

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DEMETRIUS L.,
Appellant,

v.

JOSHLYNN F., D.L.,
Appellees.

No. 1 CA-JV 15-0034
FILED 5-26-2016

Appeal from the Superior Court in Mohave County
No. B8015SV201404004
The Honorable Richard Weiss, Judge

AFFIRMED

COUNSEL

Mohave County Legal Defender's Office, Kingman
By Eric Devany
Counsel for Appellant

Harris & Winger, Flagstaff
By Chad Joshua Winger
Counsel for Appellee Joshlynn F.

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Peter B. Swann joined.

O R O Z C O, Judge:

¶1 This matter is on remand from the Arizona Supreme Court to consider whether, based on the appeal by Demetrius L. (Father), the record supports the juvenile court’s order terminating his parental rights to D.L. on the grounds of abandonment. For the following reasons, we affirm.

FACTS¹ AND PROCEDURAL HISTORY

¶2 The underlying facts and procedural history of this case were stated in *Demetrius L. v. Joshlynn F.*, -- Ariz. --, --, 365 P.3d 353, 354-55, ¶¶ 2-8 (2016). Briefly, Joshlynn F. (Mother) and Father never married but lived together for three years after D.L. was born in September 2006. *Id.* at 354, ¶ 3. In 2009, Father moved to California but maintained an informal visitation schedule with D.L. until August 2010. *Id.* Thereafter, Father provided no child support and, except for one gift delivered by a relative, sent no gifts, cards or letters to D.L. *Id.* at ¶ 4.

¶3 Mother married Stepfather in 2011. *Id.* at ¶ 5. D.L. lives with Mother, Stepfather, and Mother’s four other children. *Id.* Stepfather has a close, loving relationship with D.L., wants to adopt him, and would “love for him to have a father.” *Id.* To that end, Mother petitioned to terminate Father’s parental rights on grounds of abandonment in March 2014. *Id.* at ¶ 6. Following a severance hearing in December 2014, the juvenile court found clear and convincing evidence that Father abandoned D.L. and found that severance was in D.L.’s best interests. *Id.* at 354-55, ¶ 6; Ariz. Rev. Stat. (A.R.S.) §§ 8-531.1 and -533.B. Thus, the juvenile court granted Mother’s petition. *Demetrius L.*, 365 P.3d at 355, ¶ 6.

¶4 Without considering the grounds of abandonment, this court reversed the severance order, finding the “record [did] not establish by a

¹ We view the evidence in the light most favorable to sustaining the court’s ruling. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20 (2000).

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preponderance of the evidence that terminating Father’s parental rights [was] in [D.L.’s] best interests.” *Id.* at ¶ 7 (quoting *Demetrius L. v. Joshlynn F.*, 1 CA-JV 15-0034, 2015 WL 4575956 at *1, ¶ 1 (Ariz. App. July 30, 2015) (mem. decision)). Specifically, this court relied on *Jose M. v. Eleanor J.*, 234 Ariz. 13 (App. 2014) to require Mother to present additional evidence beyond Stepfather’s plan to adopt D.L. to show that severance was in D.L.’s best interests. *Id.* at 357, ¶ 18.

¶5 The Arizona Supreme Court disagreed and found “making D.L. adoptable would affirmatively improve his life in that it would add permanency and stability to the de-facto father-son relationship” between D.L. and Stepfather. *Id.* at ¶ 20. Furthermore, “[s]everance would not merely position D.L. as a possible adoptee waiting and hoping for a better, willing provider to come along: Stepfather is married to Mother, has financially provided for D.L. for about half of D.L.’s life, and fulfills the psychological role of a parent.” *Id.* at 357-58, ¶ 20. Therefore, the Supreme Court reversed this court, affirmed the juvenile court’s finding that termination of Father’s parental rights was in D.L.’s best interests, and remanded the issue of whether clear and convincing evidence supported the juvenile court’s finding of abandonment. *Id.* at 358, ¶¶ 22-23. On remand, we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235 and 12-120.21.A.1 (West 2016).²

DISCUSSION

¶6 We review an order terminating parental rights for abuse of discretion and will affirm if the order is supported by sufficient evidence. *Calvin B. v. Brittany B.*, 232 Ariz. 292, 296, ¶ 17 (App. 2013). The juvenile court may terminate parental rights if it finds one of the statutory grounds by clear and convincing evidence, and that termination is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 281-82, 288, ¶¶ 7, 41 (2005) (interpreting A.R.S. § 8-533.B).³ One statutory ground for termination of

² We cite the current version of applicable statute when no revisions material to this decision have since occurred.

