

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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KEVIN H., *Appellant*,

*v.*

BRITTANY H., L.H., V.H., K.H., *Appellees*.

No. 1 CA-JV 16-0480  
FILED 5-2-2017

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Appeal from the Superior Court in Maricopa County  
No. JS517749  
The Honorable Arthur T. Anderson, Judge

**AFFIRMED**

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APPEARANCES

Vierling Law Offices, Phoenix  
By Thomas A. Vierling  
*Counsel for Appellant*

Brittany H., Phoenix  
*Appellee*

**MEMORANDUM DECISION**

Judge Patricia A. Orozco<sup>1</sup> delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Donn Kessler joined.

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**O R O Z C O**, Judge:

¶1 Kevin H. (Father) appeals the juvenile court's order terminating his parental rights to his three children, claiming the court's finding that termination is in the children's best interests is clearly erroneous. For the following reasons, we affirm.

**BACKGROUND**

¶2 Father and Brittany H. (Mother) are the biological parents of L.H. (a daughter born in 2006), V.H. (a daughter born in 2012), and K.H. (a son born in 2014). In December 2014, Father pled guilty to sexually motivated child abuse, a class 4 felony, against Mother's 15-year-old sister, and was placed on supervised probation for 20 years with sex offender terms for at least 10 years. Mother was granted an order of protection against Father, which prohibited Father from having contact with her and the children, and their divorce was finalized in January 2015.

¶3 In January 2016, Mother petitioned to terminate Father's parental rights on several statutory grounds and alleged severance was in the children's best interests.

¶4 After a contested severance hearing in November 2016, where Mother and Father testified, the juvenile court terminated Father's parental rights on the grounds of abandonment and the nature of his felony conviction,<sup>2</sup> and found that severance was in the children's best interests.

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<sup>1</sup> The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

<sup>2</sup> Father does not challenge the juvenile court's finding that Mother proved the statutory grounds for severance and thus we do not address them.

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Arizona Revised Statutes (A.R.S.) § 8-533(B)(1) and (4). Father timely appealed. We have jurisdiction pursuant to Article VI, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235(A), 12-120.21(A)(1) and -2101(A). (West 2017).<sup>3</sup>

**DISCUSSION**

¶5 Father's sole argument is that termination of his parental rights is not in the children's best interests. To support an order terminating parental rights, the juvenile court must find by a preponderance of the evidence that termination is in the best interests of the child. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 11 (App. 2011); A.R.S. § 8-533(B). As the trier of fact, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). Accordingly, we will accept the court's findings of fact "unless no reasonable evidence supports those findings." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555 (App. 1997).

¶6 To prove that severance is in the children's best interests, Mother was required to show that the children would either benefit from severance or be harmed by a continuation of the parental relationship with Father. *Mario G.*, 227 Ariz. at 288, ¶ 26. Father asserts that Mother proved neither. Thus, Father argues he should be afforded "an opportunity to complete more of his probation," which may permit modification of terms and conditions so that sometime "in the future" he may be allowed to have contact and visitation with the children.

¶7 In considering best interests, after finding statutory grounds supported termination, the juvenile court must balance that parent's "diluted parental interest against the independent and often adverse interests of the child in a safe and stable home life." *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005). "Judges must simultaneously protect the parent's interests and safeguard the child's stability and security." *Pima Cnty. Juv. Action No. S-114487*, 179 Ariz. 86, 101 (1994).

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<sup>3</sup> Absent material revisions, we cite to the current version of statutes and rules unless otherwise indicated.

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¶8 The court found Mother proved by clear and convincing evidence that severance was proper given Father's felony conviction of sexually motivated child abuse. The court noted that although Father pled to a lesser offense, he was initially charged with: (1) luring a minor for sexual exploitation, a class 3 felony; and (2) furnishing harmful items to minors, internet activity, a class 4 felony. The complaint alleged Father sent Mother's 15-year-old sister messages through a chat application in which he told her "I really want to please U sexually," sent a picture of an adult male holding his penis, and asked her "do U think I'm big?"

¶9 Mother testified that when Father was arrested in July 2014, she was "blindsided." She said she sought an order of protection against Father because she and the children lived just two blocks from where her parents lived with her 15-year-old sister (Father's victim) and she was concerned for the children's safety. Mother explained the order of protection was issued in July 2014 and, after an initial contested hearing, was extended for one year. She testified she was afraid for her children's safety and believed severance was in their best interests. Mother stated that she and Father were married for 10 years. She never thought he would approach a 15-year-old sexually, especially her sister who Father had known since she was six-years-old. Mother testified she believed Father continued to pose a risk to the children and if Father's rights were not severed, her two daughters may be exposed to a child predator. Mother further testified that by the time of the severance hearing in November 2016, Father had no contact with the children for more than two years, since his arrest in July 2014. At the time of Father's arrest, K.H. was only four-weeks-old, V.H. was 18-months-old, and L.H. was eight-years-old. Mother stated the children would benefit from severance because Father is a stranger to them.

¶10 With respect to his 20-year probation period, Father testified that by the terms of his probation, he is prohibited from: (1) having any contact with a minor, including his own children; (2) being anywhere children typically frequent, such as malls and playgrounds; and (3) leaving his home or being without a tracking device. Father admitted that after violating probation twice in late 2015, once for possessing a smart phone and once for communicating via the internet, he was placed on intensive probation with no specific end date. He testified that his repeated requests to modify his probation to allow visitation with his children were denied. However, his probation officer stated it could be modified "in few years." Father acknowledged that he did not attempt to modify or quash the order of protection during the year it was extended so that he might be permitted contact with his children.

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¶11 The court found that Father’s conviction for a sex offense against a minor child was “one that puts children at risk, as reflected in his sex offender terms,” and “certainly raises enough red flags where people should be legitimately concerned” that the children are at risk. The court found that “Mother has provided a loving and stable home for these children [and] she has spent a fair amount of time protecting [them] from the behaviors of Father.” In addition, the fact that Father was “going after” Mother’s 15-year-old sister and “sending lewd pictures” was “pretty outrageous conduct which further supports that [Father has] no business being near those kids.”

¶12 On this record, reasonable evidence supports the juvenile court’s finding that termination of Father’s parental rights is in the children’s best interests as they would be harmed by a continuation of a relationship with him.

**CONCLUSION**

¶13 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA