IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RAMON G.,
Appellant,

v.

MAEGAN C. AND A.G.,
Appellees.

No. 2 CA-JV 2017-0042
Filed June 27, 2017

Appeal from the Superior Court in Graham County
No. SV201600020
The Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

Jared O. Smith, Safford
Counsel for Appellant

Law Office of Jeremy J. Waite, P.C., Safford
By Jeremy J. Waite
Counsel for Appellee

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Ramon G. appeals from the juvenile court's order in this private severance proceeding filed by Maegan C., mother of A.G., born in August 2012, terminating his parental rights to the child based on the length of the prison term Ramon must serve as a result of a felony conviction, pursuant to A.R.S. § 8-533(B)(4). Ramon challenges the order on numerous grounds including insufficiency of the evidence. He also contends the court erred by misapplying the severance statute, refusing to order a social study, denying his motion for a directed verdict, denying him access to severance records in other cases, and failing to comply with the Parental Bill of Rights. We affirm for the reasons stated below.

¶2 To sever a parent's parental rights, the juvenile court must find clear and convincing evidence of at least one statutory ground and that a preponderance of the evidence establishes termination of the parent-child relationship is in the child's best interests. *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). We will affirm the order unless we can conclude as a matter of law that no reasonable person could find a statutory ground proven by clear and convincing evidence. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the ruling. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 Maegan was pregnant with A.G. when Ramon was charged with the federal offense of financial structuring, and A.G. was about eighteen months old when Ramon was sentenced to a five-year prison term. His release date is April 2018. Ramon had been in federal prison in Arizona, but at the time of the severance hearing in January and February 2017, he was incarcerated in Colorado; Maegan remained in Safford, Arizona. A.G. was four and a half at the time of the severance hearing. When Maegan lived in the same town as Ramon, she often took A.G. to see him at the prison, but stopped doing so in approximately April 2016. At that time, Ramon threatened Maegan that if she did not quit school he would take her off the prison's visitation list and cut off all contact with her.

¶4 In September 2016, Maegan filed a pro se petition to terminate Ramon's parental rights to A.G., based on his incarceration. Through retained counsel, she filed an amended petition in November, adding abandonment as a ground, pursuant to § 8-533(B)(1). After a two-day hearing in January and February 2017, the juvenile court terminated Ramon's rights. Applying the factors articulated by our supreme court in *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, ¶ 29, 995 P.2d 682, 687-88 (2000), and entering specific factual findings related to each, the court found Maegan had sustained her burden of proving by clear and convincing evidence that termination was justified under § 8-533(B)(4). The court additionally found Maegan had established by a preponderance of the evidence that termination of Ramon's parental rights was in A.G.'s best interest. The court determined, however, that Maegan had not sustained her burden of establishing Ramon had abandoned A.G.

¶5 Ramon first argues the juvenile court's findings related to the *Michael J.* factors are erroneous. The record, however, contains reasonable evidence to support those findings. "[W]e believe little would be gained by our further 'rehashing the . . . court's correct ruling'" and therefore adopt it. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The juvenile court entered those findings after it weighed the evidence and assessed the witnesses' credibility. We will not reweigh that evidence on appeal. *Id.* ¶ 12. Rather, we defer to the juvenile court in this regard because it is "in the best position to weigh the evidence,

observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶6 We reject, too, Ramon's claims that the juvenile court committed legal error with respect to the *Michael J.* factors. The court did not, for example, shift the burden of proof to him when it found that it could not "say with certainty that the relationship between the father and the daughter was particularly strong at this young age, although it is clear the father loves her." The court made this finding in considering the first *Michael J.* factor: the length and strength of the parent-child relationship at the time the parent was incarcerated. 196 Ariz. 246, ¶ 29, 995 P.2d at 687-88. The record and the rest of the court's ruling make clear the court was well aware that Maegan had the burden of proving the ground for termination by clear and convincing evidence. Nor do we agree with Ramon's other challenges to the court's consideration of this or any other factor under *Michael J.*