³ The Supreme Court has already found that termination of Father’s parental rights is in the best interests of D.L. *Demetrius L.*, 365 P.3d at 358, ¶ 22.

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parental rights is abandonment. See A.R.S. § 8-533.B.1. Pursuant to A.R.S. § 8-531.1, abandonment is defined 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.⁴

¶7 “[A]bandonment is measured not by a parent’s subjective intent, but by the parent’s conduct” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18 (2000). The question of abandonment is a question of fact to be resolved by the juvenile court. *Pima Cnty. Juvenile Action No. S-1182*, 136 Ariz. 432, 432 (App. 1983). Nonsupport alone is insufficient to establish abandonment. *Yuma Cty. Juv. Ct. Action No. J-87-119*, 161 Ariz. 537, 539 (App. 1989).

¶8 The juvenile court held a severance hearing on December 5, 2014. In its order terminating Father’s parental rights, the juvenile court made a number of express findings, including:

8. The single ground for termination is abandonment pursuant to A.R.S. §§ 8-533(B)(1) and 8-531(1);

9. The court finds that the testimony is uncontroverted that the father did not see his son since the late summer of 2010 except for a brief, perhaps traumatizing episode for the child . . . in November 2013;

10. The court finds based upon the testimony and evidence presented that the father has not provided any monetary support for his son. There have been no court orders for the father to pay any child support. However, the primary responsibility of a parent is to provide support for his or her child.

⁴ The statutory test for abandonment applies equally to severance actions involving married and unmarried parents. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 19 (2000).

11. The court finds that father appears to believe monetary support is tied to his actually seeing his son. The father has provided one gift during his time of no contact with his child, such gift delivered by a family member. Otherwise, the father has not communicated with his son by card, gifts or letters for more than three (3) years. The father has attempted third party contact to establish contact with his son without success.

12. There is evidence that the mother or her present husband may have frustrated the ability of the father to contact his son. The father testified that he believed his faith would eventually result in his reunion with his son. These cases are governed by conduct and not a parties' subjective intent. The father presents as mature and intelligent enough to effectively navigate the legal system to obtain timely results.

13. The Court finds that father has failed to provide reasonable support, maintain regular contact, including normal supervision for his child for a period of time greater than six (6) months. Father's efforts to support and communicate with his son were minimal.

...

15. The court finds by clear and convincing evidence that the mother has sustained her burden of proof that the father has abandoned his son[.]

¶9 Sufficient evidence supports the juvenile court's finding of abandonment by clear and convincing evidence. Father had no contact with D.L. since 2010 except for one brief encounter in November 2013. Apart from the one gift delivered through a relative, Father sent no cards, gifts or letters to D.L. Father never paid any support and never contributed towards the costs of D.L.'s education, school supplies or clothing. Granted, Father filed a petition for parenting time and custody in California in 2010, but he was told he needed to refile in Arizona. Despite this knowledge, Father did not file a petition in Arizona until January 2014.

¶10 To the extent Father argues that Mother frustrated his efforts to contact D.L., we disagree. The record suggests that Mother could have been protecting D.L. from further traumatizing events following the encounter in November 2013. And even if Mother was frustrating Father's

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efforts, Father knew how to file a petition for parenting time and custody, and he knew that he had to file in Arizona. Still, he waited over three years to file in Arizona and gave no reason for the delay. “The burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity.” *Michael J.*, 196 Ariz. at 251, ¶ 25.

CONCLUSION

¶11 For the foregoing reasons, we affirm the juvenile court’s order terminating Father’s parental rights to D.L.



Ruth A. Willingham · Clerk of the Court
FILED : ama