

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 10 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|---------------------------|---|----------------------------|
| KEVIN C., |) | 2 CA-JV 2010-0035 |
| |) | DEPARTMENT B |
| Appellant, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 28, Rules of Civil |
| ADREANNA G. and KEVIN C., |) | Appellate Procedure |
| |) | |
| Appellees. |) | |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. SV200900024

Honorable Joseph R. Georgini, Judge

AFFIRMED

Hamilton Law Office
By Lynn T. Hamilton

Mesa
Attorneys for Appellant

Fitzgibbons Law Offices, P.L.C.
By Richard L. Scholz

Casa Grande
Attorneys for Appellee Adreanna G.

K E L L Y, Judge.

¶1 After a contested severance hearing, the juvenile court terminated the parental rights of Kevin C. to his son, Kevin Adolpho C. (K.A.), born in 2006, granting the petition filed in March 2009 by K.A.’s mother, Adreanna G. The court terminated Kevin’s rights on the grounds of abandonment, incarceration, and mental illness. *See* A.R.S. § 8-533(B)(1), (4), (3). The court found termination of Kevin’s parental rights was in K.A.’s best interests. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). On appeal, Kevin contends there was insufficient evidence to establish the statutory grounds for terminating his rights and to support the finding that termination of his parental rights was in K.A.’s best interests. We affirm.

¶2 A juvenile court may terminate a parent’s rights if clear and convincing evidence establishes any one of the statutory grounds for termination enumerated in § 8-533(B), *see* A.R.S. § 8-863(B); *Michael J.*, 196 Ariz. 246, ¶¶ 12, 27, 995 P.2d at 685, 687, and a preponderance of the evidence establishes that severing the parent’s rights is in the child’s best interests, *see* § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On appeal, we view the evidence in the light most favorable to sustaining the court’s ruling. *Michael J.*, 196 Ariz. 246, ¶ 20, 995 P.2d at 686. “[W]e will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We will affirm the court’s ruling ““unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear

and convincing.”” *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009), quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*).

¶3 Section 8-531(1), A.R.S., defines abandonment as

the failure of a parent to provide reasonable support and 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.

Kevin asserts there was insufficient evidence that he abandoned K.A. He argues the juvenile court should not have considered the time he was incarcerated in finding he had abandoned K.A. Additionally, Kevin points out that he was prohibited by court order from contacting K.A. during a portion of the relevant time period.

¶4 Other than three visits with K.A. during the first half of 2008, Kevin did not see him that year, nor did he provide any meaningful financial support for him. Kevin left the state in June 2008 without telling Adreanna where he was going. In December 2008, Adreanna received two threatening text messages from Kevin; in one of the messages, he threatened to kill her “slow and cruel.” At the time of the severance hearing, Kevin had not interacted with K.A. since his incarceration in December 2008, nor had he provided any support for the child or sent him any gifts or cards.

¶5 Adreanna established a prima facie case of abandonment based on a six-month period that preceded Kevin’s incarceration, and established that Kevin had made no effort to communicate with or even inquire about K.A. during his incarceration. To the extent Kevin suggests he was prevented from communicating with K.A. due to a restraining order, we do not find this argument persuasive because the order was imposed as a result of Kevin’s own actions.

¶6 In addition, Kevin seems to suggest this court reweigh the evidence. But it is for the juvenile court, as the trier of fact, to weigh the evidence after determining the credibility and persuasiveness of the witnesses. *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004). And there is reasonable evidence in the record that supports the court’s factual findings. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. The record establishes that Kevin did not establish a normal parental relationship with K.A. and did not provide any meaningful support for him. Because we need only find that one statutory ground was established in order to sustain the juvenile court’s order, we do not address Kevin’s arguments regarding the sufficiency of the evidence to support the other grounds in the court’s ruling. *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687.

¶7 Kevin also argues the evidence was insufficient to support the juvenile court’s finding that terminating his parental rights was in K.A.’s best interests. He challenges the court’s findings that severance would allow K.A. “to be protected by the mother and her extended family,” and that it would be detrimental to K.A. to maintain a

parent-child relationship with Kevin. “A best-interests determination need only be supported by a preponderance of the evidence.” *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). “Evidence that a child will derive ‘an affirmative benefit from termination’ is sufficient to satisfy that burden” *Id.*, quoting *Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945.

¶8 Here, Adreanna testified that in May 2007, when K.A. was less than a year old, she took K.A. and left Kevin in “[f]ear for [their] lives,” based on prior incidents when Kevin had “throw[n her] around” and “h[e]ld [her] down and choke[d her].” Nor did Kevin dispute he had sent Adreanna threatening text messages. Because reasonable evidence supports the juvenile court’s best interests finding that severance would permit Adreanna and her family to protect K.A. and that maintaining a relationship with Kevin would be detrimental to K.A., we will not disturb that finding. *See Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997); *see also* A.R.S. § 25-403.03(B) (“The court shall consider evidence of domestic violence as being contrary to the best interests of the child.”).

¶9 Adreanna has requested an award of attorney fees on appeal pursuant to Rule 21(c), Ariz. R. Civ. App. P., and A.R.S. § 12-341.01. She is presumably suggesting Kevin’s appeal “constitutes harassment, is groundless and is not made in good faith.” § 13-341.01(C). However, Adreanna has offered no evidence or argument to support any such claim. Additionally, we note that Rule 21 is not among the Arizona Rules of Civil

Appellate Procedure that Rule 103(G), Ariz. R. P. Juv. Ct., makes applicable to appeals in juvenile cases. Therefore, Adreanna's request for attorney fees is denied.

¶10 Because none of the issues Kevin raises on appeal warrants reversal, we affirm the juvenile court's order terminating his parental rights to K.A. and deny Adreanna's request for attorney fees.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge