesting he call so that the Department could establish services. Father never responded. Nor did Father meaningfully participate in telephonic or in-person visits. Even when the Department is required to provide services, it is not required "to ensure that a parent participates in each service it offers." *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239.

CONCLUSION

¶22 For the foregoing reasons, we affirm the order terminating Mother's and Father's parental rights as to Child.

_____/s/_____
DIANE M. JOHNSEN, Chief Judge

CONCURRING:

_____/s/_____
LAWRENCE F. WINTHROP, Presiding Judge

_____/s/_____
MARGARET H. DOWNIE, Judge