

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 -5 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MIGUEL M., Sr.)	2 CA-JV 2010-0041
)	DEPARTMENT B
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
NICOLE S., MIGUEL M., Jr.,)	
and ANGEL NICOLE M.,)	
)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S190935

Honorable Hector E. Campoy, Judge

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
Attorneys for Appellees
Miguel M., Jr. and Angel Nicole M.

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Miguel M., Sr., appeals the juvenile court's March 18, 2010 order terminating his parental rights to his fourteen-year-old son, Miguel M., Jr., and his twelve-year-old daughter, Angel M., on the ground of abandonment, pursuant to A.R.S. § 8-533(B)(1). Miguel does not challenge the court's finding that he abandoned the children, as the children's mother, Nicole S. alleged in the petition she filed. His sole argument on appeal is that there was insufficient evidence to support the court's finding that severance of his parental rights was in his children's best interests. For the following reasons, we affirm.

¶2 Because Miguel challenges only the juvenile court's finding that termination of his rights was in the children's best interests, we limit our discussion accordingly. To terminate parental rights, a juvenile court must find that at least one statutory ground for termination exists and that termination of the parent's rights is in the child's best interests. § 8-533(B) (enumerating grounds). Although a specific statutory ground for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve 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 accept the juvenile court's findings of fact if there is reasonable evidence in the record to support those findings, and we view the evidence in the light most favorable to upholding the court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 4, 9-10, 210 P.3d 1263, 1264-66 (App. 2009).

¶3 In its under-advisement ruling, the juvenile court wrote:

[Nicole] seeks termination to avoid a situation in which the children could be placed in the custody of their father should she become incapacitated. There would be a detriment to the children should such a contingency occur in that the children would be hostile and opposed to any such occurrence. . . . The

children have maternal relatives who could assume custodial or parental duties should the mother be otherwise unable to function in her present capacity during the next six years of the children's minority. It is also in the best interests of the children that they be allowed closure to the relationship with their father due to the protracted period of abandonment to which they have been exposed and through which they have been impacted deleteriously.

¶4 Relying on *In re Maricopa County Juvenile Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990), Miguel argues that “[t]he evidence presented at the severance hearing on the issue of best interests showed neither significant benefit or detriment, was speculative and conclusory, and was insufficient to prove this necessary element of the termination requirements by a preponderance of the evidence[.]” In *Maricopa County Juv. Action No. JS-500274*, a mother sought termination of a father's rights to the couple's three-and-a-half-year-old son on the ground of abandonment, “so she could name her parents in her will as guardians [and because,] in case she married, she wanted her future husband to be able to adopt” the child. *Id.* at 3, 804 P.2d at 732. Our supreme court concluded the record did not support the juvenile court's determination that severance was in the child's best interests and reversed the termination order. *Id.* at 8, 804 P.2d at 737. Stating, “a determination of the child's best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship,” the court found the potential benefits the mother had suggested were “too speculative” and she had thus “fail[ed] to show any present benefit” to her child would result from termination. *Id.* at 5, 7, 804 P.2d at 734, 736. The court continued,

There is evidence that [the child] knows his father. There is no evidence that [the child] feared or hated his father or that he has become emotionally attached to another paternal

figure. We cannot hold that there is sufficient evidence to terminate when the record is entirely devoid of any explanation of what [the child] will gain or lose.

Id. at 8, 804 P.2d at 737.

¶5 We disagree with Miguel that the facts in *Maricopa County Juvenile Action No. JS-500274* “are sufficiently close” to those here that we must regard the case as “controlling precedent.” In that case, the juvenile court terminated a father’s parental rights to a toddler whose interests were not represented by independent counsel in the proceeding. *Id.* In contrast here, Miguel, Jr. and Angel are old enough to express their own interests and are represented by counsel. As noted in the court’s order, the children’s attorney and the counselor who prepared a social summary for the court reported that both children had expressed anxiety about having to maintain any relationship with a father they had not seen for eight years. *Cf. In re Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988) (termination not in best interests of children when mother’s abandonment had no “negative effect on the children” and experts agreed visitation with mother was beneficial to children).

¶6 The testimony of the counselor who interviewed Miguel, Jr. and Angel amply supports the juvenile court’s best interests finding. When the court asked whether, if Miguel’s rights were not terminated, there would be any harm in allowing the children “to explore their relationship with their father,” the counselor responded that the children were “really closed” to accepting “any type of relationship with their father.” She opined that if Miguel were ever to be awarded custody, the children “would not go and if they were forced to live [with him], they would run.” Although Miguel challenges the credibility of these statements and asserts “it could reasonably be assumed that the children had been encouraged by their mother to display hostility to their father,” the

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 make appropriate findings.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence on appeal. *Id.* ¶ 12.

¶7 Nor can we say the juvenile court erred in finding the children’s anxiety about retaining a relationship with Miguel was detrimental to them, or in finding they would benefit emotionally from “closure” of the long-abandoned relationship. Sufficient evidence thus supports the court’s determination that Miguel, Jr. and Angel will benefit from termination of Miguel’s parental rights and that termination is in their best interests. Accordingly, we affirm the court’s March 18, 2010 order.

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

CONCURRING:

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

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