

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CODY B.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND C.B.,
Appellees.

No. 2 CA-JV 2016-0105
Filed September 19, 2016

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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201500130
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

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Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Cody B. appeals from the juvenile court's order terminating his parental rights to his son, C., born in October 2011, pursuant to A.R.S. § 8-533(B)(1), (B)(4), (B)(10). Cody argues termination was not in C.'s best interests and the court should have imposed a permanent guardianship rather than severing his parental rights. We affirm.

¶2 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). Cody's last contact with C. was in July 2013, and he has been "in and out of prison or on parole several times since" then. C. was removed from the mother's custody in June 2015 due to allegations of neglect and substance abuse as to her, and due to Cody's incarceration, lack of support, and his failure to protect C. from the mother. C. was adjudicated dependent in July 2015. In February 2016, Cody's parental rights to another child were terminated based on abandonment, neglect, and substance abuse.¹

¹Cody testified at the severance hearing that he has five children, and "[t]o [his] knowledge," his parental rights to one of them had been severed.

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¶3 In December 2015, the Department of Child Safety (DCS) filed a motion to terminate the parents' rights, alleging that Cody's parental rights were subject to severance pursuant to abandonment, deprivation of his civil liberties due to a felony conviction, and termination of his parental rights to another child within the preceding two years. *See* § 8-533(B)(1), (B)(4), (B)(10). After a one-day contested severance hearing held in May 2016, the juvenile court terminated Cody's parental rights based on all of the grounds alleged, and found that termination was in C.'s best interests.² This appeal followed.

¶4 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of a statutory ground for severance and finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶5 At the termination hearing, Cody's attorney asked DCS child safety specialist Margaret Bonacci if DCS had considered permanent guardianship as an alternative to severance and inquired why DCS "believe[d] that severance is more appropriate than a permanent guardianship." Over the state's objection, Bonacci responded that severance was a better option than permanent guardianship for the following reasons: Cody has a history with the criminal justice system and DCS; his rights to another child were recently severed based on abandonment; C. "deserves a permanent home and he [currently] has a safe and very stable home"; and, "it would be harmful to [C.] should [Cody] decide to start a relationship [with C.] again and then be incarcerated again." Cody's attorney

²The juvenile court also terminated the parental rights of C.'s mother. She is not a party to this appeal.

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then asked Bonacci to “explain . . . [her] understanding” of a permanent guardianship. The state again objected, and the juvenile court sustained its objection. In its severance ruling, the court found that termination would permit C., who is adoptable and currently is residing in an adoptive placement, to be adopted. It also determined severance “would provide [C.] with permanency and stability,” and found that his “current placement is the least restrictive placement available consistent with his needs.”³

¶6 On appeal, Cody “does not contest that he is presently incarcerated and that his parental rights to another child were terminated,” but instead asserts “[t]he question raised in this appeal is whether the juvenile court had an adequate basis for finding that it was in [C.’s] best interests to sever [his] parental rights” without considering whether a permanent guardianship was the better option.⁴ Notably, before a juvenile court may order DCS to file a motion to terminate a parent’s rights to his or her children, it is required to determine “[w]hether termination of parental rights, adoption, permanent guardianship . . . or some other permanent legal status is the most appropriate plan for the child.” A.R.S. § 8-862(B)(1). And although Cody did not provide this court with a transcript of the hearing that led the court to adopt a case plan of severance and adoption, we presume the court made the determination required by § 8-862(B) before doing so. *Cf. State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994) (trial court presumed to know and follow law).

¶7 Moreover, there was no motion for a permanent guardianship before the court.⁵ See A.R.S. § 8-872. And A.R.S. § 8-

³Because C. “has a brain disorder called Schizencephaly,” he has certain special medical, physical and educational needs.

⁴Because it appears Cody does not challenge the juvenile court’s findings regarding any of the grounds for termination, we address only his claim that severance was not in C.’s best interests.

⁵Nor did the juvenile court order that such a motion be filed, as it was entitled to do if it had determined that a permanent guardianship was in C.’s best interests. See Ariz. R. P. Juv. Ct. 61(A).

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871, the statute governing the permanent guardianship of a child, suggests that a permanent guardianship would not have been appropriate in any event. *See* § 8-871(A)(4) (court may establish permanent guardianship for dependent child if certain requirements are met, including that guardianship is in child's best interests and "likelihood that the child would be adopted is remote or termination of parental rights would not be in the child's best interests").

¶8 There was ample evidence before the juvenile court that termination was in C.'s best interests and that he is in an adoptive placement and is an adoptable child.⁶ Bonacci opined that termination is in C.'s best interests, noting that, in light of Cody's past behavior, she believes he will reoffend following his release.⁷ *See In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) ("[l]eaving the window of opportunity for remediation open indefinitely is not necessary, nor do we think that it is in the child's or the parent's best interests"). Bonacci also testified that C. is receiving consistent care for his special needs in a stable home with the grandparents of his half-siblings, with whom he has bonded, and that remaining there will provide him with "the most stability that he has ever had in his life." She further explained C. has developed a close relationship with his half-siblings, and separating him from them will be harmful to him; C. is "fully adoptable"; and, C. was never attached to Cody, even before he was incarcerated, nor has Cody ever been "present" in C.'s life "for a significant amount of time to understand what C[.]'s needs are."

¶9 The evidence showed that C. would benefit from the permanency available from severance and adoption—permanency

⁶Concomitantly, Cody has not presented any evidence that a permanent guardianship would be in C.'s best interests. *See* § 8-871(A)(4).

⁷Although Cody testified he will be released on November 5, 2016, he acknowledged he would not be "able to pick [C.] up on November 7 and bring him into [his] house," a concern Bonacci essentially echoed.

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that cannot be accomplished via guardianship because it is subject to revocation. *See* A.R.S. § 8-539 (order terminating parental rights permanently “divest[s] the parent and the child of all legal rights, privileges, duties and obligations with respect to each other”); A.R.S. § 8-873(A)(1) (order granting permanent guardianship may be revoked and custody returned to parent when “there is a significant change of circumstances” such as when “[t]he child's parent is able and willing to properly care for the child”). Finally, to the extent Cody asks us to reweigh the evidence presented below, this we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). Rather, we defer to the juvenile court’s resolution of conflicting inferences if supported by the record. *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶10 For all of the foregoing reasons, the juvenile court’s order terminating Cody’s parental rights to C. is affirmed.