

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MICHAEL F., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.E., *Appellees*.

No. 1 CA-JV 17-0479
FILED 3-20-2018

Appeal from the Superior Court in Maricopa County
No. JD32530
The Honorable Bruce R. Cohen, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Jennifer L. Holder
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Michael F. (“Father”) challenges the superior court’s order terminating his parental rights to B.E., born in 2011. Because Father has shown no error, we affirm the order.

FACTS AND PROCEDURAL HISTORY

¶2 In April 2016, the Department of Child Safety (“DCS”) received a report that B.E. had a black eye and other injuries inconsistent with his explanation that his younger half-brother caused them. Two weeks later, DCS received a report that Rebecca E. (“Mother”) and her boyfriend¹ were evicted and staying in a motel with the children, where the children were exposed to illegal drugs. DCS noted concern that B.E. was possibly malnourished and his hygiene was marginal. DCS took the children into temporary custody on April 22, 2016, and placed them with maternal grandparents.

¶3 Father was not present when B.E. was born, and in the first few months of B.E.’s life he visited B.E. a “handful of times.” The court granted Mother a restraining order against Father in March 2011, which Father testified prevented him from seeing B.E. until Halloween 2012.² In 2012, Father visited B.E. two or three times. The following year he drove cross-country for a trucking company and had no contact with B.E. Father never petitioned the superior court to establish parenting time or legal

¹ Mother’s boyfriend is the biological father of X.E., Mother’s second child, who is a named party in the case but not a party to this appeal. Mother is also not a party to this appeal.

² The superior court received conflicting testimony regarding whether the Halloween visit was in 2011 or 2012 and did not determine which date is accurate.

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decision-making rights to B.E., instead allowing Mother to dictate when he could see his son.

¶4 Father provided minimal financial support in the form of some furniture, clothing, and formula the year B.E. was born, and he occasionally gave Mother money until sometime in 2013. Thereafter, he had no contact with Mother until May 2016. When Mother contacted Father for money to buy food for the children in 2016, they met at her apartment but he never saw B.E. Mother requested financial help every month from May 2016 until February 2017, but she had an excuse for why Father could not see B.E. each time he stopped by, and he never questioned her excuses. Father claims he was unaware B.E. was in foster care or that a dependency petition had been filed.

¶5 DCS located and served Father in May 2017. DCS arranged supervised visits with a parent aide beginning in June. During visitations, Father gave B.E. small gifts and provided clothes on occasion, but never provided financial support for B.E.'s daily needs.

¶6 Following a contested severance hearing held in October 2017, the superior court terminated Father's parental rights to B.E., finding DCS proved the statutory ground of abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) and that severance would be in B.E.'s best interests. Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235(A) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶7 In his appeal, Father does not challenge the superior court's findings of the statutory ground permitting severance on the ground of abandonment. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 281-82, ¶ 7 (2005) (requiring clear and convincing evidence of at least one statutory ground under A.R.S. § 8-533 to justify termination).

¶8 Instead, Father argues that the superior court abused its discretion by finding that severance was in B.E.'s best interest, claiming that DCS provided insufficient evidence Father is an unfit parent. Father argues he "produced negative drug test[] results and is actively engaged with the parent aide," that "in the months leading to [his] involvement in the case, [he] was able to provide the Mother with funds for his child as a result of employment," and further, he has secured housing. These arguments, however, do not relate to best interests. Even assuming their relevance, we find no error.

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¶9 The superior court may sever a parent's rights if clear and convincing evidence establishes that at least one of the statutory grounds for termination exists and that a preponderance of the evidence shows terminating the parent's rights is in the child's best interests. *Ariz. R.P. Juv. Ct.* 66(C); *Kent K.*, 210 Ariz. at 284, 288, ¶¶ 22, 41. We review the termination order and the record before us in the light most favorable to sustaining the court's ruling, affirming, unless we conclude "'as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.'" *Denise R. v. ADES*, 221 Ariz. 92, 95, ¶ 10 (App. 2009) (quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9 (1955)). We will not disturb the order if there is reasonable evidence based in the record that supports the factual findings upon which the order is based. *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We do not reweigh the evidence on appeal; rather, we defer to the superior court with respect to any factual findings, because, as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). The superior court, not this court, assesses the credibility of witnesses before it and weighs the evidence presented. *Id.* And to the extent there are conflicts in the evidence, the superior court must resolve them. *Jesus M.*, 203 Ariz. at 282, ¶ 12.

¶10 The best interests inquiry requires the superior court to balance the parent's rights "against the independent and often adverse interests of the child in a safe and stable home life." *Kent K.*, 210 Ariz. at 286, ¶ 35. "[T]he best interests inquiry focuses primarily upon the interests of the child, as distinct from those of the parent." *Id.* at 287, ¶ 37. "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990).

¶11 "When a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 12 (2016); *Mary Lou C. v. ADES*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (the best interests requirement may be satisfied if there is credible evidence of an adoptive plan or the child is adoptable). "Of course, a court need not automatically conclude that severance is in a child's best interests just because the child is adoptable; there may be other circumstances indicating that severance is not the best option." *Demetrius L.*, 239 Ariz. at 4, ¶ 14. The superior court must consider the totality of the circumstances

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when making a best interests finding. *Dominique M. v. DCS*, 240 Ariz. 96, 99, ¶ 12 (App. 2016).

¶12 In this case, the superior court considered the totality of the circumstances and determined that severance was in the best interests of the child. Father did not see B.E. for over four years and failed to provide any reasonable support, correspondence, or regular contact for a period of more than six months. When visitation with Father began, B.E. showed signs of stress and anxiety, and he exhibited behavioral problems such as self-harm and negative self-talk.

¶13 B.E. lived with Mother in maternal grandparents' home for most of his life.³ Maternal grandparents are willing and able to adopt B.E. They meet all his needs and provide a loving and nurturing environment for B.E. and his brother, with the opportunity to maintain relationships with the extended family. At the severance hearing, the DCS case manager testified that terminating Father's parental rights would be in B.E.'s best interests because it would provide him with permanency and stability, and because his educational, behavioral, and special needs would be met.

¶14 We accept the superior court's findings because reasonable evidence within the record supports them. *See Jesus M.*, 203 Ariz. at 280, ¶ 4.

CONCLUSION

¶15 Because Father has shown no error, we affirm the superior court's order terminating his parental rights to B.E.



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

³ The grandmother testified B.E. lived in her home, with Mother, from January 2011 to February 2012, July 2012 to February 2014, and from July 2015 until January 2016.