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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DANIEL C., Appellant, v. MELISSA A. and BLAINE A-C., Appellees.	2 CA-JV 2010-0076 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S192326

Honorable Gus Aragon, Judge

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio
Tucson
Attorneys for Appellant

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins
Tucson
Attorneys for Appellee Blaine A-C.

B R A M M E R, Presiding Judge.

¶1 Daniel C. appeals from the juvenile court's order granting the petition to terminate Daniel's parental rights to Blaine A.-C., born June 2001, filed by the child's mother, Melissa A., and terminating Daniel's rights on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). Although Daniel does not challenge the court's finding that he abandoned Blaine, he contends there was insufficient evidence to support the finding that termination of his rights was in Blaine's best interest. We affirm for the reasons stated below.

¶2 To terminate a parent's rights, the juvenile court must find clear and convincing evidence of at least one of the statutory grounds for termination and that a preponderance of the evidence establishes severance 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, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). "We view the facts in the light most favorable to sustaining the juvenile court's decision." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007).

¶3 Daniel and Melissa were married in 2001 and a few months later Blaine was born. They were divorced in October 2004 and Melissa moved from Tucson to Sierra Vista; she accepted a transfer by her employer so that she could work full-time rather than part-time. In October 2009, Melissa filed a pro se petition, seeking to terminate Daniel's parental rights to Blaine on the grounds of abandonment and chronic

substance abuse. *See* § 8-533(B)(1),(3). After a contested severance hearing in June 2010, the juvenile court terminated Daniel's rights on the ground of abandonment.

¶4 Among the factual findings the juvenile court made was that Daniel had not been "an active parent" during the marriage and often did not come home; "[e]ventually," the court added, "he did not come home at all and did not help financially, prompting the mother to file for divorce." The court further found Daniel had suffered a brain injury when he was about seventeen years old, noting the paternal grandmother's testimony that at times Daniel exhibited the mentality of a nine-year-old. The grandmother had testified Daniel could not maintain his finances without her help, is unable to keep a job, and needed her help "with his living facilities." The court found Daniel had not provided any support for Blaine since he and Melissa had moved to Sierra Vista, that their only contact had been a few telephone conversations, and that there had been no contact for about two years. Based on these and other findings that are supported amply by the record, the court concluded Daniel had abandoned Blaine, a conclusion Daniel does not dispute.

¶5 The juvenile court also found termination of Daniel's parental rights was in Blaine's best interest. To establish termination of a parent's rights is in a child's best interests, the petitioner must demonstrate Blaine "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004); *see also In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Among the things a court may consider is whether the child's current placement is meeting the child's needs. *See In re Maricopa County Juv. Action No. JS-8490*, 179

Ariz. 102, 107, 876 P.2d 1137, 1142 (1994). The court must balance a parent's rights against the state's interest in protecting the child and may consider the child's wishes as well as the parent's. *See Kent K.*, 210 Ariz. 279, ¶¶ 33-41, 110 P.3d at 1020-22.

¶6 Relevant to the best interest finding, the juvenile court found Melissa is a single parent with "no history of substance abuse or mental health issues" who "cares deeply for Blaine and his younger sibling, and takes good care of both of them." The court found "credible" Melissa's purported testimony that Blaine did not want to have any contact with his father.[1] Finding a preponderance of the evidence established termination of Daniel's parental rights was in Blaine's best interest, the court found no detriment would result from terminating Daniel's rights and the following with respect to the benefit to Blaine:

> [I]t will assist him in obtaining closure with respect to his biological father, who has ignored him for a period of years now. Termination will allow Blaine to move on with his life without having to wait and wonder whether his biological father will someday reappear and attempt to assert parental rights to custody or parenting time, thus forcing contact with a person with whom Blaine has no relationship.

¶7 Daniel contends the evidence that there was an affirmative benefit to Blaine by terminating Daniel's rights was "speculative" and insufficient. He asserts, "It is uncontested that the mother is not married nor does she intend to have someone adopt

[1]Melissa has not directed this court to the portion of the transcript in which she so testified, nor have we found such testimony. But as Daniel correctly points out in his opening brief, Melissa made that allegation in her verified petition to terminate Daniel's parental rights. We assume this is what the court was referring to in its order. In any event, in addition to the allegation in the petition, Blaine's counsel filed a position statement for trial in which he stated and avowed during the severance hearing that Blaine wanted no contact with his biological father.

Blaine." He maintains there was no evidence that continuing the parental relationship was harmful or detrimental to Blaine and noted the social worker who prepared the social study did not believe termination of Daniel's parental rights was in Blaine's best interest. He argues, too, that there was no evidence to support the juvenile court's finding that Blaine needed to "move on with his life" or needed closure. Daniel also suggests that the court should have found more credible the social worker's testimony that Blaine had equivocated about whether he wanted continuing contact with his father than Melissa's purported testimony that Blaine had told her he did not want such contact.

¶8 There was reasonable evidence in the record, together with the inferences the evidence permitted, to support the juvenile court's best-interest finding. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (appellate court will affirm termination order if reasonable evidence supports factual findings upon which order based). To the extent there were conflicts in the evidence, such as whether Blaine wanted to have contact with his father, it was for the juvenile court, not this court, to resolve such conflicts based on its weighing of the evidence and assessment of the credibility of the witnesses. *See id.* The court was not required to find the social worker more credible than Melissa, as Daniel suggests. Moreover, as we previously pointed out, Blaine's counsel asserted in the position statement he had filed before the severance hearing, and informed the court at the hearing, that Blaine did not want a relationship with his biological father.

¶9 We summarily reject Daniel's suggestion that the evidence was insufficient simply because Melissa is a single mother with no partner who currently wishes to adopt

Blaine. There is no support for such a proposition. The juvenile court found Melissa took good care of Blaine and his younger sibling, a finding amply supported by the record. There is no need for Blaine to be adopted by anyone. Additionally, the court found Daniel had not been an appropriate father to Blaine; he could have had contact with Blaine but made no real attempt to do so; he had a problem with alcohol during the marriage and had to be hospitalized after Melissa found him "passed out on the floor with a bottle of Black Velvet liquor"; and there was a person in Blaine's life who served as a father figure and provided him with guidance and emotional as well as some financial support. From this evidence, the court readily could and did infer that Blaine would benefit from the termination of Daniel's parental rights.

¶10 For the reasons stated, the juvenile court's order terminating Daniel's parental rights is affirmed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge