

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

FILED BY CLERK

DEC 24 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GILBERTO J.,)	2 CA-JV 2012-0095
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ROSA Y., GEORGE Y., and ROMEO Y.,)	Appellate Procedure
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100SV201200020

Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

Hernandez, Scherb & Hanawalt, P.C.
By Richard Scherb

Florence
Attorneys for Appellant

Rosa Y.

Arizona City
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Gilberto J. appeals from the juvenile court’s order of August 9, 2012, terminating his parental rights to his son Romeo Y., born in December 2006, on the ground of abandonment. A.R.S. § 8-533(B)(1).¹ Gilberto challenges the sufficiency of the evidence to sustain the statutory ground for severance. We affirm.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. *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 must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court’s order. *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 When Romeo was two months old, his mother left him with his maternal grandparents. He was diagnosed with fetal alcohol syndrome and is currently undergoing extensive treatment, including physical, occupational, and speech therapy; visits with a psychiatrist; and treatment for mood disorder and attention deficit hyperactivity disorder. He also suffers from “clonic jerks,” asthma, and repeated cases of bronchitis. When

¹Romeo’s mother’s parental rights also were terminated after she failed to appear at the contested severance hearing. She is not a party to this appeal.

Romeo’s grandparents did not see either parent for a few months, they sought and obtained legal guardianship of the child. Gilberto, who apparently was incarcerated at the time, did not appear for those proceedings.

¶4 From 2007 to the time of the severance hearing, testimony at trial established Gilberto had seen Romeo only a few times—once at his birth, once for a one-to-two-hour visit in October 2007, and once in January of 2008.² He has not contributed financially to Romeo’s upbringing, has not requested more visitation or sought custody, and has sent only two cards to Romeo—for Christmas and his birthday in the year before the severance hearing. And Gilberto himself acknowledged that he would not be in a position to provide for Romeo’s needs in “the foreseeable future” and that Romeo was “best off” staying with his maternal grandparents.

¶5 In granting the motion to terminate Gilberto’s parental rights, the juvenile court prepared a thorough minute entry setting out its factual findings and legal conclusions. We have determined that the record contains reasonable evidence to support the court’s factual findings with respect to both the statutory ground for termination and Romeo’s best interests. *See Denise R.*, 221 Ariz. 92, ¶ 4, 210 P.3d at 1264-65 (factual findings upheld if supported by reasonable evidence); *see also* A.R.S. § 8-531(1)

²Romeo also visited with Gilberto’s mother a “couple of months” before the severance hearing, but Gilberto was not present because he was incarcerated. Romeo has seen Gilberto’s mother on some other occasions as well, but nothing at the hearing established that Gilberto was present on any of those occasions either.

(“Abandonment’ means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision.”). The court’s factual findings, in turn, support its legal conclusion that severing Gilberto’s rights was warranted under § 8-533(B)(1). We therefore adopt the court’s findings of fact and approve its conclusions of law. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Gilberto’s arguments on appeal amount to a request that this court reweigh the evidence presented below; this we will not do. *See id.* ¶ 12. Because the court’s factual findings are clearly stated and supported by reasonable evidence, we have no basis on which to disturb its conclusion that severance will serve Romeo’s best interests. *See id.* ¶ 16.

¶6 Accordingly, the juvenile court’s order terminating Gilberto’s parental rights is affirmed.

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

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge