IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MATTHEW C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND I.C.,
Appellees.

No. 2 CA-JV 2015-0036
Filed June 12, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD194510
The Honorable Susan A. Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Brammer[1] concurred.

V Á S Q U E Z, Judge:

¶1 Matthew C., father of I.C., born in January 2013, appeals from the juvenile court's January 2015 order terminating his parental rights on the ground that he had been convicted of a felony and ordered to serve a prison term of such length that it deprived the child of a normal home for a period of years. *See* A.R.S. § 8-533(B)(4).[2] Matthew challenges the sufficiency of the evidence to support the ruling. We affirm for the reasons stated below.

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[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]The juvenile court also terminated the parental rights of I.C.'s mother, Vanessa R., Matthew's co-defendant in the criminal proceedings, on the same ground; she was sentenced to concurrent prison terms, the longest of which was 10.25 years. This court affirmed Vanessa's convictions and sentences on appeal. *State v. Rodriguez*, No. 2 CA-CR 2014-0272 (memorandum decision filed May 20, 2015). We dismissed her severance appeal after appointed counsel filed an affidavit pursuant to Rule 106(G), Ariz. R. P. Juv. Ct.

¶2 The Department of Child Safety (DCS)[3] took temporary custody of I.C. in November 2013 after Matthew and the child's mother, Vanessa R., had been arrested and incarcerated for robbing and assaulting someone. Matthew was convicted of armed robbery, aggravated robbery, and kidnapping and sentenced to concurrent prison terms, the longest of which was 15.75 years. I.C. was placed with the paternal grandparents, who had cared for the child for a significant amount of time before the parents were arrested. DCS filed a petition for dependency and paternity, alleging as to Matthew that I.C. was dependent because of the parents' incarceration and because Matthew had neglected the child by failing to establish paternity, obtain a custody order, and address I.C.'s medical issues. In February 2014, after a contested hearing, the juvenile court adjudicated I.C. dependent on the grounds alleged.

¶3 In August 2014, DCS filed a motion for termination of both parents' parental rights pursuant to § 8-533(B)(4). Matthew filed a motion to appoint the paternal grandmother as I.C.'s permanent guardian. Vanessa joined in that motion, which the juvenile court stated at the severance hearing it would consider concurrently with the motion to terminate. In January 2015, after a two-day hearing, the court granted DCS's motion and denied Matthew's motion. In its under-advisement ruling, the court expressly considered the factors set forth by our supreme court in *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, 995 P.2d 682 (2000). Based on its finding that Matthew had been sentenced in June 2014, to a prison term of over fifteen years,[4] and

[3]DCS is substituted for the Arizona Department of Economic Security (ADES), which investigated the case initially and filed the dependency petition. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

[4]This court recently affirmed Matthew's convictions and the sentences imposed on appeal. *State v. Cordova*, No. 2 CA-CR 2014-0231 (memorandum decision filed Mar. 26, 2015).

additional findings related to I.C.'s age, the fact she had not lived with the parents for more than half of her life, and her anticipated adoption by the grandparents, the court found DCS had sustained its burden of proving the statutory ground for termination by clear and convincing evidence, and a preponderance of the evidence established termination was in I.C.'s best interest.

¶4 Matthew first contends the juvenile court erred in finding DCS had established by clear and convincing evidence that the length of his prison term justified termination of his parental rights pursuant to § 8-533(B)(4). He argues, inter alia, severance should be "a last resort," a permanent guardianship provided a better alternative,[5] the court "ignored the family's preference for guardianship," DCS never informed the grandparents a permanent guardianship was a possibility, and the court "failed to accurately apply" the *Michael J.* factors to this case.

¶5 On appeal, "we view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, when a parent challenges the sufficiency of the evidence to support the juvenile court's severance order, we will not disturb the ruling unless, as a matter of law, no reasonable fact finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz.

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[5]DCS seems to suggest in its answering brief that we need not consider this argument because Matthew did not expressly appeal from the juvenile court's denial of his motion for a permanent guardianship and appealed only from the termination of his rights. But the question whether a permanent guardianship was a viable alternative to severance was litigated simultaneously with the motion to terminate Matthew's parental rights and both issues were addressed in the same order from which the appeal was taken. Under these circumstances, and in this context, we address Matthew's arguments.

92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). And, in reviewing the evidence we are mindful that it is for the juvenile court, not this court, to weigh the evidence and assess the credibility of the witnesses; we will not reweigh the evidence on appeal. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002) (resolution of "conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact").

¶6 The record shows the juvenile court considered the relevant factors, including those prescribed by our supreme court in *Michael J.* Matthew is essentially asking this court to reweigh the evidence and reconsider the *Michael J.* factors. He asserts that his relationship with I.C. could have been nurtured while he is in prison, relying on the fact that the grandparents had taken I.C. to the prison to visit. But the court was aware of and considered Matthew's contentions in this regard. It found that "there is no indication that the[] visits are significant in frequency or duration to substitute for a normal parent-child relationship, especially in light of" I.C.'s age and the fact she had not lived with her parents for more than half her life. This was an appropriate consideration and the court did not abuse its discretion by balancing this factor against the other factors. Additionally, the court properly considered and denied Matthew's motion for a permanent guardianship within the context of DCS's severance motion.

¶7 The record contains reasonable evidence to support the juvenile court's determination that DCS sustained its burden of proving by clear and convincing evidence severance of Matthew's parental rights was warranted under § 8-533(B)(4). We have no basis for disturbing that portion of its decision.

¶8 Similarly, we reject Matthew's challenge to the sufficiency of the evidence to support the juvenile court's finding that termination of his parental rights was in I.C.'s best interest. Again Matthew argues that the permanent guardianship would have been a better choice that could have helped "strengthen[] and preserv[e] the child's family ties." The court made proper findings to support its conclusion that termination was in I.C.'s best interest. Among them, the court found that severance of the parents' rights

and adoption of the child by the paternal grandparents was the best choice and gave the child the permanency she needed, a benefit particularly important to a child of her age and with her special needs. The court noted the parents preferred a guardianship so that I.C.'s relationship with family other than the paternal grandparents could be fostered but stated there was "very little" evidence to suggest the grandparents would not do so.

¶9 There was reasonable evidence in the record to support the juvenile court's best-interest finding. That evidence included the testimony of the DCS program specialist and the ongoing unit supervisor, who stressed the need for the most permanent situation for I.C. Although the unit supervisor testified she had not discussed with the grandparents the possibility of a permanent guardianship, she knew they were willing to adopt I.C. DCS specialist Erica Macias testified about the strong bond and love between I.C. and the grandparents. Although she stated she did not give the grandparents information about the difference between a guardianship and an adoption, she did believe it had come up in conversations, indeed, "it's always come up" in conversations. Matthew cites no authority for the proposition that DCS is required to discuss a permanent guardianship with prospective adoptive parents who wish to adopt when DCS believes severance and adoption is in the child's best interest.

¶10 Additionally, the DCS program specialist explained the factors DCS considers relevant to recommending adoption or permanent guardianship, including the child's age and special needs and the likelihood that a parent would become capable of properly caring for the child, eliminating the need for the guardianship. Given the parents' lengthy prison terms, she saw no benefit to keeping "the door open for" either parent to return and raise I.C. She explained the various benefits of adoption over guardianship for a two-year-old child with special needs. Again, we will not reweigh the evidence and have no basis for disturbing this finding.

¶11 We affirm the juvenile court's order terminating Matthew's parental rights to I.C.