

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

GILBERTO C.,
Appellant,

v.

JOANN M., JESSE M., AND G.C.,
Appellees.

No. 2 CA-JV 2021-0060
Filed September 14, 2021

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NOT FOR PUBLICATION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. S20190189
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

The Huff Law Firm PLLC, Tucson
By Laura J. Huff
Counsel for Appellant

Sarah Michèle Martin, Tucson
Counsel for Appellees JoAnn M. and Jesse M.

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Gilberto C. appeals from the termination of his parental rights to his son, G.C., born in January 2010, on the ground of length of incarceration for a felony.¹ See A.R.S. § 8-533(B)(4). He argues the evidence does not support the termination ground or the juvenile court’s finding that termination was in G.C.’s best interests. We affirm.

¶2 To sever a parent’s rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and by a preponderance of the evidence that terminating the parent’s rights is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); see also A.R.S. § 8-863(B). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. See *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view the evidence in the light most favorable to upholding the ruling. See *Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 Viewed in that light, the evidence established that G.C. had been adjudicated dependent as to the parents in 2010 and that in 2011 he had been placed with the maternal grandmother, JoAnn M., who was appointed as his permanent legal guardian in 2012. Gilberto has been incarcerated for the majority of G.C.’s life; he received a 2.5-year sentence in 2010, just after G.C. was born, and received a ten-year sentence in 2016.² Gilberto has never had a consistent relationship with G.C., nor has he seen G.C. since 2015. In September 2019, JoAnn filed a petition to terminate the parents’ rights, alleging as to Gilberto that termination was warranted under § 8-533(B)(1) because he had abandoned G.C. and under § 8-533(B)(4)

¹The juvenile court also terminated the parental rights of the mother, who is not a party to this appeal.

²Gilberto remained incarcerated at the time of the severance hearing, with a sentence expiration date in 2024, although he testified he expected to be released in August 2022 or possibly eight months before that time.

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because his incarceration would deprive G.C. of a normal home for a period of years.³ The juvenile court held a multi-day contested severance hearing and terminated Gilberto's parental rights in a written ruling in January 2021. The court concluded JoAnn and Jesse had sustained their burden of proving the termination ground of length of incarceration, and had established termination was in G.C.'s best interests. This appeal followed.

Termination Under A.R.S. § 8-533(B)(4)

¶4 Gilberto asserts there was insufficient evidence to support termination under § 8-533(B)(4). To terminate Gilberto's rights based on his incarceration for a felony under § 8-533(B)(4), JoAnn and Jesse were required to demonstrate the resulting sentence "is of such length that [G.C.] will be deprived of a normal home for a period of years."⁴ Our supreme court has not adopted a "'bright line' definition of when a sentence is sufficiently long to deprive a child of a normal home for a period of years." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 29 (2000). Instead, the court directed that juvenile courts consider all relevant factors, including but not limited to the nature of the parent-child relationship before incarceration and whether that relationship can be "continued and nurtured during the incarceration"; the child's age in light of the length of incarceration and the likelihood incarceration "will deprive the child of a normal home"; "the availability of another parent to provide a normal home life"; and "the effect of the deprivation of a parental presence on the child at issue." *Id.*

¶5 Gilberto contends the factors set forth in *Michael J.* do not support the juvenile court's ruling, asserting that termination is not required because G.C. is currently in a stable home with JoAnn and Jesse. The court considered the factors set forth in *Michael J.*, specifying as to each, the relevant evidence presented, and entering related findings of fact. In summary, the court made the following relevant findings: Gilberto did not have a strong relationship with G.C. before his most recent incarceration in 2016, even considering that Gilberto had taken G.C. to McDonald's and to the zoo; the "minimal bond" between G.C. and Gilberto was not continued

³JoAnn and Jesse M., the child's step-grandfather, filed an amended petition in April 2020.

⁴Section 8-533(B)(4) also permits termination when the felony conviction "is of such nature as to prove the unfitness of that parent to have future custody and control of the child." JoAnn and Jesse did not allege termination was warranted on that basis.

