IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CHAD G.,
Appellant,

v.

JAKALA W., A.G., AND G.G.,
Appellees.

No. 2 CA-JV 2020-0034
Filed August 13, 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NOT FOR PUBLICATION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 Cochise County
No. SV201900026
The Honorable Terry Bannon, Judge

AFFIRMED

COUNSEL

Cochise County Office of Legal Advocate, Bisbee
By Xochitl Orozco, Legal Advocate and
Dean LeVay, Deputy Legal Advocate
Counsel for Appellant

Law Office of Michael E. Farro, Sierra Vista
By Michael E. Farro
Counsel for Appellee

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Chad G., father of A.G., born in March 2003, and G.G., born in June 2008, appeals the juvenile court's order granting the petition for termination of parental rights filed by Jakala W., the children's mother, and severing his rights on the grounds of abandonment and abuse, pursuant to A.R.S. § 8-533(B)(1) and (B)(2). We affirm for the reasons stated below.

¶2 To terminate parental rights, a juvenile court must find clear and convincing evidence has established at least one of the statutory grounds in § 8-533(B), and a preponderance of evidence demonstrated termination 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 (2005). We will reverse a termination order only for an abuse of discretion, which includes circumstances in which the factual findings upon which the order is based are clearly erroneous, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8 (App. 2004), or in which it appears, as a matter of law, no reasonable trier of fact could have found the evidence satisfied the applicable burden of proof, *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). This court views the evidence in the light most favorable to upholding the order terminating Chad's parental rights. *Id.*

¶3 A.G. and G.G. were born during Jakala and Chad's marriage, which was dissolved in 2010. Jakala was given sole legal and physical custody of the children, subject to Chad's visitation rights, and Chad was ordered to pay child support. In September 2017, the Cochise County Superior Court issued an order of protection prohibiting contact between Chad and the children based on Jakala's allegations that since the court had denied his request for modification of parenting time, Chad had become agitated and aggressive, subjecting the children to outbursts of anger during visitation, yelling, and throwing and hitting objects. Jakala avowed that the children were frightened of being with Chad and G.G. was experiencing stomach aches and nightmares. In October 2017, the court denied Chad's motion to vacate the order of protection, but modified the

order to permit Chad to visit the children through an on-line visitation portal, or through a family counselor if in-person visitation were recommended. Chad did not meaningfully avail himself of this opportunity to remain in contact with the children.

¶4 In August and September 2018, the trial court entered an order on Jakala's motion to suspend visitation and found there had been domestic violence between the parties. It therefore required therapeutic visitation through a counseling center in an effort to normalize the relationship between Chad and the children. The court also found that Chad had failed to purge the contempt found in February 2017, and that he remained in contempt and in arrears for child support. The court subsequently granted Jakala's motion for change of venue of the dissolution action to Pima County Superior Court, which entered an order after a status conference in October 2019, finding Chad remained in contempt of court for failing to pay child support for which he was more than $7,511 in arrears from 2010, and noting he had agreed to a severance of his parental rights.

¶5 Jakala filed a petition to terminate Chad's parental rights in October 2019, alleging Chad had failed to pay child support and maintain a normal relationship with the children for several years, thereby abandoning them. She testified at the severance hearing that from August of 2016 until December 2019, Chad had not paid child support, introducing into evidence the trial court orders regarding the arrearages and Chad's contempt of court. Although he started paying child support after the severance petition was filed, the arrearage remained outstanding.

¶6 Jakala also alleged in the severance petition that on several occasions Chad had abused the children emotionally, which resulted in the issuance of an order of protection. She described displays of anger during which he had thrown objects and, on one occasion, three years earlier, had yelled in front of them while in a car. Jakala testified at the severance hearing that the children were afraid of Chad because of his behavior, his complaints about her and the legal system, and threats to harm himself, Jakala or the family dog. During this period they experienced nightmares and were extremely fearful. Both children required therapy, which they continue to receive. She testified further about obtaining the order of protection in September 2017, and Chad's decision not to have supervised, therapeutic visitation that the juvenile court had allowed during the year the order of protection was in place, and very little after it expired. Jakala testified Chad did not initiate those visits, delaying them for about a year. He did not communicate as ordered through the website portal, despite the

fact that Jakala had paid for it. He had seven supervised therapeutic visits in twenty-nine months and decided he no longer wanted to proceed with those kinds of visits, which the children's therapists and the court determined were in the children's best interests. She testified he had not had contact with the children, other than supervised visitation, since September 2017, when the court issued the order of protection.

¶7 Although the severance hearing had been set for the end of October, Chad appeared without counsel and, claiming he was indigent, requested court-appointed counsel. The juvenile court appointed counsel and reset the severance hearing for March 4, to give counsel time to prepare. On February 13, 2020, Chad filed a motion to conduct a social study pursuant to A.R.S. § 8-536. He argued a neutral party should determine the children's best interests. The court denied the motion.

¶8 After a hearing in March, the juvenile court granted the petition to terminate, entering specific factual findings on the record and in a written order. The court found clear and convincing evidence established Chad had abandoned his children and had subjected them to emotional abuse, and that a preponderance of the evidence demonstrated termination of his parental rights was in the children's best interests. Although the court acknowledged lack of support alone is not a sufficient basis for terminating a parent's rights on the ground of abandonment, the court found Chad had failed to provide support for A.G. and G.G. but admitted he paid support for another child. In addition, the court found Chad had failed to maintain a normal parent-child relationship with the children. He had failed to send cards, gifts, or letters, had not seen them since September of 2018, and for fifteen months, had made no efforts to see them, establishing a prima facie case of abandonment. The court found Chad's claim that he had believed he was prohibited from having contact because of the order of protection was not plausible because the order stated it was in effect only for one year.

