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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ANTHONY N.,	)	2 CA-JV 2013-0006
	)	DEPARTMENT A
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
KRYSANIA L. and SERAYA N.,	)	Appellate Procedure
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. SV201200007

Honorable Donna Beumler, Judge Pro Tempore

AFFIRMED

John R. Gustafson
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Attorney for Appellant

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By Edward W. Matchett
Douglas
Attorney for Appellee Krysania L.

Benna R. Troup
Bisbee
Guardian ad Litem for Appellee Seraya N.

M I L L E R, Judge.

¶1 Anthony N. appeals from the juvenile court's order of January 3, 2013, terminating his parental rights to his daughter Seraya N., born in September 2007, pursuant to a petition filed by Seraya's mother, Krysania. Anthony argues insufficient evidence supports the court's finding that termination was warranted on the ground of abandonment pursuant to A.R.S. § 8-533(B)(1), or to establish that terminating his parental rights was in Seraya's best interests. He also challenges the court's waiver, pursuant to A.R.S. § 8-536(C), of the social study presumptively required by § 8-536(A). For the reasons set forth below, we affirm.

¶2 Before it can terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* 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 order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). In April 2012, Krysania filed a petition to terminate Anthony's parental rights to Seraya based on abandonment pursuant to § 8-533(B)(1). After a two-day contested severance hearing, the court found termination warranted on the asserted ground and further determined termination was in Seraya's best interests. The court also

found good cause existed to grant Krysania's request to waive the social study. *See* § 8-536(A),(C).

¶4 When Seraya was an infant, Anthony left Douglas, Arizona, where he had been living with Krysania and Seraya, and moved to California. The testimony at trial established that Anthony had not seen Seraya, who was five years old at the time of the trial, since he had left Arizona shortly after she was born.[1] Anthony testified he had sent Seraya a card on her first birthday, and "money and letters" during the first four months after he had left Arizona, all of which were returned, and he had tried to contact Krysania by electronic mail in 2009. Anthony's current wife testified she had tried to contact Krysania through "My Space" and "Facebook," but those communications "didn't end good."

¶5 Although Anthony had known Krysania's mother and grandmother when he had lived in Douglas, and knew where they worked, he did not attempt to reach Krysania by contacting her family members or any other mutual acquaintances in Douglas. Nor did Anthony contribute financially to Seraya's upbringing, request visitation or seek custody through the court. And he did not attempt to establish contact with Seraya through his own attorney or Krysania's or Seraya's attorneys after he was served with the petition to terminate his parental rights. Krysania's current husband, Frank, has been in Seraya's life since she was approximately eighteen months old; he is the only father figure Seraya knows, and Seraya "adores" Frank, who wishes to adopt her.

[1]Anthony testified that he last saw Seraya when she was eight months old, while Krysania testified she had been three months old.

¶6 On appeal, Anthony argues the evidence was insufficient to support termination based on the ground of abandonment, asserting "[m]any of the trial court[']s findings are unsupported by the evidence or [are] unreasonable interpretations of the evidence," and that Krysania "created the abandonment" by excluding him from Seraya's life. Anthony further argues that termination was not in Seraya's best interests, maintaining "[t]he issue . . . is not whether adoption was in the child's best interest . . . [t]he issue is whether secreting the child and preventing her from knowing her biological father is in the child's best interest." He also contends there was no evidence he "would be a bad influence" on Seraya.

¶7 Anthony's arguments regarding the sufficiency of the evidence to support termination and the propriety of the juvenile court's best interests finding amount to a request that we reweigh the evidence presented below. This we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205 (we defer to juvenile court to determine witness credibility, evaluate evidence, and resolve conflicts); *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005) (appellate court does not "reweigh the evidence presented").

¶8 In granting the petition to terminate Anthony's parental rights, the juvenile court prepared a thorough minute entry ruling setting out its factual findings and legal conclusions. We have determined that the record contains reasonable evidence to support the court's factual findings with respect to the statutory ground for termination and Seraya's best interests. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264-65 (App. 2009) (factual findings upheld if supported by reasonable evidence); *see also* A.R.S. § 8-531(1) ("[a]bandonment means the failure of a parent to

provide reasonable support and to maintain regular contact with the child, including providing normal supervision . . . failure to maintain a normal parental relationship with the child without just cause for . . . six months constitutes prima facie evidence of abandonment."). The court's factual findings, in turn, support its legal conclusion that severing Anthony's rights was both warranted under § 8-533(B)(1) and in Seraya's best interests. We therefore adopt the court's findings of fact and approve its conclusions of law. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶9 Finally, Anthony briefly challenges the juvenile court's waiver of the social study, asserting "[t]he family social study report . . . would have shed light on [whether termination of his parental rights was in Seraya's best interests]. Ironically, the trial court waived that report in the best interests of [Seraya]. The court erred in waiving that report." *See* A.R.S. § 8-536(A) (upon filing of petition to terminate parental rights, court shall order social study be conducted). However, § 8-536(C) permits the court to waive the social study requirement if it finds "that to do so is in the best interest of the child."

¶10 In its order terminating Anthony's parental rights, the juvenile court granted Krysania's request to waive a social study, noting "good cause" existed to do so. Although the court did not expressly find that waiving the social study was in Seraya's best interest, we can infer it did so in compliance with the statute. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 32, 97 P.3d 876, 883 (App. 2004) (trial judges presumed to know and apply law). The court appointed a guardian ad litem to evaluate and protect Seraya's best interests and the guardian ad litem opined that severance would, in fact, be in her best interests. Moreover, not only did Anthony not request a social study, but he

did not object during the entire pendency of this matter to Krysania's request that the social study be waived. As such, he has waived the argument 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 objections raised for first time on appeal).

¶11 Therefore, we affirm the juvenile court's order terminating Anthony's parental rights to Seraya.

/s/ Michael Miller
MICHAEL MILLER, Judge

CONCURRING:

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

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

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.