DIVISION ONE
FILED: 07/14/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

NORMA E.,	)	1 CA-JV 11-0049
	)	
Appellant,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
DAVID K., WENDY K., MEGAN K.,	)	103(G), Ariz. R.P. Juv.
	)	Ct.; Rule 28, ARCAP)
	)	
Appellees.	)	

Appeal from the Superior Court in Mohave County

Cause No. S8015AD201000036

The Honorable Richard Weiss, Judge

AFFIRMED

Jill L. Evans, Mohave County Appellate Defender — Kingman
by Diane S. McCoy, Deputy Appellate Defender
Attorneys for Appellant Mother

DeRienzo & Williams, P.L.L.C. — Prescott Valley
by Daniel J. DeRienzo
Attorneys for Appellees

P O R T L E Y, Judge

¶1 Norma E. ("Mother") appeals the termination of her parental rights. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother gave birth to a child three months after she was sentenced to 6.5 years in prison in May 2007. David K. ("Father") established paternity and was awarded custody of the child.[1] He filed a petition to terminate Mother's parental rights in April 2010. He alleged that Mother had abandoned the child and that her felony conviction deprived the child of a normal home for a period of years.

¶3 After the severance trial, the juvenile court found that Father proved the allegations by clear and convincing evidence and that termination was in the best interest of the child. Mother appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2007), 12-120.21(A)(1), -2101(B) (2003) and Ariz. R.P. Juv. Ct. 103(A).

DISCUSSION

¶4 Mother contends that the juvenile court erred. She argues that she did not abandon her child and contends that the court erred in finding that her felony conviction deprived the child of a normal home for a period of years and that the termination was in the child's best interest.

[1] The trial court, in August 2009, ordered that Mother was to have weekly phone contact and biannual visits with the child while she was incarcerated.

¶5 "We view the facts in the light most favorable to upholding the juvenile court's order." *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010). Termination of parental rights is appropriate when the petitioner proves by clear and convincing evidence that there is a statutory basis for the termination. *Id.* The petitioner also must prove by a preponderance of the evidence that termination is in the child's best interest. *Id.*

I.

¶6 A juvenile court can terminate parental rights pursuant to A.R.S. § 8-533(B)(4) (Supp. 2010) when "the parent is deprived of civil liberties due to the conviction of a felony . . . if the sentence of that parent is of such length that the child will be deprived a normal home for a period of years." In interpreting § 8-533(B)(4), our supreme court explained that there is no bright line rule that defines "when a sentence is sufficiently long to deprive a child of a normal home for a period of years." *Michael J. v. Ariz. Dep't of Econ. Sec.,* 196 Ariz. 246, 251, ¶ 29, 995 P.2d 682, 687 (2000). The court articulated six factors that a juvenile court should use when deciding if termination of parental rights is appropriate. *Id*. at 687-88, 995 P.2d at 251-52. The factors are:

> (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to

> which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

Id.

¶7 Mother contends that the juvenile court did not consider all six *Michael J.* factors before terminating her parental rights. The *Michael J.* factors, however, are not exclusive and must be considered on a case-by-case basis. *Matthew L.*, 223 Ariz. at 549, ¶ 8, 225 P.3d at 606.

¶8 Our review of the record finds that there was evidence to support all of the *Michael J.* factors. Mother did not have a relationship with the child because the child was born while she was incarcerated. Custody was granted to Father, and it was impractical for Mother to establish a bond before the child was removed.

¶9 Second, although "incarceration will as a practical matter typically preclude all but minimal visits," *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 451, ¶ 17, 153 P.3d 1074, 1080 (App. 2007), and Father obstructed Mother's attempts

to communicate with the child,[2] there was no evidence that Mother could nurture the parent-child relationship even if "she did *not* have the significant impediment of incarceration." *Id.* at ¶ 18. Mother has three other children from different relationships and has not nurtured a parental relationship with any of those children.

¶10 Third, although Mother wishes to be involved in the child's life, she has not, and the child will be over six years old before Mother's sentence expires. A meaningful parent-child relationship, therefore, does not exist.

¶11 Fourth, even though Mother testified that she could be released as early as August 10, 2012, her full sentence will not be completed until July 2013. The court followed *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 n.1, ¶ 6, 53 P.3d 203, 205 n.1 (App. 2002) and considered the actual length of her sentence, not the potential early release date. We find no error.

¶12 Fifth, the child has been living with Father and his wife, and is flourishing. And, sixth, there was no evidence

[2] Father testified that he did everything in his power to not let Mother contact the child and would not follow the court's order regarding Mother's contact. Because Father frustrated Mother's ability to communicate with the child, we find that termination was not warranted on the abandonment ground. We will, however, affirm if the juvenile court's ruling is correct on any ground. *See MacLean v. Dep't of Educ.*, 195 Ariz. 235, 240, ¶ 18, 986 P.2d 903, 908 (App. 1999).

that a bond existed between Mother and child, or any indication that the child knew her biological mother. We, however, note that this factor weighs in favor of Mother because Father obstructed any attempt she made to contact the child.

¶13 The juvenile court was required to weigh the *Michael J.* and other relevant factors when making its determination, and we presume that it did so. *Matthew L.*, 223 Ariz. at 551, ¶ 18, 225 P.3d at 608. "[T]here is no threshold level under each individual factor in *Michael J*. that either compels, or forbids, severance." *Matthew L.*, 223 Ariz. at 551, ¶ 19, 225 P.3d at 608 (quoting *Christy C.*, 214 Ariz. at 450, ¶ 15, 153 P.3d at 1079) (internal quotation marks omitted). Consequently, based on the record, reasonable evidence supports the juvenile court's findings and we find no abuse of discretion.

II.

¶14 Mother next contends that the juvenile court erred in finding that severance of her parental rights was in the best interest of the child. The issue is a factual one, and we view the evidence and draw all reasonable inferences from it in favor of supporting the juvenile court's findings. *Jesus M.*, 203 Ariz. at 282, ¶ 13, 53 P.3d at 207. Best interest is demonstrated when there is evidence that the child would benefit from the severance or would be harmed if the parental

relationship continued. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶15 Here, there was sufficient evidence to support the best interest finding. In addition to Mother's crime, attempted sexual conduct with a minor, and lengthy sentence, there was evidence that the child has bonded to Father's wife, who wants to adopt the child. Moreover, the court found that Father could provide a "stable and nurturing home." Consequently, the evidence supports the juvenile court's best interest finding.

III.

¶16 Finally, Mother contends that the termination must be reversed because the social study was not timely disclosed. We review the decision to admit or exclude evidence that was not timely disclosed for an abuse of discretion. *See State v. Reinhardt*, 190 Ariz. 579, 586, 951 P.2d 454, 461 (1997).

¶17 A social study is required after a petition to terminate parental rights is filed pursuant to A.R.S. § 8-536(A) (2007) and when a petition to adopt is filed. A.R.S. § 8-112(A) (2007). Here, the juvenile court ordered the necessary social studies be completed, and in spite of the argument that Father's social study was deficient, the study complied with the statutory requirements.

¶18 Although the social study was filed more than six months before trial, Mother's counsel only received it just

prior to trial.[3] She, however, did not ask for a continuance, or otherwise demonstrate that the disclosure prevented her from preparing for trial. She, moreover, cross-examined the court-appointed investigator who prepared the social study.[4] Consequently, we find no abuse of discretion.

CONCLUSION

¶19 For the foregoing reasons, we affirm the termination of Mother's parental rights to her child in this case.

/s/
_____
MAURICE PORTLEY, Judge

CONCURRING:

/s/
_____
DANIEL A. BARKER, Presiding Judge

/s/
_____
DIANE M. JOHNSEN, Judge

[3] Mother did not challenge the social study in the pretrial statement as required by Arizona Rules of Juvenile Procedure 44(B)(2)(e) and 66(E).

[4] Mother also argues that her counsel was ineffective because she did not contact her until two days prior to trial, did not introduce evidence to demonstrate that Mother attempted to contact the child while incarcerated, and did not object to admission of the social study. Mother, however, did cross-examine Father and other witnesses. Consequently, we find no prejudice to support the ineffective assistance of counsel claim.