

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ERASMO H.,
Appellant,

v.

DIANA E., K.H., AND I.H.,
Appellees.

No. 2 CA-JV 2019-0183
Filed April 29, 2020

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NOT FOR PUBLICATION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. S20180280
The Honorable Susan Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark C. Bockel, Tucson
Counsel for Appellee Diana E.

Pima County Office of Children's Counsel, Tucson
By Christopher Lloyd
Counsel for Minors

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 In this private-severance proceeding, Erasmo H. appeals from the juvenile court's December 2019 ruling terminating his parental rights to his daughter, K.H., born in May 2006, and his son, I.H., born in July 2009, based on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). Erasmo challenges the sufficiency of the evidence to support the court's findings that he abandoned the children and that termination of his parental rights was in their best interests. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the juvenile court's ruling. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016). Erasmo and Diana E. married in 2001 and bought a home in 2005, where they subsequently lived with K.H. and I.H. In 2009, two weeks after I.H.'s birth, Erasmo was deported to Mexico and prohibited from reentering the United States for ten years. Thereafter, Diana voluntarily took the children bi-weekly to visit Erasmo in Mexico.

¶3 In approximately 2014, after Diana and Erasmo ended their relationship, she stopped taking the children to visit him. However, the children's paternal grandparents continued taking them to see Erasmo in Mexico for approximately two years, until the grandfather passed away and the grandmother became ill. Diana and Erasmo divorced in August 2015. The decree provided no scheduled parenting time for Erasmo. The last time he saw the children was in March 2016.

¶4 Thereafter, Diana married E.E. They have one son together. K.H. and I.H. each grew to identify E.E. as their "father," and they wanted him to adopt them. The children also wanted to legally change their surnames to match E.E., their mother, and their half-brother.

¶5 In December 2018, Diana filed a petition to terminate Erasmo's parental rights to K.H. and I.H. She alleged, as grounds for

ERASMO H. v. DIANA E.
Decision of the Court

termination, abandonment and criminal conviction. A child welfare consultant completed a social study in June 2019, recommending severance and adoption.

¶6 After a three-day contested severance hearing, the juvenile court granted Diana's petition. Noting that the ground of criminal conviction had not been "pursued," the court found the ground of abandonment proven. The court also concluded that termination of Erasmo's parental rights would be in the children's best interests because "the children can be adopted by the individual they identify as their father, and legally be part of his family." The court further noted that "[t]he detriment of failing to sever [Erasmo's] parental rights is that the children will face the possibility that [Erasmo] may determine at a future point that he wants to enforce visitation rights, to which the children are opposed." This appeal followed.

Standard of Review

¶7 The juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the evidence that termination of the parent's rights 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 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). Put another way, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder 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 (App. 2009).

Abandonment

¶8 Erasmo argues the juvenile court erred in severing his parental rights to K.H. and I.H. on the ground of abandonment. He contends that, because he lived in Mexico, "maintaining a 'normal parental relationship' would be difficult at best" and that Diana "substantially interfered with his ability to maintain a relationship with his children."

¶9 Section 8-533(B)(1) provides, as a ground for termination, "That the parent has abandoned the child." "'Abandonment' means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision." A.R.S.

ERASMO H. v. DIANA E.
Decision of the Court

§ 8-531(1); *see also In re Pima Cty. Juv. Action No. S-1182*, 136 Ariz. 432, 433 (App. 1983) (describing test for abandonment as “whether there has been conduct on the part of the parent which implies a conscious disregard of the obligations owed by a parent to his child, leading to the destruction of the parent-child relationship”). Abandonment is measured by the parent’s conduct, not his or her subjective intent. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 18 (2000). “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.” § 8-531(1).

¶10 Erasmo’s argument on appeal largely amounts to a request that we reevaluate Diana’s credibility and reweigh the evidence. However, the juvenile court “as the trier of fact in a termination proceeding 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 (App. 2004). We will not second guess that court’s determination. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). Instead, we review the record for reasonable evidence supporting the court’s finding of abandonment, and such evidence exists here. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

¶11 From March 2016 to January 2019, Erasmo had no contact with the children.¹ He sent no letters, no cards, and no gifts. Although Erasmo testified that Diana had “completely blocked” him from communicating with her or the children, Diana testified otherwise, explaining that she had only “block[ed] him from [her] social media.” Diana had the same phone number, and she and the children lived at the same home as they had with Erasmo. Erasmo sent no messages through family members to ensure ongoing contact with the children. Also during that time, Erasmo provided Diana no financial support for the children. *See In re Maricopa Cty. Juv. Action No. JS-3594*, 133 Ariz. 582, 586 (App. 1982) (nonsupport only one factor to be considered in abandonment analysis, but coupled with failure to communicate or absence of gifts, sufficient to show child abandoned).

