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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHRISTOPHER M.,	)	2 CA-JV 2010-0144
	)	DEPARTMENT A
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
CHRISTINA O. and MARISABEL M.,	)	Appellate Procedure
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF GREENLEE COUNTY

Cause No. SV201000005

Honorable Monica L. Stauffer, Judge

AFFIRMED

Law Office of Rebecca R. Johnson
By Rebecca R. Johnson
Safford
Attorney for Appellant

Law Office of Matt N. Clifford, P.C.
By Jeremy J. Waite
Safford
Attorneys for Appellee Christina O.

H O W A R D, Chief Judge.

¶1 After a contested severance hearing in October 2010, the juvenile court terminated the parental rights of Christopher M. to his daughter, Marisabel M. (Bella), born in July 2008, granting the petition filed in August 2010 by Bella's mother, Christina O. The court terminated Christopher's rights on the grounds of abandonment, incarceration, and unfitness to parent, *see* A.R.S. § 8-533(B)(1), (4), and found termination of Christopher's parental rights was in Bella's best interests. On appeal, Christopher contends there was insufficient evidence to support the court's termination order and best interests finding, his procedural rights were not protected during the proceeding, and his attorney did not represent him effectively. 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 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). In April 2009, following his conviction of sexual assault and

aggravated assault against Christina, Christopher began serving a fifteen-year prison term without the possibility of parole. Christina filed a petition to terminate Christopher's parental rights to then two-year-old Bella in August 2010. Christopher, Christina, and Christina's fiancé, Anthony, testified at the contested severance hearing.

¶4 Christina testified that in December 2007 Christopher had held a knife to her neck in front of her crying, two-year-old son, "shov[ing]" her son's shirt in her mouth to keep her from screaming, and telling her he would not rape her in front of her son because "that would give [her] too much of a thrill." She also testified that in August 2008, shortly after Bella's birth, Christopher "forcibly sodomized" Christina on the baseball field in Morenci.

¶5 Christina testified that neither she nor Bella has seen Christopher since the August 2008 incident, when Bella was three weeks old, and that Bella, who has no relationship with Christopher, will be sixteen years old when Christopher is released from prison. Although Christina and Bella have lived at the same address since Bella's birth, Bella has not received cards, letters, gifts, or financial support from Christopher, with the exception of one cashier's check for $150. Christina testified that Christopher has not requested parenting time with Bella, a fact Christopher confirmed. Christina also testified that she would not take Bella to visit Christopher in prison, "[k]nowing that he raped me and was actually capable of doing something like that to a human being. I couldn't . . . take my daughter there and say . . . he did this to me, but it's ok you can go see him. I can't." She added that none of Christopher's family members has asked to see Bella since his conviction. Acknowledging he had not had any contact with two-year-old

Bella in twenty-seven months, Christopher testified he could have sent a gift to Bella through his sister but did not, stating he was giving Christina "some time." Christopher did, however, testify that his siblings had tried to contact Christina by electronic mail and telephone, "but no contact ha[d] been made."

¶6 At the conclusion of the termination hearing, the juvenile court took the matter under advisement and, on November 10, 2010, terminated Christopher's parental rights based on all three grounds alleged, abandonment, incarceration, and unfitness to parent. *See* A.R.S. § 8-533(B)(1), (4). In its under advisement ruling, the court found

> clear and convincing evidence to terminate Christopher['s] . . . parental rights based upon abandonment . . . as he has failed to maintain a normal parent/child relationship and to provide reasonable support for a period of at least six months without just cause. Christopher . . . has not had any contact with [Bella] in any way in the form of gifts, letters or cards.
>
> The Court finds clear and convincing evidence to terminate Christopher['s] . . . parental rights based upon [Christopher's] incarceration in the Arizona Department of Corrections. Christopher['s] . . . term of incarceration is of such length that [Bella] will be deprived of a normal home pursuant to A.R.S. § 8-533(B)(4). Christopher . . . was sentenced to the Arizona Department of Corrections for a term of 12[1] years on April 28, 2009. The sentence is to be served day for day without eligibility for early release. Additionally, the Court finds Christopher['s] . . . conviction to be of such nature as to prove the unfitness of him to have future custody and control of [Bella]. Christopher . . . committed sexual assault with a dangerous weapon upon [Bella's] mother, the petitioner in this action.

[1]The record shows that Christopher was sentenced to fifteen, rather than twelve years in prison.

> The Court finds by a preponderance of the evidence termination of Christopher[']s . . . rights is in [Bella's] best interest.
>
> The Court finds petitioner's fiancé, Anthony . . . stands in loco parentis to [Bella]. Anthony . . . desires to adopt [Bella] as both [Bella] and Anthony . . . are bonded to one another.

