

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

APR 20 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

CHRISTOPHER A.,	)	2 CA-JV 2010-0131
	)	DEPARTMENT B
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
CHRISTINA M. and TERRY A.,	)	Appellate Procedure
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S194371

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Law Office of David J. Polan  
By David J. Polan

Tucson  
Attorney for Appellant

Thea M. Gilbert

Tucson  
Attorney for Appellee Minor

Christina Martin

Tucson  
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 After a contested severance hearing, the juvenile court terminated the parental rights of Christopher A. to his son, Terry A., born in December 2000, granting a termination petition filed in April 2010 by Terry’s mother, Christina M.<sup>1</sup> The court terminated Christopher’s rights on the ground of abandonment<sup>2</sup> and found that termination of Christopher’s parental rights was in Terry’s best interests. *See* A.R.S. § 8-533(B)(1). On appeal, Christopher contends there was insufficient evidence to support the court’s termination based on abandonment and challenges the court’s finding that termination was in Terry’s best interests. He also asserts the court erred by terminating his parental rights because the social study was not submitted by the court-ordered date or admitted at the severance hearing. Finally, Christopher contends the court exceeded its authority by questioning Christina at the severance hearing. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a

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<sup>1</sup>We permitted Christina, who is not represented by counsel, to join in Terry’s answering brief on appeal.

<sup>2</sup>Section 8-531(1), A.R.S., defines abandonment as

the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review, . . . we will 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." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). When Christopher appeared at the initial severance hearing in July 2010, the court notified him that if he failed to appear at future hearings, his parental rights could be terminated in his absence. At that same hearing, the court ordered Christina to have a social study prepared in time for the upcoming facilitated case conference on October 4, 2010. However, the October 4 conference did not take place; although Christina appeared at the conference, she explained that the social study would be released when she could pay the writer, which she had not done to date, but was then prepared to do. In any event, Christopher did not appear at the October 4 conference. When Christopher likewise did not appear at the October 21, 2010 severance hearing, the court deemed his absence voluntary. His attorney informed the court he did not know where Christopher was and that he had "no idea [as] to father's position . . . at this moment."

¶4 At the severance hearing, the juvenile court acknowledged it had considered the social study, which was then before the court, but did not admit it based on Christopher's objection on grounds it lacked foundation. Although the author of the study noted that Christopher had abandoned Terry, she did not opine whether the severance petition should be granted.

¶5 Christopher's attorney objected to the severance hearing going forward based on what counsel characterized as a "procedural argument," an objection the juvenile court rejected. Christina testified that Christopher had not provided any gifts, cards, or letters to Terry since Terry had been born; that he recently had begun paying child support in the amount of \$135 per month; that his only contact with Terry had occurred during the brief period between June and September 2009; and that Terry had heard a gunshot during a recent visit at Christopher's home.

¶6 On appeal, Christopher contends there is insufficient evidence to support the juvenile court's severance order based on abandonment. However, for all of the reasons discussed above, the record amply supports the court's findings as set forth in its minute entry order:

[Christopher] has not had any contact with this child since 09-26-09 and [Christopher] is paying a nominal amount of child support on a regular basis and has done so since approximately June 2009 with some except[i]ons as he is behind a couple of months in child support. He has not provided any gift cards or letters to the child. The Court notes that [Christopher] has made no efforts to enforce any contact that could have taken place in the special paternity

action and has failed to assert his legal rights with regard to contact.

Additionally, by characterizing Christina's uncontroverted testimony, the only testimony presented to the court, as "unsupported," Christopher suggests this court reweigh the evidence. But it is for the juvenile court, as the trier of fact, to weigh the evidence after determining the credibility and persuasiveness of the witnesses. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004).

¶7 Christopher next argues that, absent the admission of the social study, "there was a total lack of information regarding best interest." "A best-interests determination need only be supported by a preponderance of the evidence." *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). Contrary to Christopher's assertion, there was ample evidence to support the juvenile court's best interests finding

that it would be detrimental for [Terry] to continue to have contact with [Christopher], based upon the position stated by [Christina], as well as [Terry]'s counsel that [Terry] does not wish to have contact with [Christopher] and is, in fact, fearful of having contact with [Christopher]. [Terry] is currently involved in therapeutic services to help him address those issues.

¶8 Christina testified that, because Terry is afraid Christopher will hurt him, continued contact with Christopher would be detrimental to Terry, and termination would be in Terry's best interests. Christina also testified that Terry is afraid to go to Christopher's house, that Terry had said he "hated" her for sending him there, and that he

is receiving therapy to deal with his fear of Christopher. Additionally, Terry's attorney told the court that Terry "does not want any contact with his father. He is terrified of his father and in his own way [is] asking me to make sure that this action goes forward." Christina also testified there had been incidents of domestic violence with Christopher in Terry's presence. *See Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997); *see also* A.R.S. § 25-403.03(B) ("The court shall consider evidence of domestic violence as being contrary to the best interests of the child.").

¶9 Christopher further contends that "his due process rights were violated" because Christina had failed to provide the social study in time for the October 4 conference and that the judge had failed to "comply with her own Minute Entry Order of July 15, 2010," in which she had ordered the report prepared by October 4. *See* A.R.S. § 8-536(A) (upon filing petition to terminate parental rights, court shall order social study be conducted). Christopher seems to assert that, because the language in § 8-536(A) is mandatory, the juvenile court's failure to assure that the social study was timely prepared violated his due process rights.

¶10 Notably, although Christina appeared at the October 4 hearing without the report, Christopher did not appear at the hearing at all. We thus question any suggestion that Christopher was prejudiced or that his rights were violated by Christina's failure to provide the report in a timely manner. In addition, as Terry and Christina point out in their answering brief, § 8-536(A) merely requires that the social study "be submitted to the court before a hearing," which, in fact, occurred here. The statute does not specify

that the report be submitted, or for that matter, admitted, at any specific hearing, despite the juvenile court's order here that it be presented at the October 4 conference. Nor did Christopher's attorney inform the court at the severance hearing that he needed extra time to review the report. Based on the record before us, we disagree that Christopher's rights were violated by the late submission of the social study.

¶11 Finally, Christopher asserts that the juvenile court improperly questioned Christina, who was not represented by counsel. Although the court did ask Christina questions to clarify her testimony, the record simply does not support Christopher's assertion that the court's conduct prejudiced him in any way.

¶12 Because none of the issues Christopher raises on appeal warrants reversal, we affirm the juvenile court's order terminating his parental rights to Terry.

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

CONCURRING:

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

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