¹The record includes social media messages between Diana and Erasmo in March 2017, but it does not show that he spoke with or saw the children during that time. But even if we assume he had contact up to that point, March 2017 to January 2019 is more than six months, satisfying the six-month requirement of § 8-531(1).

ERASMO H. v. DIANA E.
Decision of the Court

¶12 Erasmo nevertheless relies on *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013), to suggest that his lack of contact with the children was due to Diana’s “parental alienation,” not his own conduct.² In that case, this court reversed the juvenile court’s order terminating the father’s parental rights on the ground of abandonment, reasoning, in part, that he had “consistently ‘done something’ to assert his right to have contact with his son.” *Id.* ¶¶ 29, 33. Despite “the hurdles that [the mother] erected to his ability to parent,” the father sought to establish a fixed parenting-time schedule and “managed as many as ten visits with his son a year.” *Id.* ¶¶ 22, 25.

¶13 Here, by contrast, Erasmo took no affirmative steps to continue a relationship with the children. Although he testified that he had gone “to the U.S. consulate . . . and . . . was denied any help,” he offered no evidence of that conversation, and he filed nothing here. Starting in January 2019, after Diana had filed the petition for termination, Erasmo called approximately every other day, but by that point the children did not want a relationship with him and rarely spoke to him. *See Pima Cty. No. S-1182*, 136 Ariz. at 433. Moreover, Erasmo has continued to live in Mexico, apparently without attempting to visit the children in Tucson, even though the ten-year deportation restriction ended in July 2019. Accordingly, the juvenile court did not err in finding the ground of abandonment established. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

Best Interests

¶14 Erasmo also contends the juvenile court erred in finding that termination of his parental rights was in the children’s best interests. He argues that Diana “failed to provide even a scintilla of evidence” to support that determination.

¶15 “[T]ermination is in the child’s best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied.” *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, ¶ 13

²Although Diana may have shared inappropriate information with the children regarding an offense committed by Erasmo, which was apparently the basis of his deportation, the juvenile court found that Erasmo’s “complete lack of effort to maintain a relationship with the children from 2016 until early 2019 far outweighs [Diana’s] decision to reveal this information to the children.” We will not reweigh that determination on appeal. *See Jesus M.*, 203 Ariz. 278, ¶ 12.

ERASMO H. v. DIANA E.
Decision of the Court

(2018). “[A] juvenile court may conclude that a proposed adoption benefits the child and supports a finding that severance is in the child’s best interests.” *Demetrius L.*, 239 Ariz. 1, ¶ 1. Yet, the court cannot “assume that a child will benefit from a termination simply because he has been abandoned.” *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5-6 (1990). Instead, the court must assess the relevant facts on a case-by-case basis. *Demetrius L.*, 239 Ariz. 1, ¶ 13.

¶16 Erasmo’s argument on appeal again appears to hinge on Diana’s purported “efforts to alienate [the children] from [him].” He also seems to suggest the juvenile court improperly balanced his parental rights against E.E.’s potential adoption of the children. But Erasmo seems to misunderstand the best-interests inquiry—the focus of which is on the children, not the parents. *See Alma S.*, 245 Ariz. 146, ¶ 16.

¶17 Reasonable evidence supports the juvenile court’s best-interests finding. K.H. and I.H. feel “safe” and “secure” in their current living environment. E.E. has known the children since they were young, and he has parented them on a day-to-day basis for several years. Both children identify E.E. as their “father,” even calling him “dad,” and E.E. likewise considers the children “[his] kids.” The children want E.E. to adopt them, and they want to change their surnames to match his so the five of them can be a “complete family.” Notably, I.H. has already started using E.E.’s last name at school.

¶18 The child welfare consultant opined that the children would benefit from termination of Erasmo’s parental rights. *See Alma S.*, 245 Ariz. 146, ¶ 13. She testified that the children were “emotionally bonded and attached” to E.E. If the severance were granted, she explained that E.E. could adopt the children and then legally make “day-to-day decisions for them.” On the other hand, she explained that, if the severance were denied, the children would not have permanency and E.E. may face obstacles if he was alone with the children and they needed emergency care. The juvenile court therefore did not err in finding termination of Erasmo’s parental rights was in the children’s best interests. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

Disposition

¶19 For the foregoing reasons, we affirm the juvenile court’s ruling terminating Erasmo’s parental rights to K.H. and I.H.