¶9 With respect to the allegation of emotional abuse of the children, the juvenile court found Chad's conduct had resulted in physical manifestations of fear and terror, causing stress that included stomach aches. The court stated, "It matters not . . . that the incident occurred three years ago because father has spent very little time in the years since that incident to make amends to his daughters." The court added that A.G. and G.G. are living with Jakala and her new husband and his two children, with whom they bonded, and that the husband wishes to adopt them.

¶10 On appeal, Chad first contends the juvenile court erred in refusing his request to order a social study pursuant to § 8-536. That statute provides that when termination of parental rights is sought by petition, as opposed to by motion in a dependency proceeding, the court must "order that the department, an agency or another person selected by the court conduct or cause to be conducted a complete social study and that a report in writing of such study be submitted to the court before a hearing." § 8-536(A). The report must "include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child and other facts pertinent to the parent-child relationship," and must also include a recommendation on the question of severance, with an explanation for that recommendation. *Id.* The court may waive the requirement, "if [it] finds that to do so is in the best interest of the child." § 8-536(C).

¶11 Chad asserts the juvenile court erred by denying his request for a social study, particularly without making any findings. We note at the outset that Chad did not request the social study until just three weeks before the hearing, even though the petition had been filed in October 2019, and counsel was appointed to represent him at the end of January 2020. Nevertheless, even were we to assume the court erred by waiving the social study or by doing so without entering findings, we will not reverse a severance order on this ground absent prejudice, and there is no such prejudice if the court had before it at the time of trial the information necessary to make its decision. *See In re Pima Cty. Juv. Action No. S-2710,* 164 Ariz. 21, 24 (App. 1990) (juvenile court did not err in waiving social study when evidence was presented on the "crucial issues" that a social study would likely address), *disapproved on other grounds by In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1 (1990).

¶12 Chad concedes the severance petition alleged that Jakala's husband wishes to adopt the children and that this is a valid factor for a court's best-interests determination. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 1 (2016). But, he asserts, the Department of Child Safety had investigated him in 2017 and determined he was not a danger to the children. He adds that during a therapeutic visitation the children stated they were still open to contact with him. He surmises that a study "could have delved into the true desires of the children," without resorting to hearsay from Chad and Jakala. He lists other information the study might have included, such as child-care arrangements in Jakala's home, the identity of the brother-in-law who also lived there, and whether the brother-in-law has a criminal record.

¶13 In addition to the speculative nature of some of this information, the juvenile court had before it the relevant and "crucial" information required to make a thorough inquiry into and finding regarding the children's best interests. *Pima Cty. Juv. Action No. S-2710*, 164 Ariz. at 24. The evidence included information regarding Chad's conduct and the effect it had on the children; the marriage between Jakala and her husband and facts related to their employment; and the children's bond with Jakala's husband and his children. The evidence included multiple rulings by various trial judges establishing a history of volatile behavior by Chad, as well as his failure to pay support. The court also had the notes from the counseling center regarding the therapeutic visits, evidence that a therapist had characterized the relationship between the children and Chad as "wounded," as well as other ample testimony related to best interests. The court's factual findings regarding best interests reflect its consideration of the relevant factors, and the record supports those findings. To the extent there may have been conflicts in the evidence, particularly with regard to the children's purported desire to live with or remain in contact with Chad, it was for the court to resolve them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). Chad has not shown that a social study would have produced information to refute evidence before the court or would have been crucial to the court's best-interests determination. Chad has not established he was prejudiced by the lack of a social study under § 8-536, therefore we reject this argument as a basis for reversing the severance order.

¶14 Chad also contends the juvenile court erred in finding he had abandoned the children, claiming that Jakala had impeded his ability to maintain a normal relationship by preventing meaningful contact. He faults her for having obtained an order of protection in 2017, claiming a subsequent visitation order confused him into believing he was still subject to the order of protection. He asserts Jakala contributed to the delay in allowing him supervised visits.

¶15 First, we need not address this argument, which amounts to a challenge to the sufficiency of the evidence to support termination on the ground of abandonment, because Chad does not challenge the juvenile court's finding that severance was appropriate on the ground of abuse, and we may affirm a severance as long as it can be supported on one ground. *Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, ¶ 5 (App. 2017). In any event, Chad is essentially asking this court to reweigh the evidence and second guess the court with respect to its resolution of conflicts in the evidence.

This we will not do. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). It is for the juvenile court, not this court, to weigh the evidence based on its observations of the parties and assessment of the witnesses' credibility. *Id.* ¶¶ 4, 14. In its ruling, the juvenile court made clear that Jakala could not be blamed for Chad's failure to maintain a normal parent-child relationship, noting that a *prima facie* case of abandonment, which arises after six months' lack of contact, had been established. *See* A.R.S. § 8-531(1). There is reasonable evidence in the record supporting the detailed factual findings in the court's ruling. *Jesus M.*, 203 Ariz. 278, ¶ 4. We have no basis for disturbing the ruling.

¶16 For the reasons stated, we affirm the juvenile court's order terminating Chad's parental rights to A.G. and G.G. Jakala requests an award of attorney fees and costs pursuant to A.R.S. § 25-324. However, we agree with Chad such an award is not appropriate under that statute or otherwise and therefore deny the request.