¶7 Nor did the juvenile court err as a matter of law when it found Ramon's threats against Maegan to retaliate for her independent parenting decisions would hinder her ability to nurture the relationship. Ramon argues there were other means of maintaining the relationship through family and friends willing to facilitate visits in Colorado. And, he contends, the court erred by terminating his rights before a ruling could be made on legal decision-making and parenting time in the ongoing domestic case. But Ramon did not seek such orders until after the severance hearing had begun. Additionally, the court was well aware of Ramon's claim that there might be others willing to facilitate visits, specifically his sister and his mother. It was for the court to consider this claim together with A.G.'s age and the difficulty of arranging for someone to travel from Arizona to Colorado to facilitate these visits. As the court found, Ramon's own conduct "virtually assured that the parent-child relationship cannot be continued while he is incarcerated." The court did not abuse its discretion or err as a matter of law in finding this material to this *Michael J.* factor.

¶8 Ramon further contends there was insufficient evidence to support the juvenile court's finding termination of his parental rights was in A.G.'s best interests. The record, however, contains

ample evidence to support the court's conclusion and the factual findings upon which it is based. Again, Ramon is essentially asking this court to reweigh the evidence, which we will not do. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶9 Ramon also appears to suggest the juvenile court committed legal error by considering his admitted threats against and coercion and manipulation of Maegan in determining severance was in A.G.'s best interest. He seems to argue that his conduct is not relevant because it relates only to Maegan, not his relationship with A.G. But he provides no authority for that proposition and we are aware of none.

¶10 Nor did the juvenile court err in finding A.G. is adoptable and considering that fact in assessing A.G.'s best interests. Although there are distinctions between state-initiated severance proceedings and private severance proceedings, that factor is nevertheless relevant. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶¶ 12-19, 365 P.3d 353, 355-57 (2016) (adoptability of child supports best-interests finding in private severance proceeding). The court did not err in considering it and giving the boyfriend's expressed interest in adopting A.G. the weight to which the court deemed it was entitled.

¶11 Ramon next contends the juvenile court erred in waiving a social study under A.R.S. § 8-536. The statute provides that, upon the filing of a petition to terminate parental rights, the court shall order a social study, but may waive the requirement if the court finds it in the child's best interests to do so. § 8-536(A), (C). Maegan had asked the court to waive the social study in her initial, pro se severance petition. Although the court never ordered a social study, it appears the court did not expressly rule on Maegan's waiver request before entering its initial or amended ruling. But Ramon did not object or request a social study before or during the severance hearing. He raised the issue for the first time in a motion seeking to "reopen" the case filed on February 8, the day the court entered its initial under-advisement ruling. On February 9, the court issued its amended ruling. That same day, Maegan filed her response to the motion, in which A.G.'s guardian ad litem joined, objecting to the reopening of the case and asking the court to expressly waive the

social study. On February 24, Ramon filed a notice of appeal and on February 27, the court denied his motion.

¶12 Ramon did not object in a meaningfully timely manner, thereby depriving the juvenile court of the opportunity to consider the issue before ruling. *Cf. Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 18, 319 P.3d 236, 241 (App. 2014) (by failing to raise objection to lack of reunification services below, mother prevented juvenile court from addressing her concerns). Indeed, the juvenile court was divested of jurisdiction to rule on the motion when Ramon filed his notice of appeal. *See* Ariz. R. P. Juv. Ct. 103(F); *see also Apache East, Inc. v. Means*, 124 Ariz. 11, 14, 601 P.2d 615, 618 (App. 1979) (notice of appeal divests trial court of jurisdiction to rule on pending motion for rehearing). This was therefore tantamount to raising the issue for the first time on appeal, and Ramon thereby waived it. *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).