¶7 On appeal, Christopher contends insufficient evidence had been presented at the contested severance hearing to support the juvenile court's termination order. However, there is reasonable evidence in the record to support the court's factual finding that the nature of Christopher's convictions proved him unfit to parent Bella. Although the court did not explain in its ruling why it so concluded, by referring to Christopher's sexual assault on Christina, we infer the court found the violent and sexual nature of the offenses of which Christopher had been convicted, and that Bella's mother was the victim, rendered him unfit to parent Bella. We also infer the court disagreed with Christopher's testimony that sexually assaulting and sodomizing Christina would not have a "chilling" impact on his relationship with Bella and that it had "nothing" to do with Bella. We additionally reject Christopher's argument on appeal that termination on this ground was improper because his "crime was not directed at a child and no evidence was presented that [he] had ever been accused of acting inappropriately to a child." Again, based on the violent and sexual nature of the offenses, and the fact that Christopher held a knife to Christina's throat in the presence her two-year-old son, we find more than ample evidence to support the court's termination order based on Christopher's unfitness to parent Bella based on the nature of his conduct and convictions.

¶8 Because we need only find that one statutory ground was established in order to sustain the court's order, we do not address Christopher's arguments regarding the sufficiency of the evidence to support the grounds of abandonment and incarceration. *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687. In addition, because Christopher asserts that his attorney was ineffective for failing to call witnesses to testify on his behalf in relation to abandonment and incarceration, grounds we do not address on appeal, we likewise do not address his claim of ineffective assistance of counsel.

¶9 Christopher also argues the evidence was insufficient to support the juvenile court's finding that termination was in Bella's best interests. "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). "Evidence that a child will derive 'an affirmative benefit from termination' is sufficient to satisfy that burden . . . ." *Id., quoting Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). There was ample evidence to support the court's best interest finding. At the severance hearing, Christina testified that terminating Christopher's parental rights would be in Bella's best interests because Anthony would be able to adopt her and provide her with a stable home and that termination would provide Bella with closure regarding her father. Both Christina and Anthony described Anthony's loving and close relationship with Bella, who Bella calls "Daddy." Anthony testified that if permitted to adopt Bella, he would "love her . . . financially support her, be with her . . . care for her . . . like she is my own." Because reasonable evidence supports the court's best interests finding that Anthony and Bella "are bonded to one

another" and that severance would permit Anthony to adopt Bella, we will not disturb that finding. Moreover, although not specifically noted by the court, we infer it also considered in its best interests ruling the violent history between Christopher and Christina. *See* 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.").

¶10 Christopher raises three arguments in which he asserts the juvenile court failed to comply with "statutory requirements and applicable rules." He first contends that, because he was not permitted to appear telephonically from prison at the initial hearing, the court did not admonish him that it could terminate his parental rights if he failed to appear at future hearings. *See* A.R.S. § 8-535(E). However, the minute entry ruling from that hearing states that the court had received Christopher's request to appear telephonically and that counsel be appointed to represent him that very day. The court then granted both of Christopher's requests by ordering that counsel be appointed and that he be permitted to appear telephonically at the upcoming settlement conference/termination hearing. Therefore, even assuming, without finding, that the court erred by failing to provide Christopher notice about his failure to appear at future hearings, because he did, in fact, appear at the termination hearing, and because his rights were not terminated in his absence, he was not prejudiced by the court's failure to advise him of that possibility.

¶11 Second, Christopher argues he was "denied due process and a fair trial" because the juvenile court failed to advise him of his trial rights pursuant to Rule

65(C)(5), Ariz. R. P. Juv. Ct.[2] Although the record does not show that Christopher was expressly advised of these rights, he does not claim, nor does the record show, that he was unaware of them, that he would have exercised them any differently had the court so advised him, or that he was in any way prejudiced by the court's apparent failure to advise him of these rights. Moreover, we note that in Christopher's argument that counsel was ineffective for failing to call two witnesses to testify on his behalf, he does not assert he did not know he had the right to compel witnesses, only that counsel was remiss in having failed to do so.

¶12 Third, Christopher claims the juvenile court's under advisement ruling terminating his parental rights lacked specific findings of fact and thus did not comply with Rule 66(F)(2)(a), Ariz. R. P. Juv. Ct. Rule 66, governing termination adjudication hearings, provides in subsection (F)(2)(a) that the court must "[m]ake specific findings of fact in support of the termination of parental rights." The court's signed minute entry order here arguably falls short of compliance with Rule 66(F)(2)(a). It articulates that the court found clear and convincing evidence to support termination on each of the grounds asserted and identifies the general reason for granting relief on each ground. However, because Christopher did not raise this issue below, when the court could have amplified its findings, he has waived it on appeal. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (appellate court generally does not consider objection raised for first time on appeal, particularly "as it relates to the alleged

[2]Rule 65(C)(5) includes the right to: counsel, cross-examine witnesses, trial by the court, and compel attendance of witnesses.

lack of detail in the juvenile court's findings"). Moreover, as the court in *Christy* noted, even if the juvenile court's findings were insufficient, "any error would have been harmless, and remand not required." *Id*. n.5. Because there is more than ample evidence in the record to support the court's findings, we reach the same conclusion here.

¶13 For all of these reasons, we affirm the juvenile court's termination of Christopher's parental rights to Bella.

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

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

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