

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ERIC M.,
Appellant,

v.

SHANNON H. AND E.M.,
Appellees.

No. 2 CA-JV 2013-0094
Filed January 9, 2014

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NOT FOR PUBLICATION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); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pinal County
No. S1100SV201300009
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Flores & Clark, LLC, Globe
By Daisy Flores
Counsel for Appellant

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Shannon H., Gold Canyon
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Eric M. appeals from the juvenile court’s August 2013 order granting the petition for termination of Eric’s parental rights to E.M., filed by Shannon H., E.M.’s mother, on the grounds of abandonment, history of chronic abuse of drugs and controlled substances, and conviction of a crime resulting in the deprivation of civil liberties for a period of time sufficiently lengthy so as to deprive E.M. of a normal home for a period of years. *See* A.R.S. § 8-533(B)(1), (B)(3), (B)(4). Eric essentially challenges the sufficiency of the evidence to support the order. We affirm for the reasons stated below.

¶2 To terminate a parent’s rights, the juvenile court must find that clear and convincing evidence established at least one statutory ground for terminating exists and that a preponderance of the evidence has shown severance is in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 16, 41, 110 P.3d 1013, 1017, 1022 (2005). We will affirm the court’s order unless we conclude 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, ¶¶ 6, 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the order. *Id.* ¶ 10. If the record contains sufficient evidence to support at least one statutory ground for the termination, “we need not address claims pertaining to the other grounds” alleged and found to exist. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

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¶3 In its under-advisement ruling entered after a contested-severance hearing, the juvenile court made thorough findings of facts that included a chronology of events that preceded the filing of the petition. As the court found, Eric had moved to California when E.M., born in June of 2010, was about three months old. Eric returned to Arizona in November, left for Colorado in January 2011, was arrested in Colorado in August 2011, and was convicted of two counts of armed robbery and sentenced in March 2012 to consecutive prison terms of nine years. The court also found Eric had abused drugs and controlled substances since he was a teen, deleteriously affecting his ability to parent E.M.

¶4 With respect to § 8-533(B)(4), the juvenile court found and the record established Eric's "mandatory release date" from prison, given the consecutive, nine-year prison terms, is February 2029, his parole hearing is in May of 2024, and his "estimated parole eligibility date is August 14, 2024." Applying the language of the statute, the court concluded E.M. "will be deprived of a normal home with [Eric] for a period of years" and Eric will not be able to provide the child with "care, guidance and emotional and financial support" because of the length of the prison term and the fact that the term is being served in another state. The court further found Eric did not have a "significant relationship with the child when his incarceration began, having abandoned the child early in the child's infancy."

¶5 Because the record before us supports these findings of fact, we adopt them. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, quoting *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Eric has not persuaded us on appeal the court abused its discretion or erred in any respect by finding the existence of a ground for severance pursuant to § 8-533(B)(4), based on Eric's conviction of two felonies and the prison term imposed in Colorado as a consequence. Eric contends he "stands convicted of a non-dangerous and non-violent offense" and there was evidence that he "is a good parent." But, the offense was armed robbery, permitting the inference it was, in fact, a dangerous, potentially violent, if not actually violent, offense. And in any event, the court did not

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terminate Eric's rights based on the nature of the offense. Rather, it did so because of the length of the prison term and the effect of that term on Eric's ability to parent and provide a normal home for E.M. Based on the record before us, which includes documentation of the convictions and prison terms, Eric's contention that the length of the prison term "is unclear," is specious at best. At a minimum, he cannot be released any earlier than August of 2024 and his mandatory release date is in 2029.

¶6 Because there was sufficient evidence to support the juvenile court's finding that at least one statutory ground for terminating his parental rights existed, we need not address Eric's challenges to the sufficiency of the evidence on the grounds of abandonment and chronic abuse of drugs and other substances. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205. We therefore turn to Eric's argument that there was insufficient evidence to support the court's finding that termination of his rights to E.M. was in the child's best interests.

¶7 In order to establish termination of Eric's rights to E.M. was in the child's best interests, Shannon was required to show E.M. 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). Whether there exists an adoptive placement for a dependent child is a relevant factor. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). The court may also consider whether the person with whom the child has been placed is adequately providing for the child's needs. *See In re Maricopa Cnty. Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994). Additionally, the existence of a statutory ground for termination may be regarded as having "a negative effect" on a child and may therefore be among the factors a court considers in making the best-interests finding. *In re Maricopa Cnty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988).

¶8 The juvenile court made numerous appropriate, relevant, and well-supported findings of fact upon which it based its conclusion that termination of Eric's parental rights to E.M. was in

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the child's best interests. We need not restate those findings here in their entirety; rather, we adopt them because there is reasonable evidence to support them, *see Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, and refer to specific findings as is necessary to address Eric's arguments on appeal. We will not, however, reweigh the evidence, *see id.* ¶ 4, which is what Eric seems to be asking us to do. Instead, we assume the court considered all evidence presented, including that which Eric insists showed he is a good parent.

¶9 Eric has not persuaded us on review that the juvenile court abused its discretion. He contends, for example, that "the record has no reference as to how the child would be endangered or harmed by allowing the parental relationship to remain intact." The record, which includes the testimony of the maternal grandparents, Shannon, the service coordinator with the Division of Developmental Disabilities who was E.M.'s services coordinator, and others, belies that contention. The maternal grandmother testified, for example, that she provides child care for E.M. She and the maternal grandfather described E.M.'s special needs because of developmental disabilities, including a "sensory deprivation" or "sensory disorder," and verbal challenges. The maternal grandmother testified Eric would be unable to care for E.M. because he did not fully understand her disabilities, adding that if something were to happen to Shannon, "[w]e want the satisfaction of knowing . . . that this child, who has special needs, is protected and we don't have to continue with this threat of him making decisions for this child that he doesn't even know."

¶10 E.M.'s service coordinator testified about E.M.'s disabilities and the services she received. She stated Eric had never contacted her to inquire about the kinds of services E.M. was entitled to or "what is in [E.M.'s] best interest for her development."

¶11 Evidence also established the negative effect Eric's substance abuse had on the course of his life and ability to parent, which the court noted in connection with the best-interests finding. In that regard, Eric's mother testified that because of his drug problem, Eric had spent most of his adult life in and out of prison. Eric admits in his opening brief that he "struggles with drug

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addiction,” and “[i]t is possible he will still be struggling with addiction for the rest of his life,” although he insists “there is no assurance as to what degree and whether it will impede his ability to parent.”

¶12 The juvenile court expressly addressed the risk to E.M. resulting from Eric’s “harmful tendencies and poor judgment,” which termination “will serve to substantially minimize.” The court considered the absence of a meaningful relationship between Eric and E.M. to preserve and that there is essentially no chance of developing one, given that Eric is incarcerated in another state. The court also noted Eric’s criminal conduct and “character issues,” commenting that they show he is “chronically unfit to parent,” findings that are also supported by the record.

¶13 Eric also asserts there is no plan for E.M.’s adoption, suggesting this weighed against severance of his rights. First, we question the relevancy of this factor here, given that E.M. is not a dependent child in need of a permanent, adoptive home; rather, her biological mother has legal and physical custody, and the juvenile court found Shannon is meeting E.M.’s special needs, with family support. Moreover, the court did consider this factor as a benefit of severance, noting termination frees E.M. for adoption by Shannon’s husband if she marries in the future. That there currently is no such person does not negate the court’s best-interests finding.

¶14 Because Eric has failed to establish the juvenile court abused its discretion, we affirm the court’s order terminating his parental rights to E.M.