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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOHN A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and CHRISTINA A., Appellees.	2 CA-JV 2011-0080 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD201000003

Honorable Joseph R. Georgini, Judge

AFFIRMED

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E C K E R S T R O M, Presiding Judge.

¶1 John A. appeals from the juvenile court's order terminating his parental rights to his daughter Christina, born in June 2010, on the ground that he had willfully abused a child. *See* A.R.S. § 8-533(B)(2). Christina's mother, Sara H., has relinquished her parental rights to Christina and A.R., Jr. (A.R.), her son from a previous relationship, and she is not a party to this appeal. John appears to argue termination pursuant to § 8-533(B)(2) was not warranted because the court did not expressly find "an adequate nexus between the abuse suffered by [A.R.] and the risk of harm that such abuse would occur to Christina" and because the Arizona Department of Economic Security (ADES) "made no effort to establish this nexus." He asserts that, "[t]herefore, no reasonable evidence supported the decision." He also maintains the court "erred when it found that termination was in Christina's best interests."

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we conclude as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221

Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Id.* ¶ 10.

¶3 Less than a month after A.R.'s second birthday, Child Protective Services (CPS) received a report that he had been hospitalized for "non-accidental trauma to the spine and first ribs" resulting in a dislocated spine and broken ribs. His back was bruised and swollen, with a healing wound that resembled a burn; he could not bear weight or walk; and further x-rays and computerized tomography scans revealed "older fractures with callus formation at multiple levels of bilateral ribs and multiple levels of the spine in addition to a questionable healing fractured left clavicle." Medical personnel opined that A.R.'s severe injuries were consistent with child abuse and not with the accident described by Sara. They also reported that the injuries had occurred five to eight days before A.R. was seen by a doctor, and that, from the time of those injuries, A.R. would have been in excruciating pain, would have been unable to walk, and would have been markedly swollen and bruised.

¶4 Sara and John eventually admitted to a detective that A.R. had been injured while in John's care, and Sara stated she had lied to investigators about John's involvement so that he would not be arrested on an outstanding warrant for violation of his probation. CPS took temporary custody of A.R. on January 4, 2010, and he was later adjudicated a dependent child. John was charged with child abuse and aggravated assault and Sara was charged with child abuse based on the injuries A.R. had suffered. Both parents were incarcerated pending trial when Christina was born in June 2010; CPS

placed her in temporary custody and she was found dependent in August. Christina and A.R. have since been placed in the same adoptive foster home and have bonded to each other and their foster parents.

¶5 On appeal, John acknowledges that § 8-533(B)(2), which permits termination of parental rights when a parent "has neglected or wilfully abused a child," applies to termination of rights to a child not yet born when the abuse to another child occurred. *See Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ¶¶ 16-20, 257 P.3d 1162, 1165-67 (App. 2011). He maintains however that, unlike in that case, the juvenile court here made no express finding of an "adequate nexus" between the abuse of A.R. and the risk of abuse to Christina, a nexus required for termination under these circumstances. *See id.* ¶¶ 16, 22, *citing Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, n.3, 117 P.3d 795, 799 n.3 (App. 2005).

¶6 Ordinarily, we do not consider an issue raised for the first time on appeal, "particularly [when] it relates to the alleged lack of detail in the juvenile court's findings." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007). Moreover, "we will presume that the juvenile court made every finding necessary to support the severance order if reasonable evidence supports the order" and, "[i]f the juvenile court fails to expressly make a necessary finding, we may

examine the record to determine whether the facts support that implicit finding." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 17, 83 P.3d 43, 50 (App. 2004).[1]

¶7 In *Mario G.*, the court found reasonable evidence supported the juvenile court's finding that a sufficient nexus occurred to terminate a father's parental rights to a child born nine months after his rights to another child had been terminated for abuse, and more than two years after that child had been hospitalized for serious injuries. 227 Ariz. 282, ¶¶ 3, 19, 257 P.3d at 1163, 1166-67. In addition to finding the birth of the second child was "not remote in time" to the physical abuse of the first child, the court had considered whether the circumstances surrounding the abuse had changed, or whether the father "continued to be concerned primarily with his own best interests, rather than those of the child." *Id.* ¶¶ 20, 24.

¶8 Here, the temporal nexus between A.R.'s abuse and Christina's birth is yet stronger. Christina was born just six months after A.R. had been hospitalized for his injuries. Moreover, at the termination hearing, the juvenile court found that, even if the initial cause of A.R.'s injuries had been accidental, John had been responsible for his care and had allowed him to remain in "unbearable pain" for days without seeking treatment, while "the needs of that child took a backseat" to John's interest in protecting himself. In

[1]ADES suggests that we need not address John's argument because he "has failed to challenge the Juvenile Court's [alternative] finding that the termination of his parental rights was justified under A.R.S. § 8-533(B)(8)(a)." Although the court terminated the parental rights of A.R.'s biological father on this ground, nothing in the petition, the termination order, or the record supports ADES's assertion that John's parental rights were terminated pursuant to § 8-533(B)(8)(a).

further stating "[t]hat tells me a lot about what kind of father you will be, what kind of a man you are right now," the court implicitly found the circumstances surrounding A.R.'s abuse had not changed. John's own testimony may be read to support the court's conclusion that John would continue to consider his own needs above those of his child; when asked at the termination hearing why he had made no attempts to contact CPS about how Christina was doing, he responded, "I'm attending classes right now," adding, "Being incarcerated, you may think I have all the time in the world, but I'm trying to get stuff done for myself." Reasonable evidence supported the court's implicit finding that a nexus existed between the abuse suffered by A.R. and the risk of abuse to Christina, and reasonable evidence thus supported the termination of John's parental rights to Christina pursuant to § 8-533(B)(2).

¶9 In arguing the juvenile court erred in finding termination was in Christina's best interests, John essentially maintains the court gave insufficient weight to his testimony "that he was making efforts even though incarcerated to prepare to raise Christina" and to alternative placements available with his family. But "we do not re-weigh the evidence on review." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). To support its conclusion that termination of a parent's rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684, 689 (App. 1998). Thus, to establish best interests, "petitioner might

prove that there is a current adoptive plan for the child or that the child will be freed from an abusive parent." *In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990). In making the determination, the court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou C.*, 207 Ariz. 43, ¶ 19, 83 P.3d at 50.

¶10 At the termination hearing, the juvenile court found Christina was living with foster parents who are committed to adopting her, and that "termination will benefit the child because it will allow [her] to be adopted in a safe, loving, stable and drug-free home and achieve permanency." Ample evidence supported this determination.

¶11 For the foregoing reasons, we affirm the juvenile court's termination order.

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

CONCURRING:

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

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge