IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CARLOS H.,
Appellant,

v.

L.H.,
Appellee.

No. 2 CA-JV 2016-0063
Filed August 8, 2016

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NOT FOR PUBLICATION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. SV201500038
The Honorable Henry G. Gooday, Judge

AFFIRMED

COUNSEL

Heard Law Firm, Mesa
By James L. Heard
Counsel for Appellant

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

E S P I N O S A, Judge:

¶1 Carlos H. appeals from the juvenile court's March 2016 order terminating his parental rights to his daughter, L.H., born in October 2010. In April 2015, L.H.'s mother, Sarah O., filed a petition to terminate Carlos's parental rights alleging as grounds for termination abandonment, mental illness or history of chronic substance abuse, and deprivation of civil liberties. *See* A.R.S. § 8-533(B)(1), (3), (4). After a one-day hearing in March 2016, the court terminated Carlos's parental rights based on abandonment and found that termination was in L.H.'s best interests.[1] For the following reasons, we affirm the termination order.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(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 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

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[1]Sarah represented herself at the hearing, while Carlos and L.H. were represented by counsel. Although the juvenile court stated Sarah had "met the burden of proof as to the allegations" contained in the petition for termination, it only addressed the abandonment ground with any specificity.

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. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).[2]

¶3 In 2014, Carlos pled guilty to burglary and attempted second-degree murder. He was sentenced to a three-year prison term for the burglary, to be followed by intensive probation for the attempted murder; he has been incarcerated since January 2015. Carlos's convictions resulted from a 2013 incident in which he "picked up L.H.[,] took her to a friend's house and made plans to murder" Sarah by burning her to death and to kill her boyfriend with a machete. Carlos was arrested after jumping over Sarah's fence while carrying a lighter and a can of gasoline.

¶4 Carlos challenges the sufficiency of the evidence to support the juvenile court's finding that he had abandoned L.H. and that termination of his parental rights was in her best interests.[3] Pursuant to A.R.S. § 8-531(1),

> "Abandonment" means the failure of a parent to provide reasonable support and

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[2]We note that no answering brief was filed. Thus, if Carlos has raised a debatable issue, we may "treat the lack of a response as a confession of error and reverse on that basis." *In re Pinal Cty. Juv. Action No. S-389*, 151 Ariz. 564, 565, 729 P.2d 918, 919 (App. 1986). But, in our discretion and in light of the ample evidence supporting the juvenile court's ruling, we decline to do so.

[3]Although Carlos challenges the sufficiency of the evidence to support the other alleged grounds, we need not address those arguments because we conclude the court did not err in terminating his rights on abandonment grounds. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

> to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

¶5 Quoting *In re Pima Cty. Juv. Action No. S-624,* 126 Ariz. 488, 490, 616 P.2d 948, 950 (App. 1980), Carlos argues the fact that he was incarcerated is but "one factor" to consider in determining whether he "perform[ed] [his] parental obligations." He also asserts he was unable to maintain contact with L.H. during his incarceration "due to the Mother's refusal to provide contact information and due to [no-contact] orders of the Maricopa County Superior Court." However, when "'circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.'" *Michael J. v. Ariz. Dep't of Econ. Sec.,* 196 Ariz. 246, ¶ 22, 995 P.2d 682, 686 (2000), *quoting In re Pima Cty. Juv. Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994). Notably, the record does not indicate Carlos petitioned the trial court for permission to provide, directly or indirectly, for example through the court, any gift, card, or financial support to L.H. without violating the no-contact order.

¶6 At the termination hearing, Sarah testified that during Carlos's incarceration, he had not provided any financial support or sent cards, gifts, or letters to L.H. She further testified there was a no-contact order between Carlos and L.H., and acknowledged she has a protected address because she is "afraid of [Carlos]." Sarah also reported to the author of the presentence report that she hesitated to submit a victim impact statement "for fear of retribution," and that "[s]he has lost everything as a result of this crime. She lost her job and her house and has struggled emotionally since this happened." And, although Carlos similarly testified that

he had not had any contact with L.H. during his incarceration, he explained that any such contact would have violated the court-imposed no-contact order, and that, with the exception of his incarceration, he would "[n]ever" willfully have abandoned L.H.

¶7 The juvenile court found by clear and convincing evidence Carlos had "made no effort to maintain a parental relationship with [L.H.]," who had "been left without any provisions for her support and without any communications from [Carlos] . . . for a period of six months or longer, to-wit abandonment"; and, termination was in the child's best interests. And Carlos acknowledged that his "conduct is what compromised" the "very close" relationship he had shared with L.H. before his incarceration. Accordingly, despite Carlos's claim that the no-contact order and Sarah's refusal to provide him with information regarding L.H.'s whereabouts were the reasons he failed to maintain contact with or provide support for L.H. during his incarceration, it is Carlos's criminal behavior that made it necessary for the court to impose safety measures restricting his contact with L.H. and Sarah. And, while we acknowledge that "a parent who has persistently and substantially restricted the other parent's interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child," that did not occur in this case. *Calvin B. v. Brittany B.*, 232 Ariz. 292, ¶ 1, 304 P.3d 1115, 1116-17 (App. 2013).

¶8 In addition, to the extent Carlos cites conflicting testimony and asks us to reweigh the evidence on appeal, we will not do so. *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"). We thus conclude the record contains reasonable evidence to support the juvenile court's ruling based on abandonment. *See Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303.

¶9 Carlos also disputes the juvenile court's finding that termination of his parental rights is in L.H.'s best interests, asserting "there was little to no testimony provided" to support the court's best-interests finding. He further maintains the court's

consideration of his "write-up[s]" for improper conduct while in prison was not relevant to determine whether he would "follow through on his parental duties," and argues that the court's concern about his future conduct was "speculative at best." In order to satisfy the requirement that termination is not only warranted by a statutory ground identified in § 8-533(B), but also is in a child's best interests, the court must enter findings, based on a preponderance of the evidence, "as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *In re Maricopa Cty. Juv. Action No. JS-500274,* 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (emphasis omitted).

¶10 Although the juvenile court's finding that termination was in L.H.'s best interests was cursory, the court nonetheless was presented with ample evidence to satisfy the best interests requirement in § 8-533(B). As Sarah pointed out at the hearing, "the fact that [L.H.] was included in the process, in the plan [to kill Sarah,] was the great concern" for her; in addition, Carlos's plan would have left L.H. "an orphan."[4]

¶11 At the hearing, the juvenile court noted, "coming out on intensive probation for a term of 7 years . . . if [Carlos] were to screw up probation, he could go for a presumptive of five more years . . . [a]ll the way up to 12 and a half years . . . ." Moreover, in addition to the evidence of Carlos's violent nature in attempting to commit a heinous double murder, there was evidence he had disobeyed a verbal order and had engaged in fighting while in prison, conduct the court apparently considered when it stated that the best prediction of future conduct is "[past] behavior."[5] Thus, to the extent the court considered all of this evidence as an indicator of Carlos's ability to control his conduct in the future, and presumably considered whether his conduct could place L.H. in harm's way or

[4]Remarkably, Carlos asserts that although he did in fact try to kill Sarah, "he made efforts to protect [L.H.] from any exposure to whatever he had planned."

[5]Although the transcript says "best behavior," this appears to be a typographical error.

even make her an orphan, we conclude the evidence supported a finding by a preponderance of the evidence that L.H. would be harmed by the continuation of her relationship with Carlos. *Maricopa Cty. No. JS-500274,* 167 Ariz. at 5, 804 P.2d at 734.

¶12 For all of these reasons, the juvenile court's order terminating Carlos's parental rights to L.H. is affirmed.