IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

AKBAR T.,
Appellant,

v.

CHRISTINA K., D.T., AND E.T.,
Appellees.

No. 2 CA-JV 2015-0063
Filed July 14, 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NOT FOR PUBLICATION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 Pinal County
No. S1100SV201400071
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

Ritter Law Group, L.L.C., Florence
By Matthew A. Ritter
Counsel for Appellee Christina K.

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Akbar T. appeals from the juvenile court's order terminating his parental rights to his daughter D., born in January 2001, and his son E., born in October 2002, on abandonment grounds. *See* A.R.S. § 8-533(B)(1). Although Akbar concedes he abandoned his children, he argues on appeal that the court "fundamentally erred" because it did not order a social study pursuant to A.R.S § 8-536(A) or appoint counsel or a guardian ad litem for the children, thereby resulting in "an unsupported, inadequate finding of best interests." We affirm.

¶2 In October 2014, Christina K., D.'s mother, filed a petition to terminate Akbar's parental rights on the grounds of abandonment, neglect or abuse, and mental illness. After a contested hearing, the juvenile court granted the petition on the ground of abandonment, additionally finding termination was in the children's best interests.

¶3 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] 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, we will not reverse a termination order for insufficient evidence 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. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶4 Akbar first argues the juvenile court erred because it did not order a social study as required by A.R.S. § 8-536(A). He acknowledges he did not raise this issue below and thus has forfeited the right to review for all but fundamental, prejudicial error. *See Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶¶ 22-23, 118 P.3d 37, 42 (App. 2005). To establish fundamental error, Akbar must "'show that the error complained of goes to the foundation of his case, takes away a right that is essential to his defense, and is of such magnitude that he could not have received a fair trial.'" *Id.* ¶ 24, *quoting State v. Henderson*, 210 Ariz. 561, ¶ 24, 115 P.3d 601, 608 (2005).

¶5 Akbar is correct that the juvenile court was required to order a social study when Christina filed the petition to terminate his parental rights. § 8-536(A). Although a court may waive that requirement if it "finds that to do so is in the best interest of the child," § 8-536(C), Akbar is also correct the court made no such express finding here. But he has not developed any argument that the lack of a social study went to the foundation of his case, took away a right essential to his defense, and deprived him of a fair trial. He claims only that it deprived the court of "the evidence [it] needed to make a best interests determination." But, as we discuss in more detail below, there was ample evidence to support the court's best-interests finding. And Akbar does not assert that he was prevented from interviewing the children or calling them as witnesses at trial, or that he could not otherwise defend against Christina's allegation that termination of his parental rights was in the children's best interests.

¶6 For much the same reasons, we reject Akbar's companion claim that the juvenile court fundamentally erred

because it did not appoint counsel or a guardian ad litem to represent the children.[1] Pursuant to A.R.S. § 8-221(A), a juvenile court may appoint counsel in a termination proceeding. And it may appoint a guardian ad litem pursuant to A.R.S. § 8-535(F). Indeed, in light of Christina's allegation that termination was warranted on the grounds of abuse and neglect, the court was required to appoint a guardian ad litem pursuant to § 8-221(I). But, again, Akbar has not demonstrated any error was fundamental. Although the court's appointment of a guardian ad litem or counsel may have resulted in more information being made available to the court, Akbar does not explain why he was not otherwise able to obtain the information he believes was missing.

¶7 At the heart of Akbar's arguments is his insistence that the juvenile court's best-interests finding was insufficient. To establish that termination is in a child's best interests, a petitioner must show that termination would benefit the child, or that continuing the parental relationship would harm the child. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684, 689 (App. 1998). Akbar first suggests the court's order is defective because it did not contain "finding[s] as to how the children would benefit from the severance or how they would be harmed by the continuation of the relationship." But, although a juvenile court is required to "recite the findings on which the [termination] order is based," A.R.S. § 8-538(A), Akbar did not raise that argument below and accordingly has waived any such error on appeal, *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007).

¶8 Furthermore, we disagree with Akbar that the evidence presented was insufficient to support a best-interests finding. Relying on *Jose M. v. Eleanor J.*, 234 Ariz. 13, 316 P.3d 602 (App.

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[1]We assume, without deciding, that Akbar has standing to assert this argument. *But cf. In re Pima Cnty. Juv. Severance Action No. S-113432*, 178 Ariz. 288, 291, 872 P.2d 1240, 1243 (App. 1993) (concluding parent "has no standing" to assert conflict by children's counsel).

2014), he asserts that the fact Christina's husband intends to adopt the children, standing alone, renders the evidence insufficient because the children do not currently lack stability. In *Jose M.*, this court rejected a juvenile court's best-interest finding based solely on a potential adoption by the petitioner's fiancé. *Id.* ¶¶ 22-23. We reasoned that, because the child was not in foster care and would "presumably continue to live with Mother for the foreseeable future," the living arrangement "already offers stability and permanence," the petitioner's "stated intent to marry fiancé on some undetermined future date, and fiancé's interest in adopting [the child], without more, do not establish an increase in stability and permanence . . . to the degree necessary to demonstrate a benefit." *Id.* ¶ 23.

¶9 *Jose M.* is readily distinguishable. We first note that, in that case, we also vacated the juvenile court's finding that the parent had abandoned the child. *Id.* ¶ 19. Here, Akbar acknowledges that finding was correct. The presence of a statutory ground for termination typically will "have a negative effect on the children," therefore supporting a juvenile court's best-interests finding. *In re Maricopa Cnty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988). Akbar also failed to address his history of domestic violence. *Cf.* A.R.S. § 25–403.03(B) (in determining parenting time, "court shall consider evidence of domestic violence as being contrary to the best interests of the child"). Additionally, the children's eighteen-year-old sibling, A., testified that both children had no relationship with Akbar and did not wish to have a relationship with him. Christina corroborated that testimony and stated that one of the children was undergoing counseling due to the child's fear that Akbar would attempt to reinsert himself into their lives. This evidence is sufficient to support the court's best-interests finding. Akbar's argument essentially asks us to reweigh the evidence, something we do not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶10 The juvenile court's order terminating Akbar's parental rights to D. and E. is affirmed.