

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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FRANK H.,)	2 CA-JV 2010-0107
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and CHLOE C.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19016200

Honorable Peter Hochuli, Judge Pro Tempore

AFFIRMED

Ronald Zack

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Frank H. appeals from the juvenile court’s order terminating his parental rights to his daughter, Chloe C., born in March 2008. Frank contends there was insufficient evidence to support the court’s termination of his parental rights based on the term of his incarceration¹ and Chloe C.’s out-of-home placement. *See* A.R.S. § 8-533(B)(4), (8)(a). He also challenges the court’s finding that termination was in Chloe’s best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance 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). “On review, . . . we 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). To sustain its burden of establishing that termination is in a child’s best interests, the Arizona Department of Economic Security (ADES) must prove, by a preponderance of the evidence, that the child either would benefit from the severance or be harmed if the parental relationship continued. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶3 We view the evidence in the light most favorable to upholding the juvenile court’s ruling. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d

¹Termination of a parent’s rights may be justified if a “parent is deprived of civil liberties due to the conviction of a felony” and “the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.” A.R.S. § 8-533(B)(4).

682, 686 (2000). Frank, who had had little contact with Chloe since birth and had denied paternity, was incarcerated in February 2009, just before Chloe's first birthday; his paternity was ultimately established in June 2009. In March 2009, Child Protective Services (CPS) received a report alleging that then one-year-old Chloe had sustained a "submersion burn" on four fingers of her right hand. "It was reported the injury was eight to ten days old and [mother] did not seek medical treatment."² The report also alleged Chloe's mother and her current boyfriend had a history of domestic violence. Thus, ADES removed Chloe from the mother's care, placed her with the maternal grandmother, and filed a dependency petition.

¶4 In May 2009, Frank admitted the allegations in an amended dependency petition, and the court adjudicated Chloe dependent as to him, ordering him to "participate in any services available to him while incarcerated." In September 2009, the court gave ADES "discretion" to permit Chloe to visit Frank in prison. In December 2009, Frank was sentenced to a five-year prison term for aggravated robbery with credit for 295 days served. Chloe will be almost six years old when Frank's maximum term of incarceration expires in February 2014. After he was sentenced, Frank acknowledged to the court he could not parent Chloe from prison but stated he did not want his parental rights severed. During the dependency proceeding, Frank completed parenting and substance abuse classes in prison, and sent Chloe letters, some with pictures he had drawn. Frank never contacted the CPS case manager to inquire about Chloe's status.

²The mother, whose rights to Chloe were also terminated, is not a party to this appeal.

¶5 Finding the parents were not in compliance with the case plan, the juvenile court changed the case plan goal to severance and adoption in February 2010. ADES then filed a motion to terminate the parents' rights to Chloe, alleging as to Frank that the term of his incarceration would deprive Chloe of a normal home for a period of years and that he was unable to remedy the circumstances that caused her to remain in an out-of-home placement. *See* A.R.S. § 8-533(B)(4), (8)(a). ADES also alleged termination was in Chloe's best interests. Following a four-day contested severance hearing held between April and July 2010, the court terminated the parents' rights to Chloe in an under-advisement ruling containing its findings of facts and conclusions of law.

¶6 At the termination hearing, CPS case manager Wendy Williamson testified that, because of Chloe's young age, "going into a jail, having to go through security, and hearing clanging doors," only to interact with Frank across a video screen, was not advisable. Williamson opined that Frank, whom Chloe did not recognize as her father, would not be able to nurture a parenting relationship with her from prison. The paternal great-grandmother testified she had visited Chloe during the dependency, and the paternal great-aunt testified she had facilitated purchasing gifts for Chloe at Frank's request. Williamson testified that Chloe had lived with her maternal grandmother since she had been removed from her mother's care. Williamson added that the grandmother is "very protective of Chloe," that Chloe, who is an adoptable child, had bonded with her grandmother, and that placement with her would be in Chloe's best interests. Williamson also testified that Frank "has not been an active part of [Chloe's] life . . . [h]e's never been her primary parent."

¶7 Relying on *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 225 P.3d 604 (App. 2010), a case the juvenile court considered in its under-advisement ruling, Frank first contends there was insufficient evidence to support the court's finding that his sentence was sufficiently long to deprive Chloe of a normal home for a period of years and asserts the court "improperly weighed the care that the current placement is providing Chloe versus the care that [father] can provide." We do not reweigh the evidence presented to the court because, as the trier of fact, 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, 100 P.3d 943, 945 (App. 2004). Here, the record contains abundant evidence to support the court's findings with respect to severance based on the term of Frank's incarceration and that termination was in Chloe's best interests. No purpose would be served by restating the court's ruling on these issues in its entirety. Rather, because there is reasonable evidence to support the court's findings of fact and because we see no error of law in its order, we adopt that portion of the court's order related to these particular findings.³ *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08; citing *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶8 In addition, because we conclude there was sufficient evidence to support the juvenile court's termination of parental rights based on Frank's incarceration, we do not address his argument related to the court's finding that ADES had provided appropriate reunification services and that he was unable to remedy the circumstances

³We note, however, that the court mistakenly stated the "only 'parent[]'" Chloe has known is her "paternal" grandmother, rather than her "maternal" grandmother.

that caused Chloe to be in an out-of-home placement, an argument ADES concedes has merit. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”).

¶9 We therefore affirm the juvenile court’s order terminating Frank’s parental rights to Chloe.

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

CONCURRING:

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

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