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and nurtured during incarceration, even though Gilberto had sent gifts, cards and letters to G.C., the latter of which the court characterized as “superficial”; incarceration will deprive G.C. of a normal home life; the length of Gilberto’s sentence prevents a normal home life for G.C.; and, another parent was not available to provide a normal home life for G.C.

¶6 The ruling reflects that the juvenile court weighed the evidence and made credibility determinations in order to resolve conflicts in the evidence. The court noted there was “no evidence” JoAnn was not supportive of a relationship between G.C. and Gilberto, despite Gilberto’s contrary assertions. It also stated it did not find credible Gilberto’s avowal that he would not seek to remove G.C. from JoAnn and Jesse’s home or to revoke the guardianship upon his release from prison.⁵ The court also noted that G.C. lived in fear that he would be taken away from his grandparents. Carmen Juarez, the individual who completed the social study, testified that G.C. “needs to know that [his current] home is his forever [home].”

¶7 The juvenile court thus found, “[i]n light of [G.C.’s] level of fear and anxiety, his age and developmental status, and [Gilberto’s] lack of relationship or emotional bond, the length of [his] sentence supports termination.” The court’s findings are supported by the record before us, and Gilberto’s argument amounts to a request for us to reweigh the evidence on appeal, which we will not do. See *Jesus M.*, 203 Ariz. 278, ¶ 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 (App. 2004).

Best Interests

¶8 Gilberto also asserts there was insufficient evidence to support the juvenile court’s finding that termination was in G.C.’s best interests. Termination “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 (2018). The primary consideration is the child’s stability and security. *Id.* ¶ 12. Gilberto argues that, because G.C. is currently in a stable and permanent home, termination of his parental rights is “completely unnecessary and

⁵In this regard, the juvenile court pointed to a letter Gilberto had sent to JoAnn in 2019, just after she filed the petition to terminate, threatening to “file a motion to remove [G.C.] from [her] custody.”

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superfluous.” He points out that upon his release from prison he neither intends to seek to remove G.C. from JoAnn and Jesse’s home nor to revoke the guardianship, but wants only to maintain a relationship with him.

¶9 Juarez testified that severance and adoption by JoAnn and Jesse would benefit G.C., noting that their home is the only home he has ever known, and that he is emotionally attached to them and considers them his parents. She added that JoAnn and Jesse are meeting G.C.’s special needs based on his diagnosis of attention deficit hyperactivity disorder and that failing to tell G.C. that his current home is his permanent home would be detrimental to him. She also reported that G.C. thinks Gilberto is “dangerous,” a fact the juvenile court expressly noted in its ruling. G.C.’s attorney filed a position statement on his behalf, stating that G.C. supports termination of his parents’ rights and adoption by his grandparents and that he does not want a relationship with either of his parents.

¶10 In its best interests findings, the juvenile court noted G.C. wants to continue living with his grandparents, who want to adopt him, an eventuality G.C. supports; JoAnn and Jesse care for all of G.C.’s needs; he does not want to live with his parents, and in fact, he fears doing so; and adoption would allow G.C. to know he will not have to live with Gilberto after he is released from prison. The court further noted that G.C. suffers from “anxiety to the point that he loses sleep, bites his nails, and gets upset when the doorbell rings.” And, the court again noted it did not find credible Gilberto’s avowal that he did not intend to seek to remove G.C. from JoAnn and Jesse’s home upon his release from prison. The court thus concluded it was in G.C.’s best interests to terminate Gilberto’s parental rights to allow G.C. to be adopted by JoAnn and Jesse “and give him more permanency than the existing guardianship.”

¶11 Accordingly, insofar as Gilberto contends “[t]here is no detriment to G.C. in leaving [his] parental rights intact,” the evidence suggests otherwise. The juvenile court’s findings are supported by the record before us, and Gilberto’s arguments are, at their core, little more than a request that we reweigh the evidence related to G.C.’s best interests. We will not do so. *See Oscar O.*, 209 Ariz. 332, ¶ 14.

Disposition

¶12 We affirm the juvenile court’s order terminating Gilberto’s parental rights to G.C.