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
JAN 12 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BRANDY E.,	)	2 CA-JV 2011-0099
	)	DEPARTMENT B
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
KIMBERLY T.-S. and ISABELL E.,	)	Appellate Procedure
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. MD20100001

Honorable Gary V. Scales, Judge Pro Tempore

AFFIRMED

Robert D. Rosanelli — Phoenix
Attorney for Appellant

Johnson & Myers, PLLC
By Jamie N. Myers — Scottsdale
Attorneys for Appellee
Kimberly T.-S.

K E L L Y, Judge.

¶1 After a contested severance hearing, the juvenile court terminated appellant Brandy E.'s parental rights to her child, Isabell E., born in October 2008, on the grounds of abandonment, neglect, and the fact Brandy would be imprisoned long enough to deprive Isabell of a normal home for years. *See* A.R.S. § 8-533(B)(1), (2), (4). On appeal, Brandy challenges the sufficiency of the evidence to sustain those statutory grounds for severance.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child.[1] *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, as a matter of law, we must say that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We review the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 On December 23, 2009, Brandy, who was intermittently homeless, agreed to allow Kimberly, the former wife of one of her friends, to take then fourteen-month-old Isabell "for a while during Christmas." Brandy signed a note giving Kimberly permission "to babysit" and to take Isabell for medical care, and Kimberly told her "let's

[1]Brandy does not challenge the juvenile court's best-interests findings on appeal.

stay in touch," but no concrete plans for the situation were made. That same day Brandy faxed Kimberly a hand-written "Authorization of Temporary Guardianship."

¶4 On Christmas day, when Brandy had not called, Kimberly contacted her former husband to ask him what was going on. He informed her Brandy did not want the child and wanted Kimberly to adopt her. In January, Kimberly had an attorney create adoption papers, which Brandy signed three separate times, although none of the signatures were legally sufficient due to various technical errors. Kimberly was granted legal custody of Isabell, pursuant to a "petition for custody pending certification to adopt" later that month.

¶5 Brandy called Kimberly and left voicemail messages in December and January. Brandy pled guilty to possession of dangerous drugs in June 2010 and was incarcerated; she sent three letters and a drawing for Isabell in September and October 2010, but thereafter did not contact Kimberly or Isabell. In November, Kimberly filed a petition for termination of Brandy's parental rights, and the juvenile court granted that motion in June 2011.

¶6 Brandy asserts on appeal that she did not abandon Isabell, but that Kimberly took "advantage of [her]" and "seized the opportunity to add another child to her family" by keeping the child. Section 8-531(1), A.R.S., defines "[a]bandondment" 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.

¶7 The record here contains ample evidence that, whatever Kimberly's intentions may have been, Brandy abandoned Isabell. Brandy had not contacted Kimberly or Isabell from January to September 2010, had last written to Isabell approximately seven months before the severance hearing, had made no other contact with her after that point, and had provided no financial assistance for the child at any point after Isabell entered Kimberly's care. Whether a parent has abandoned a child is judged not by subjective intent, but by conduct. *In re Pima County Juv. Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994). In this case, Brandy's conduct, including her near-total lack of effort to maintain contact with Isabell, clearly demonstrated she had abandoned her child.

¶8 Brandy's argument on appeal essentially asks this court to 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). As outlined above, there is reasonable evidence in the record to support the court's factual findings. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, "[b]ecause we find that sufficient evidence supports the first ground for termination, we need not consider the [remaining] ground[s]." *Mary Lou C. v. Ariz. Dep't of Econ.*

Sec., 207 Ariz. 43, ¶ 14, 83 P.3d 43, 49 (App. 2004). We therefore affirm the court's order terminating Brandy's rights to Isabell.

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

CONCURRING:

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

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