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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 10/02/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

RODRIGO V.,)
)
) 1 CA-JV 12-0060
)
Appellant,) DEPARTMENT B
)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court)
ARIZONA DEPARTMENT OF)
ECONOMIC SECURITY, ANINA G.,)
)
)
Appellees.)
)

Appeal from the Superior Court of Maricopa County

Cause No. JD 19895

The Honorable Jay Ryan Adleman, Judge Pro Tem

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

John L. Popilek, P.C. Phoenix
By John L. Popilek
Attorneys for Appellant

T H O M P S O N, Presiding Judge

¶1 Rodrigo V. (father) appeals from the juvenile court's order severing his parental rights to his daughter, Anina G. (daughter). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Daughter was born out of wedlock on December 28, 2010, substance exposed to marijuana. On January 6, 2011, the Arizona Department of Economic Security (ADES) filed a dependency petition as to both Sarah G. (mother) and father. On February 15, 2011, after an in-home dependency was unsuccessful with mother,¹ daughter was taken into physical custody by ADES and placed with a foster family.

¶3 ADES effected service of the dependency petition on father by publication after multiple unsuccessful attempts to locate father.² At the publication hearing on dependency, held on March 30, 2011, the juvenile court found that service was complete as to father and ordered daughter dependent as to

¹ Daughter was found dependent as to mother on February 17, 2011. Mother's parental rights were severed from daughter on January 10, 2012. Mother is not a party to this appeal.

² ADES designated a parent locator to find a current address for father. The parent locator searched multiple databases (CHILDS, ADOC, ATLAS, and AZTECS) but was unable to obtain a current address for father. Next, a skip-trace specialist employed by Outback Adjusting and Investigative Services was hired to locate father. The specialist searched the Federal Bureau of Prisons, Department of Corrections, and the County Jails, among other databases. Like the parent-locator, the specialist was unable to locate father or any current addresses associated with father.

father when father waived his rights by failing to attend the hearing noticed in the publication. The case plan at that time was family reunification.

¶4 Father first appeared before the juvenile court on May 26, 2011, when he attended the report and review and permanency planning hearing. Father scheduled a paternity test and provided the juvenile court and ADES with a current address and phone number where he could be reached. Father failed to attend his paternity test in June 2011. Father never responded to ADES's voicemail message or letter concerning the missed test, and ADES did not have any further contact from him until November 2011.

¶5 On August 12, 2011, ADES filed a motion to sever father's parental rights. ADES alleged that father had abandoned daughter by failing to maintain a normal relationship with her, without just cause, pursuant to Arizona Revised Statutes (A.R.S.) sections 8-531(1)(2007) and -533(B)(1) (Supp. 2011), and that severance would be in daughter's best interests.

¶6 When ADES was unable to personally serve the motion to sever on father, it again properly effected service on father through publication. Father attended the November 29, 2011, publication hearing on severance and contested the allegations in the motion. After this hearing, on December 16, 2011, father took a paternity test which confirmed he was daughter's

biological father. Father saw daughter for the first time at the pre-trial conference held on January 10, 2012. Daughter was just over a year old at that time.

¶7 Once paternity was established, ADES offered services to father: specifically urinalysis (drug testing), visitation, a referral for a parent aide, and a psychological evaluation and consultation.³ After cancelling his first scheduled visit with daughter due to a work conflict, father had three supervised visits with daughter in February 2012 that went well. Father missed his first scheduled drug test on January 27, 2012, and on February 9, 2012, father tested positive for the use of cocaine. Following the failed test, father was required to call the TASC drug testing center every weekday. Between February 9, 2012, and March 11, 2012, father called TASC only eight times. Father also failed to attend three scheduled drug tests.

¶8 The contested severance hearing was held on March 13, 2012. Father testified that he was aware of mother's pregnancy and daughter's birth and that he had tried to attend but mother and her family denied him access. Father also testified that when daughter was two months old mother's cousins called him to take daughter because mother could not adequately care for her, but when father arrived, mother called the police and he was

³ At the time of the severance hearing, father had not completed a psychological evaluation. However, this was due to the doctor having to reschedule, not due to any fault of father's.

unable to take daughter. Father stated he knew of daughter's special needs⁴ and, while he had not had any special training, he, with the help of his sister who was a nurse, would be able to meet all of her needs. Father acknowledged that he had never sent daughter any cards, letters, or presents before visitations began in February 2012.

¶9 The ADES case-worker testified that severance and adoption was in the best interests of daughter because daughter had a strong bond with her placement family, the placement family was able to meet all of her special needs, and the placement family was willing to adopt her and provide her a safe and stable home. The case-worker stated that, until a month before trial, father had not maintained regular contact or made any effort to communicate with daughter, and he failed to provide support to daughter, for a period greater than six months.

¶10 The juvenile court found that ADES had proven by clear and convincing evidence that father had made "only minimal efforts to support and communicate" with daughter and he had failed to maintain a "'normal parental relationship' throughout her entire life," and that this constituted grounds for

⁴ Daughter suffers from Gastroesophageal Reflux Disorder (GERD) and Dysphasia. Dysphasia is a condition that causes delayed swallowing. These conditions requiring that daughter receive occupational, speech, and feeding therapy.

termination under A.R.S. § 8-533(B)(1). The juvenile court also found that ADES had shown by a preponderance of the evidence that severance of father's parental rights was in daughter's best interests. Therefore, the juvenile court terminated father's parental rights as to daughter.

¶11 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A)(2007) and 12-120.21.

DISCUSSION

¶12 Before a juvenile court can order termination of parental rights, it must first find that one of the enumerated grounds for termination under A.R.S. § 8-533(B) has been satisfied by clear and convincing evidence. A.R.S. 8-537(B)(2007); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find, by a preponderance of the evidence, that severance would be in the child's best interests. A.R.S. 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶41, 110 P.3d 1013 (2005).

¶13 Father argues that there was insufficient evidence to support the juvenile court's finding that he had abandoned his daughter because his initial attempts to form a relationship with daughter were thwarted by mother, and that once paternity was established he complied with the services ADES offered him. We disagree.

¶14 Questions of abandonment are questions of fact that

are best resolved by the juvenile court. See *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990). The juvenile court is in the "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dept' of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Therefore, we view the facts in a light most favorable to affirming the juvenile court's finding. See *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 976 P.2d 1137, 1141 (1994).

¶15 Abandonment is an enumerated ground for termination given in A.R.S. § 8-533(B) and is defined in A.R.S. § 8-531(1) as:

[T]he 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.

Abandonment is measured by the parent's conduct, not by the parent's subjective intent. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685. "When 'circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship

however possible and must vigorously assert his legal rights to the extent necessary.'" *Id.* at 250, ¶ 22, 995 P.2d at 686 (quoting *Pima County Juv. Severance Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994)).

¶16 The evidence provided in the record is sufficient to support the juvenile court's finding that father had abandoned daughter. Father knew about daughter's birth and took no action to establish his paternity. Father displayed similar inaction after he was denied the opportunity to take daughter from mother's cousins. Father missed a paternity test in June 2011, failed to respond to ADES's attempts to reschedule, and had no further contact with ADES until November 2011. By his own admission, father's first meaningful contact with daughter was not until his first visit with her in February 2012, over a year after her birth and six months after ADES filed the motion to sever. In that same time period, father never sent daughter any cards, letters, or gifts, and did not make any reasonable effort to create a "normal parental relationship" with her.

¶17 While father did participate in the services offered by ADES, he did not fully comply with their conditions. For example, father cancelled his first scheduled visit with daughter because of a work conflict, failed a drug test a day after his second visit with daughter, and did not call TASC every weekday as required. Therefore, we find that the juvenile

court had a sufficient basis to conclude, by clear and convincing evidence, that father had abandoned daughter.

¶18 Father contends that insufficient evidence was offered to show that severance was in daughter's best interests. To sever parental rights, the juvenile court must determine, by a preponderance of the evidence, that severance is in the best interests of the child. *Kent K.*, 210 Ariz. at 288, ¶ 41, 110 P.3d at 1022; *JS-500274*, 167 Ariz. at 4, 804 P.2d at 733. This determination "must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *JS-500274*, 167 Ariz. at 5, 804 P.2d at 734.

¶19 The case-worker testified that daughter had become "extremely bonded" with her foster family. She stated that daughter had been with the foster family since daughter was about two months old, and that the family was willing to adopt daughter. The case-worker also stated that the foster family was able to meet all of daughter's special needs and provide a "safe and stable home." Because reasonable evidence supports the best interests finding, the juvenile court did not err in determining that severance would be in daughter's best interests.

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's termination of father's parental rights.

/s/

JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

SAMUEL A. THUMMA, Judge