¶13 In any event, assuming arguendo the juvenile court erred by failing to expressly determine before the severance hearing that it was in A.G.'s interest to waive the preparation of a social study, any error was harmless. There was sufficient evidence presented that related to A.G.'s best interests and the court had protected her interests by appointing a guardian ad litem to represent her. *Cf. In re Pima Cty. Juv. Action No. S-2710*, 164 Ariz. 21, 24, 790 P.2d 307, 310 (App. 1990) (finding no prejudice to father from court's waiver of a social study before severing father's parental rights), *disapproved on other grounds by In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 7, 804 P.2d 730, 736 (1990).

¶14 Ramon raises three additional arguments, none of which merit relief. First, he contends the juvenile court erred when it refused to enter a judgment in his favor after Maegan rested, on the ground that she had not sustained her burden of proving A.G. had been deprived of a normal home. The court did not err in denying Ramon's motion for judgment and permitting the case to proceed.

¶15 We review the ruling on a motion for judgment as a matter of law de novo and view all evidence in the light most

favorable to the non-moving party.[1] *See Shoen v. Shoen*, 191 Ariz. 64, 65-66, 952 P.2d 302, 303-04 (App. 1997). A motion for judgment as a matter of law "should be granted only if the facts presented in support of a claim have so little probative value that reasonable people could not find for the claimant." *Id*.

¶16 The juvenile court articulated the correct standard for evaluating the motion, contrary to Ramon's argument, and applied it correctly. The court stated, inter alia, "I don't have to decide by clear and convincing evidence. . . . I have to find that there's been no evidence presented from which any reasonable fact-finder could rule in the petitioner's favor." The court added, "[Y]ou're making a great closing argument, but a judgment for directed verdict is . . . a much higher standard, I believe." Assuming, without deciding, this Arizona Rule of Civil Procedure applies here, *see* Ariz. R. P. Juv. Ct. 66(D), Maegan presented sufficient evidence for the juvenile court, sitting as the trier of fact, to decide the case based on all of the evidence and allow it to proceed. *See* Ariz. R. Civ. P. 50(a)(1). We also reject Ramon's related argument that, "[i]n reviewing the record, this court should ignore any material which reflects negatively upon Ramon's continued parental rights which was not presented in Maegan's case in chief, and enter judgment for Ramon."

¶17 Ramon additionally contends the juvenile court erred when it denied his "Motion for Access to Superior Court Severance Files." He filed the motion on January 31, 2017, seeking juvenile records in other cases in which the court had denied severance petitions filed by mothers of children whose fathers were in prison; he filed a related motion to continue the second day of the severance hearing, set for February 3. As the court stated at the February 3 hearing, the motion for access to files was untimely, all disclosure

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[1]In 1996, the concept of a directed verdict was replaced with a judgment as a matter of law. *See* Daniel J. McAuliffe & Shirley J. McAuliffe, Arizona Civil Rules Handbook at 680 (2016 ed.). A motion for judgment as a matter of law may be granted "[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Ariz. R. Civ. P. 50(a)(1).

deadlines having passed. Additionally, the court observed, other juvenile court cases were not precedential. Perhaps more importantly, as the court correctly stated, it was required to base its decision on findings of fact and conclusions of law "as I see the case," adding, "I don't think trial judges are really meant to have a bird's-eye view of what non-precedential decisions are being made around the state." A juvenile court's decision to terminate a parent's rights must be based on the discrete facts of that case. The court did not err.

¶18 Finally, Ramon argues the juvenile court's ruling violates the Parents' Bill of Rights, A.R.S. §§ 1-601 and 1-602 and related statutes. He argues the order lacks sufficient findings required by A.R.S. § 8-538 "and is therefore legally insufficient and prohibited by A.R.S. § 1-601," which prohibits the state from infringing on a parent's fundamental rights without establishing a compelling state interest and allows it to do so only by the least restrictive means. But as Ramon acknowledges, the state may restrict those rights as otherwise permitted by law. The court entered specific factual findings and applied the relevant law correctly. Neither Ramon's due process rights nor his rights under the Parents' Bill of Rights were violated and nothing further was required of the court.

¶19 We affirm the juvenile court's order terminating Ramon's parental rights to A.G.